IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MOUNTAINEER INVESTMENTS LLC, a foreign corporation,	)	**No. 29469-2-III**
Respondent,	)	
v.	)	**Division Three**
GARY HEATH and BARBARA HEATH, husband and wife, and the marital community comprised thereof,	)	
Appellants.	)	**UNPUBLISHED OPINION**

Korsmo, A.C.J. — Barbara and Gary Heath challenge the process used to sell their repossessed motor home. Rejecting their view of the word "sale," we affirm.

FACTS

The Heaths purchased their motor home in 1994 and financed it through Key Bank. Mountaineer Investments LLC succeeded to Key Bank's right to the payments. Mr. Heath suffered a debilitating workplace injury that forced him into a disability retirement. By 2006, it was difficult to make payments on the motor home.

The Heaths attempted to sell or refinance the motor home, but were unsuccessful in their efforts. They eventually had to stop making payments. Mountaineer used the services of Alpine Recovery to repossess the motor home in early February 2009; the Heaths cooperated with the repossession. At the time of repossession, the estimated low value of the motor home was $5,540.

Mountaineer initially sent the Heaths a notice that the vehicle would be sold at a private sale. A week later, Mountaineer sent another notice that the motor home would be sold at public sale at Alpine on March 2, 2009 at 9:00 a.m. The Heaths received both notices. Alpine advertised the sale in the local print media and on-line via Craig's List.[1]

Alpine received three bids on March 2. It does not appear that anyone showed up at the site to bid on the vehicle; the Heaths did not attend or send a representative. The company also received telephone inquiries about the motor home. It decided to keep the bidding open another week. By March 9, the company had received six bids; the highest bid was for $5,100. The highest bidder did not respond and Alpine approached the second highest bidder. The company was able to convince that bidder to raise her bid from $3,500 to $4,000. The sale was eventually completed and title passed to the bidder

[1] No copy of the advertisements was entered into the record. An Alpine Recovery employee asserted that the advertisements stated that March 2 was the day on which the company would begin accepting bids.

on April 15, 2009. The proceeds from the sale were applied to the debt. A deficiency of $13,973.95 remained.[2]

Mountaineer filed suit October 5, 2009, to reduce the deficiency to a judgment. The Heaths counterclaimed, alleging violations of Washington's Uniform Commercial Code (UCC). Mountaineer offered to settle by waiving the deficiency if both parties bore their own attorney fees and costs. Although the record does not show the response, the Heaths apparently declined the offer.

Both parties moved for summary judgment. The trial court granted Mountaineer's motion and denied the Heaths' motion. Judgment was entered in the sum of $16,017.92 for the deficiency; the court also awarded attorney fees in the sum of $14,288.00. The Heaths moved to reconsider, arguing that the sale was not commercially reasonable. The trial court denied the motion concluding that the Heaths did not appear on March 2 to bid and their rights were extinguished at that point.

This appeal timely followed.

ANALYSIS

The Heaths contend that the trial court erred in granting Mountaineer's motion for summary judgment while denying their own motion, and also erred in denying their

[2] Interest accrued at the daily amount of $3.47.

motion for reconsideration. They argue that the notice of sale was incorrect and that the sale process was not commercially reasonable. We address each argument in turn.

This court reviews rulings on summary judgment in accordance with long settled standards. We review a summary judgment *de novo*; our inquiry is the same as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). We view the facts, and all reasonable inferences to be drawn from them, in the light most favorable to the nonmoving party. *Id*. If there is no genuine issue of material fact, summary judgment will be granted if the moving party is entitled to judgment as a matter of law. *Id*.; *Trimble v. Wash. State Univ.*, 140 Wn.2d 88, 93, 993 P.2d 259 (2000). The facts are not in dispute here; both parties sought summary judgment on the basis of the same facts.

A trial court's ruling on reconsideration is reviewed for a manifest abuse of discretion. *Drake v. Smersh*, 122 Wn. App. 147, 151, 89 P.3d 726 (2004). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A court acts on untenable grounds when its factual findings are not supported by the record; it acts for untenable reasons if it uses an incorrect standard of law or the facts do not meet the requirements of the standard of law. *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995), *review denied*, 129 Wn.2d 1003 (1996).

RCW 62A.9A-610 permits a creditor to dispose of collateral in a commercially reasonable manner. The creditor must make "best efforts to sell the collateral for the highest price and have a reasonable regard for the debtor's interests." *Swanson v. May*, 40 Wn. App. 148, 155, 697 P.2d 1013 (1985).

RCW 62A.9A-608(4) provides that a secured debtor is liable for any deficiency remaining after the creditor accounts for the sale of collateral. RCW 62A.9A-611(1)(b) requires a secured creditor to send a "reasonable authenticated notification of disposition," to a debtor before disposing of collateral. RCW 62A.9A-614 provides the rules for notifications involving consumer goods:

> In a consumer goods transaction, the following rules apply:
> (1) A notification of disposition must provide the following information:
> (A) The information specified in RCW 62A.9A-613(1);
> (B) A description of any liability for a deficiency of the person to which the notification is sent;
> (C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under RCW 62A.9A-623 is available; and
> (D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.
> (2) A particular phrasing of the notification is not required.
> (3) The following form of notification, when completed, provides sufficient information:
>
> [*Name and address of secured party*]
> [*Date*]

NOTICE OF OUR PLAN TO SELL PROPERTY

[*Name and address of any obligor who is also a debtor*]

Subject: [*Identification of Transaction*]

We have your [*describe collateral*], because you broke promises in our agreement.

[*For a public disposition*:]

We will sell [*describe collateral*] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[*For a private disposition*:]

We will sell [*describe collateral*] at private sale sometime after [*date*]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [*will or will not, as applicable*] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [*telephone number*].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [*telephone number*] [or write us at [*secured party's address*]] and request a written explanation. [We will charge you $ __ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [*telephone number*] [or write us at [*secured party's address*]].

We are sending this notice to the following other people who have an interest in [*describe collateral*] or who owe money under your agreement:

[*Names of all other debtors and obligors, if any*]

(4) A notification in the form of [subsection] (3) of this section is

> sufficient, even if additional information appears at the end of the form.
>
> (5) A notification in the form of [subsection] (3) of this section is sufficient, even if it includes errors in information not required by [subsection] (1) of this section, unless the error is misleading with respect to rights arising under this Article.
>
> (6) If a notification under this section is not in the form of [subsection] (3) of this section, law other than this Article determines the effect of including information not required by [subsection] (1) of this section.

RCW 62A.9A-614.

Mountaineer's two notices to the Heaths were both substantially in the form recommended by RCW 62A.9A-614. Clerk's Papers at 196, 202. The Heaths do not disagree. Instead, they contend these notices were deficient because they did not list the actual sale closure date of April 15, 2009. We disagree.

The apparent purpose of the notification requirement is to give the consumers a chance to redeem their property or to find others to bid on it and thus maximize the proceeds. *Swanson*, 40 Wn. App. at 155. The parties recognize that Article 9 of the UCC does not provide a definition of the term "sale." In its ordinary context under Article 2 of the UCC, "sale" refers to the transfer of title from one party to another, which occurs when the seller has completed its actions to deliver the goods. RCW 62A.2-106; RCW 62A.2-401(2).

Although denying it, the essence of the Heaths' implicit definition of "sale" is to

equate it with a particular date and location rather than the process of exchanging goods. While those certainly are component parts of the sale *notification* required by the UCC, they are not the end-all of the term. We see "sale" date in this context as the beginning of the process of changing title on the property rather than as merely the end of the process. The fact that title passed to the new purchaser on April 15 is no more meaningful than if the title had passed at 9:01 a.m. March 2. Both are later than 9:00 a.m. on March 2. The advertised sale date and time simply signaled the beginning of the sale. The Heaths, like anyone else who had an interest, were able to bid at that time.[3] The sale did not have to be completed at that same moment.

We conclude, as did the trial court, that the Heaths were properly notified that the sale would begin March 2 at 9:00 a.m. Accordingly, the rulings on that aspect of the competing summary judgment motions were proper.

The remaining claim is a contention that the sale was not commercially reasonable. Once again, we disagree. The requirement that the sale be commercially reasonable is imposed in order to protect the interests of both the consumer and the seller by maximizing the return from the property's disposition. *Swanson*, 40 Wn. App. at 155. To that end, courts look at the efforts made to sell the repossessed property. *Id*. The

[3] The Heaths did not bid nor did they solicit other bidders. They do not claim any prejudice from the alleged defective notice.

length of time prior to the sale that notice is given the consumer also is an important factor in assessing reasonableness. *Id*. at 156.[4]

The Heaths do not argue that they had insufficient notice of the date of the sale. Rather, they argue that (for the reasons previously discussed) the notice given them was insufficient and that the bidding process did not constitute a "public sale." As to the latter point, they equate a public sale to a live in-person auction, but provide no authority to support that view. Instead, the process used was an amalgam of in-person bidding (although no one appeared at the location to place an in-person bid), telephone inquiries, and written submissions. Once the sale began, Alpine kept the bidding open to accommodate other interested purchasers and received three additional bids. When the high bidder failed to honor its bid, Alpine negotiated with the second highest bidder and obtained an additional $500 for that bid.

We once again agree with the trial court that this was a commercially reasonable process. Alpine advertised the sale sufficiently to draw six bids and it extended the process in order to double the number of bids initially received. If it had limited itself to solely people who appeared at its location, there would have been no sale at all. Alpine

[4] In a nonconsumer transaction, 10 days notice is presumptively reasonable. RCW 62A.9A-612(b). In a consumer transaction, whether sufficient notice was given is a question of fact. RCW 62A.9A-612(a).

also acted to get the ultimate winning bidder to raise its last offer $500. Under these facts, Alpine made sufficient efforts to maximize the sale price to the benefit of both Mountaineer and the Heaths. While the sale price resulted in a deficiency, it was not from lack of effort to sell the motor home.

There was legally sufficient notification of the sale and a commercially reasonable process was used to sell the motor home. Accordingly, the trial court correctly denied the Heaths' motion for summary judgment and properly granted Mountaineer's motion for summary judgment. For the same reasons, there was no abuse of discretion in denying the motion for reconsideration.

Finally, both parties request attorney fees under the terms of the installment loan agreement. As in the trial court, Mountaineer has prevailed here and is entitled to its attorney fees on appeal subject to its compliance with RAP 18.1(d).

Affirmed.

A majority of the panel has determined this opinion will not be printed in the

Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, A. C. J.

WE CONCUR:

_____
Sweeney, J.

_____
Brown, J.