



FOR PUBLICATION



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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

TRIPLE J SAIPAN, INC., dba TRIPLE J MOTORS,)	CIVIL CASE NO. 19-0034
)	
)	
Plaintiff,)	ORDER FINDING THAT, PURSUANT TO
vs.)	5 CMC §9504(3), A DEFICIENCY
)	JUDGMENT TO PAY THE BALANCE IS
RONA L. V. DOCA)	NOT ALLOWED BECAUSE DEFENDANTS
and MARIA I. MAGPOC,)	WERE NOT GIVEN REASONABLE
)	NOTIFICATION OF THE RESALE OF
Defendants.)	THE REPOSSESSED VEHICLE
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)	
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)	

I. INTRODUCTION

THIS MATTER came before the Court on May 04, 2021 at 2:30 p.m. for a bench trial. Triple J Saipan, Inc. (“Plaintiff” or “Triple J”) appeared through counsel Michael A. White. Defendants Rona L.V. Doca (“Doca”) and Maria I. Magpoc (“Magpoc”) (collectively “Defendants”) appeared with counsel, Christopher A. Heeb.

The Court heard sworn testimony from three witnesses: (1) Sean Ficke, General Manager of Triple J Motors; (2) David Guerrero, Assistant Vice President for Business Banking Loans at First Hawaiian Bank (“FHB”); and (3) Maria I. Magpoc. The Court also received and admitted the following exhibits: (1) Credit Sale Contract – Motor Vehicle, executed on July 6, 2017; (2) Request for Payoff from FHB to Triple J; (3) FHB Letter to Doca dated May 25, 2018; (4) FHB Letter to Magpoc dated May 25, 2018; (5) Kelley Blue Book Wholesale/Retail Breakdown for the vehicle; (6) Vehicle Invoice

By order of the Court, Associate Judge Joseph N. Camacho

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1 dated August 9, 2018 for resale of the vehicle; (7) Repo Reconciliation Form from Triple J; (8) Excerpt
2 from Domestic Mail Manual regarding Certified Mail Services.

3 Based on a careful review of the filings and applicable law, the evidence received and admitted,
4 and the arguments of counsels, the Court issues the following Order.

5 II. Findings of Fact

- 6 1. On July 6, 2017, Triple J and Defendants Doca and Magpoc entered into a Credit Sale Contract –
7 Motor Vehicle (“the Contract”), wherein Defendants purchased a used 2014 Hyundai Accent (“the
8 vehicle”) for a total amount financed of thirteen thousand one hundred eighty-two dollars
9 (\$13,182.00) from Plaintiff.
- 10 2. The Contract obligated Defendants Doca and Magpoc to make payments at the rate of \$334.00
11 per month.
- 12 3. Also on July 6, 2017, Triple J assigned the Contract to First Hawaiian Bank (“FHB”) with
13 recourse. An assignment with recourse means that, if Defendants failed to comply with their
14 obligations under the contract, FHB could reassign the contract to Triple J, and demand that Triple
15 J pay everything due from Defendants under the contract.
- 16 4. During the course of the loan term, Defendants defaulted on the loan by failing to make the
17 monthly payments.
- 18 5. In May 2018, FHB repossessed the vehicle, reassigned the contract to Triple J, and demanded that
19 Triple J pay the balance due under the contract, \$12,051.88.
- 20 6. Triple J paid to FHB the sum of \$12,051.88. Included in the payoff amount was the following:
 - 21 a. The balance due on the loan at the time of repossession which was eleven thousand six
22 hundred two dollars and seven cents (\$11,602.07);
 - 23 b. Repossession costs incurred by FHB totaling three hundred fifty dollars (\$350);
 - 24 c. Forty-one dollars and thirty-two cents (\$41.32) in accrued interest; and Fifty-eight dollars and
forty-nine cents (\$58.49) in late charges.

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7. The vehicle was resold on August 9, 2018 for the sum of ten thousand nine hundred ninety-five dollars (\$10,995.00).
8. Triple J received a refund of nine hundred and twenty-two dollars (\$922) for buyer purchased insurance that was cancelled upon the repossession. Triple J has credited this amount to Defendants Doca and Magpoc.
9. Triple J incurred costs totaling two thousand two hundred thirty-five dollars and eighteen cents (\$2,235.18) incurred during the resale of the vehicle.
10. FHB claims that on May 25, 2018, it sent letters to Doca and Magpoc, respectively, informing them of the default, that the vehicle had been repossessed and that the vehicle would be resold at a private sale by Triple J Motors at any time after June 4, 2018 unless the total amount due was paid by Defendants prior to that date. (“Notification Letters”).
11. David Guerrero (“Guerrero”), the Assistant Vice President for Business Banking Loans for FHB in Saipan, testified about FHB’s mailing practices.
 - a. Guerrero testified that FHB’s business practice is to send letters via certified mail return receipt requested. He also stated that FHB also customarily sends such letters via regular mail. However, Guerrero could not provide a detailed description of FHB’s office mailing practices. Guerrero offered no testimony or evidence as to how or by whom basic acts such as addressing, sealing, and stamping of items for mailing were done nor of how any such items of mailing were actually delivered to the postal service.
 - b. Guerrero testified that the Notification Letters were created at the Guam Dealer Center, which is a part of the FHB organization that operates out of Guam and handles the Bank’s car loan operations. Furthermore, Guerrero testified that these letters would have been mailed out by the Guam Dealer Center. Guerrero did not himself personally mail out the letters to Doca and Magpoc.

- 1 c. Guerrero admitted that he does not know the procedures for sending certified mail out of the
2 Guam Dealer Center.
- 3 12. Certified mail return receipt requested provides the sender with a receipt of mailing and a return
4 receipt. The return receipt (often referred to as also the ‘green card’) will bear the signature of the
5 recipient of the mailing. Both the certified mail service and the return receipt service require extra
6 fees paid to the postal service.
- 7 13. Guerrero testified that the Guam Dealer Center informed him there was no record of certified mail
8 receipts or return receipts for the Notification Letters.
- 9 14. Doca and Magpoc were never personally served the Notification Letters.
- 10 15. Defendant Magpoc testified that she never received a Notification Letter. Further, Magpoc
11 testified that she never received any notice, written or otherwise, of the proposed sale of the
12 vehicle.
- 13 16. Defendants Doca and Magpoc are not members of the same household.
- 14 17. Defendant Magpoc stated that she found out from Doca that the vehicle had been repossessed.
- 15 18. Defendant Doca did not testify.

16 III. LEGAL STANDARD

17 In the Commonwealth of the Northern Mariana Islands (“Commonwealth”), a secured party who
18 seeks to sell collateral after default *must* send to the debtor reasonable notification of the time and place
19 of any public sale or reasonable notification of the time after which any private sale or other intended
20 disposition (of the collateral) is to be made. 5 CMC § 9504(3) (stating “reasonable notification of the time
21 and place of any public sale or reasonable notification of the time after which any private sale or other
22 intended disposition is to be made shall be sent by the secured party to the debtor”); *Bank of Hawaii vs.*
23 *Teregeyo*, 3 CR 876, 881 (NMI Super. Ct. 1989) (stating that “the provision in 5 CMC § 9504(3) is
24 mandatory”). Failure to provide such reasonable notice of resale of the collateral bars the creditor from
obtaining a deficiency judgment against debtors. *See Triple J Motors v. Sanchez*, 2007 MP 23 ¶ 24 (stating

1 that “deficiency judgments are denied where a creditor fails to provide reasonable notice of the resale of
2 collateral”); *see also Economic Dev. v. Arriola*, 2 CR 212 (Dist. Ct. App.Div. 1985).

3 “The party seeking the deficiency judgment has the burden of proving the sufficiency of the
4 notice.” *Springfield Chrysler-Plymouth v. Harmon*, 858 S.W.2d 240, 245 (Mo. Ct. App. 1993)
5 (interpreting a statute similarly worded to 5 CMC § 9504(3)). Parties with this burden may proffer
6 evidence regarding regularly conducted activity if (A) the record was made at or near the time by — or
7 from information transmitted by — someone with knowledge; (B) the record was kept in the course of a
8 regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
9 (C) making the record was a regular practice of that activity; (D) all these conditions are shown by the
10 testimony of the custodian or another qualified witness, or by a certification that complies with Rule
11 902(11) or (12) or with a statute permitting certification; and (E) neither the source of information nor the
12 method or circumstances of preparation indicate a lack of trustworthiness. NMI R. EVID. 803(6). Though
13 there are no definitive steps a party seeking the deficiency judgment must take to show that the other party
14 was sent reasonable notice, suffice to say that the burden is not met when the moving party does not
15 provide any testimonial evidence showing that notice was given or the return receipt of the certified mail
16 but instead relies solely on the arguments of its counsel. *See Atkins Kroll, Inc. v Primo Ferrera, Jr.*, Small
17 Claims No. 17-0382 at 3 (April 10, 2018); *see also Salty Saipan Corp. v. Shakir*, 2018 MP 18 ¶ 18 (“The
18 preponderance of the evidence standard is described as evidence which is of greater weight or more
19 convincing than the evidence which is offered in opposition to it; that is, evidence, which as a whole show
20 that the fact sought to be provided is more probable than not.” (internal citation omitted)).

21 **IV. DISCUSSION**

22 The parties brought two issues before the Court at trial. The first issue was whether Defendants
23 Doca and Magpoc received proper notice from Plaintiff Triple J concerning the resale of the vehicle. The
24 second issue was whether prejudgment interest is authorized pursuant to the Credit Sale Contract. The

1 Court will first address the issue of whether Defendants Doca and Magpoc received proper notice from
2 Plaintiff Triple J concerning the resale of the vehicle.¹

3 Here, as to the notice issue, both parties agree that the vehicle was repossessed once payments
4 ceased to be made. The Court finds that this repossession gave Doca notice that action was being taken
5 in response to the failure to repay the loan.² However, the repossession itself did not provide “reasonable
6 notification of the time and place of any public sale or reasonable notification of the time after which any
7 private sale or other intended disposition is to be made” as required by 5 CMC § 9504(3). For this, Plaintiff
8 Triple J had the burden to present persuasive evidence that showed that reasonable notification of the *sale*
9 was sent to Defendants Doca and Magpoc or else a deficiency judgment against Defendants would be
10 barred. See *Triple J Motors*, 2007 MP 23 ¶ 24.

11 In its case in chief, Plaintiff Triple J did not produce any physical evidence such as either a
12 certified mail receipt or a return receipt showing that Defendants were sent the Notification Letters.
13 Plaintiff’s witness Guerrero conceded that he requested the return receipts associated with the letters sent
14 to Doca and Magpoc from the Guam Dealer Center and was advised that there were no return receipts.
15 Instead, Plaintiff relied solely on Guerrero’s testimony to prove that notice was given to Doca and
16 Magpoc.

17 During his testimony, Guerrero stated that FHB mails repossession letters from the Guam Dealer
18 Center in the regular course of its business and thus would have done so in this matter. However, Guerrero
19 also testified that he has never worked at the Guam Dealer Center and that he does not know their certified
20 mail procedures. The Court finds that Guerrero’s lack of familiarity with the workings of FHB’s mailing
21 procedures nullifies any weight to be given to Guerrero’s testimony. Ultimately, though the Court
22 recognizes that Guerrero gave honest testimony, Guerrero lacked the familiarity of how notification letters

23 ¹ For purposes of this Order, the Court does not differentiate between named plaintiff Triple J and unnamed plaintiff/party
24 in interest FHB that prepared the Notification Letters. The issue is whether Doca and Magpoc received the Notification
Letters.

² The repossession would not have given Defendant Magpoc this notice because Magpoc does not live with Doca.

1 are sent by the Guam Dealer Center that would be necessary to give weight to Guerrero's testimony
2 concerning this process. This lack of persuasive testimonial evidence regarding the Notification Letter in
3 addition with Guerrero's admission that Guam Dealer Center lacked any physical evidence to support its
4 claims, is fatal to Plaintiff's argument that Defendants were sent reasonable notification. Thus, Plaintiff
5 Triple J failed to show that it is more probable than not that Defendants Doca and Magpoc were sent
6 reasonable notification. *See Salty Saipan Corp.*, 2018 MP 18 ¶ 18.³

7 **V. CONCLUSION**

8 **THEREFORE**, for the reasons stated above, the Court finds that Defendants Rona L.V. Doca
9 and Maria I. Magpoc were not given reasonable notification of the resale of the repossessed vehicle in
10 accordance with 5 CMC § 9504(3). Thus, pursuant to 5 CMC § 9504(3), a deficiency judgment cannot
11 be issued against Defendants Rona L.V. Doca and Maria I. Magpoc.

12 **IT IS SO ORDERED** this 3rd day of March, 2022.

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14 /s/
15 **JOSEPH N. CAMACHO**, Associate Judge

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24 ³ Because the Court finds that Plaintiff Triple J failed to provide notice of the resale to Defendants Doca and Magpoc,
thus prohibiting the recovery of a deficiency judgment, the Court need not reach the issue of whether the contract
authorized prejudgment interest.