UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HEIKO GOLDENSTEIN, Plaintiff.	:	NO. 5:13-cv-02797-JKG
v.	:	
REPOSSESSORS INC., CHAD LATVAAHO, SHADY OAK ENTERPRICES, INC., d/b/a PREMIER FINANCE ADJUSTERS, PHILIP J. HOURICAN & WILLIAM McKIBBIN, Defendants.	:	

REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS, REPOSSESSORS, INC., CHAD LATVAAHO AND SHADY OAK ENTERPRISES, INC., d/b/a/ PREMIER FINANCE ADJUSTERS

Defendants, Repossessors, Inc., Chad Latvaaho, and Shady Oak Enterprises, Inc., d/b/a Premier Finance Adjusters (hereafter referred to individually as "Repossessors" and "Premier" and collectively as the "Repossession Defendants"), by and through their undersigned counsel, respectfully submit this Reply Brief in support of their Motion for Summary Judgment. The Repossession Defendants do not waive any argument advanced in their initial Brief, but offer the following in response to Plaintiff's opposition.

I. THE REPOSSESSION DEFENDANTS HAD A PRESENT RIGHT TO POSSESS PLAINTIFF'S VEHICLE UNDER PENNSYLVANIA LAW

A review of Plaintiff's Complaint makes it abundantly clear that at the point in time his vehicle was repossessed, he was in default on the loan he had obtained from Sovereign. He acknowledged in his Complaint at ¶-23 that the loan was secured by his car. Upon default, 13 Pa. C.S.A. § 9609 gave Sovereign, the secured creditor, the right to take possession of the collateral without judicial process, so long as no breach of the peace occurred, and Plaintiff does not make such a claim. Therefore, Defendants had a present right to possess plaintiff's vehicle at the time it was repossessed, on October 6, 2012, and summary judgment is warranted.

In his brief, Plaintiff claims that "the present case is about a predatory lender called Sovereign Lending Solutions, LLC, that makes auto title loans on-line to Pennsylvania residents at triple digit interest rates in defiance of the Pennsylvania Supreme Court." However, rather than pursue a claim against Sovereign, file for arbitration under the laws of the Lac Vieux Desert Band of Chippewa Indians' laws, or seek to recover the interest he paid allegedly in violation of Pennsylvania law, he has chosen to sue only the Repossession defendants and their principals under a novel legal theory rejected by every court to consider the issue. Although Plaintiff attempts to distinguish Judges Davis and Schmehl's holdings in Gonzalez v. DRS Towing and Collings v. Siani's Salvage, respectively, these cases are directly on point because the issue of whether the debtor chose to redeem his or her vehicle after the repossession occurred is immaterial to the issue of whether the debt collector had a present right to possess the vehicle at the point in time in which it was recovered.

Initially, while plaintiff now appears to question whether Sovereign obtained a security interest in his vehicle and faults the Repossession Defendants for not verifying this or inquiring as to the interest rate on the loan, "a [repossession company] should be able to rely on the representation and implied warranty from [the creditor]" that the creditor has a present right to possess the collateral." Revering v. Norwest Bank Minnesota, N.A.,1999 WL 33911360 at *5 (D. Minn. Nov. 30, 1999). Furthermore, the FDCPA does not require that a repossession company conduct an independent investigation into the information provided by the creditor. Ducrest v. Alco Collections, Inc., 931 F.Supp. 459, 462 (M.D. La. 1996). As plaintiff admitted in his pleading that Sovereign obtained a security interest in his vehicle, and he has never provided any discovery to the contrary, this argument lacks merit.

With regard to the question of whether Defendants had a "present right to possession" of his vehicle, "[a] court should look to state law requirements to determine whether there was a present right to possession under the FDCPA." Revering, supra, at *5. Plaintiff has conceded that he defaulted, but he claims that there was no present right to possession of his vehicle because the purpose of the repossession was to coerce the payment of unlawful interest. Pl. Br. at p10, 12. This argument is factually and legally incorrect.

Plaintiff's speculation as to why his vehicle was repossessed ignores the fact that when it was repossessed, he had not made a payment for over three months, nor had he attempted to contact Sovereign to discuss repayment of the loan. He had simply accepted a loan of $1,000, repaid a little over $400, and then walked away. When his vehicle was repossessed, he was under no obligation to redeem it; rather, 13 Pa. C.S.A. § 9623, "Right to Redeem Collateral," gives a debtor the option to redeem or to concede possession to the secured creditor, who may then dispose of the collateral as provided for by 13 Pa. C.S.A §§9610-11. Plaintiff's attempt to distinguish Gonzales v. DRS Towing on the ground that the plaintiff there did not redeem her vehicle fails accordingly.

Moreover, 13 Pa. C.S.A § 9609 clearly establishes that Sovereign had the present right under Pennsylvania law to repossess Plaintiff's vehicle on October 6, 2012. § 9609(a) provides that "[a]fter default, a secured party (1) may take possession of the collateral…" § 9609(b) provides that "a secured party may proceed under section (a) without judicial process if it proceeds without a breach of the peace." As plaintiff has admitted that he defaulted on the loan and that no breach of the peace occurred, Sovereign and the Repossession Defendants fully complied with the applicable Pennsylvania law regarding the "present right to possession of the property claimed as collateral through an enforceable security interest."

Lastly, Plaintiff's discussion of Pennsylvania's anti-usury laws simply misses the point. Sovereign is not a party to this case, and the anti-usury laws give Plaintiff a remedy against Sovereign for recovery of the interest he paid after his vehicle was repossessed, not against an independent contractor hired by a creditor. The Pennsylvania Supreme Court held in Mulcahy v. Loftus, 267 A.2d 872 (Pa. 1970) that a loan that carried an excess rate of interest is voidable but not void, and when Plaintiff's vehicle was repossessed he had not paid back the principal amount on the loan, let alone the interest, nor had he attempted to void the loan by providing written notice to Sovereign.

CONCLUSION

For the foregoing reasons, Defendants, Repossessors, Inc., Chad Latvaaho, and Shady Oak Enterprises, Inc., d/b/a Premier Finance Adjusters respectfully request that this Honorable Court enter an Order dismissing Plaintiff's Complaint with prejudice.

Respectfully submitted,

SWEENEY & SHEEHAN

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