

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

COLLEEN THACKER,)
) C.A. No. CPU5-11-000872
Appellant/Plaintiff-Below,)
)
v.)
)
WELLS FARGO DEALER SERVICES,)
)
Appellee/Defendant-Below.)

September 6, 2012

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DECISION AFTER TRIAL

Appellant, Plaintiff-Below, Colleen Thacker (hereinafter “Thacker”), has filed this civil appeal with the Court pursuant to 10 *Del. C.* § 9571 for a trial *de novo* from a final order of the Justice of the Peace Court. Thacker contends that the Appellee, Defendant-Below, Wells Fargo Dealer Services, Inc. (hereinafter “Wells Fargo”), wrongfully repossessed and sold her car. Further, she contends that such wrongful repossession violated Article 9 of Title 6 of the Delaware Code (hereinafter “Article 9”) and, as a result, she is entitled to recovery of statutory damages. Wells Fargo disputes

this contention. Following the trial for this matter and its consideration of the written summations of the parties, the Court enters judgment for Wells Fargo.

FACTS

Thacker purchased a car in January 2005. She entered into a financing agreement (hereinafter the “loan”) that Wells Fargo now owns in order to obtain the financing necessary for the car. As a condition of the loan, Wells Fargo obtained a security interest in the car. Pursuant to the loan, Thacker needed to make payments of \$266.96 per month for seventy-two months.

Thacker had difficulty keeping up with her payments for the loan and was often late with her payments. It was not unusual for her payment checks to be returned to Wells Fargo for insufficient funds. The car was finally repossessed in August of 2009, when two payments were past due.

Thacker contacted Wells Fargo once her car was repossessed and asked for a “reinstatement” amount.¹ She testified that she was advised that she could get her car back and reinstate her payment plan for the loan with a payment of \$1,333.85. Thacker thought the reinstatement amount being requested by Wells Fargo was too high. Including her missed payments, she thought that the amount should have been approximately \$800.00. Thacker thought that she could get the money together to reinstate her payment plan on the loan at the \$800.00 amount, but, she simply could not afford the \$1,333.85 amount being requested.

Thacker next requested an investigation into her payment history. During this investigation, it was discovered that one payment she made was not credited to her

¹ Although Thacker requested an amount from Wells Fargo to reinstate her loan, it appears as though she never requested a “redemption” amount to pay the full amount still owed on the loan.

account. It was mistakenly applied by Wells Fargo to a different account. When the mistake was discovered, Wells Fargo reimbursed the payment of \$266.96 to Thacker by issuing her a check. Wells Fargo provided this payment prior to the due date for Thacker to pay the reinstatement fee quoted to her.

Thacker was unable to pay the “reinstatement” amount requested by Wells Fargo and the car was sold pursuant to the terms of the loan. The proceeds of the sale did not satisfy the total amount owed on the loan by Thacker.

Thacker contends that Wells Fargo violated Article 9 in at least one of two ways. First, it is her contention that Wells Fargo repossessed her car when she was current on her payments as required by the loan. Second, even if she was in default on the loan, Thacker contends that the “reinstatement” amount quoted to her by Wells Fargo to reinstate her payment plan for the loan was miscalculated as it did not give her credit for the missed payment that was later discovered, and resulted in additional late fees and extra interest. Wells Fargo disputes both contentions and counters that it fulfilled its duties under Article 9 and the loan.

DISCUSSION

Thacker’s contention that Wells Fargo violated Article 9 by repossessing her car when she was current on her payments for the loan lacks merit. She has failed to prove this contention by a preponderance of the evidence. Based on the evidence introduced at trial, it is clear to the Court that Thacker was in default on the loan when Wells Fargo repossessed the car. Thacker was two payments behind on her loan at the time and had been late on her payments on numerous occasions before Wells Fargo declared a default on the loan and repossessed the car. Therefore, the only issue before the Court is whether

Wells Fargo violated Article 9 by miscalculating the “reinstatement” amount that Thacker needed to pay in order to bring the loan current, continue her payment plan and regain possession of her car.

The Court finds that Thacker has also failed to prove that Wells Fargo violated Article 9 by miscalculating a “reinstatement” amount for the loan because no such right to reinstatement exists under Article 9.² Under 6 *Del. C.* § 9-623, a debtor has the right to redeem collateral from a secured creditor prior to its sale. In order to redeem the collateral, the debtor must pay the full amount remaining on the loan and all reasonable expenses and attorneys fees as required by statute. 6 *Del. C.* § 9-623(1) and (2). There is no requirement under Article 9 that a secured creditor give the debtor an opportunity to come current on the loan, or “reinstate,” prior to foreclosure and sale.

Thacker’s contention that she was given the incorrect “reinstatement” amount and, therefore, was denied her rights under Article 9 is incorrect. Assuming that Wells Fargo did quote Thacker a “reinstatement” amount of \$1,333.85, reinstatement is not a right under Article 9. Reinstatement is merely a courtesy offered by the secured creditor prior to the foreclosure and sale of the property and, therefore, could be any amount less than the total due on the loan. Only redemption, with its required full payment of the balance and fees on a loan, is guaranteed under Article 9. Therefore, Thacker’s contention that her rights under Article 9 were violated when she was given an incorrect

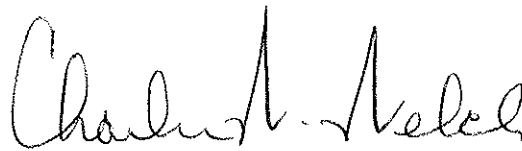
² It should also be noted that the loan does not mention any rights to reinstatement either. The only right discussed after repossession is the right to buy back, or redeem, the car.

reinstatement amount lacks merit, as there is no statutory right to reinstatement, only redemption.³

CONCLUSION

As a result of the Court's finding of fact, which is based upon the entire record, and the Court's above-referenced conclusions of law, the Court finds that Thacker's contention that she was actually current on her loan when Wells Fargo repossessed her car to be unsupported by the evidence and facts established at trial. Further, because no reinstatement rights exist under Article 9, Wells Fargo's failure to properly deduct a payment when it provided Thacker a "reinstatement" amount did not affect Thacker's statutory redemption rights. Thacker failed to show that Wells Fargo violated her Article 9 rights. Therefore, Thacker's request for statutory damages is denied. Judgment is entered for Wells Fargo.

IT IS SO ORDERED this 6th day of SEPTEMBER, 2012.



CHARLES W. WELCH
JUDGE

³ The redemption amount for the car and loan would have far exceeded the reinstatement amount quoted to Thacker. Therefore, although not discussed at trial, it is obvious that she would have been unable to exercise her statutory right to redemption.