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individually and on behalf of all others
similarly situated

MAJOR NON-JURY CASE

GARY NELSON,
KAYLEIGH POTTER,
individually and on behalf of all others
similarly situated,

Plaintiffs

vs.

BANK OF AMERICA,
NATIONAL ASSOCIATION,
Defendant.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

TERM, 2022

NO.
CLASS ACTION

CLASS COMPLAINT

I. INTRODUCTION

1. This is a consumer class action brought against an auto lender to redress systemic violations of Pennsylvania’s Uniform Commercial Code (“UCC”), 13 Pa C.S. § 9601, et seq. The UCC requires secured parties who utilize self-help repossession to provide consumers with proper notice when repossessing and reselling a financed vehicle.

2. Defendant, Bank of America, National Association (“Bank”), regularly finances the purchase of automobiles for consumer use in Pennsylvania. When the Bank believes that a consumer has defaulted on a secured vehicle finance agreement, it repossesses and then makes preparations to auction the vehicle. In the course of so doing, the Bank failed to provide Plaintiffs and the class with the proper notice of repossession and disposition of collateral required by Pennsylvania Law, including Pennsylvania’s Uniform Commercial Code (“UCC”).

3. Because self-help repossession is effected without judicial authorization or oversight, the UCC requires secured creditors like the Bank to adhere strictly to the Code's notice requirements.

4. Failure to provide proper notice of repossession of consumer goods is a violation of the Code that yields statutory minimum damages without evidence of harm for the Plaintiffs and the class they seek to represent.

II. PARTIES/VENUE

5. Plaintiff Gary Nelson ("Nelson"), is a consumer and an adult individual who resides in Reading, PA.

6. Plaintiff Kayleigh Potter ("Potter"), is a consumer and an adult individual who resides in Pittsburgh, PA.

7. Defendant Bank of America, National Association ("Bank") is a foreign corporation with an office for the regular transaction of business at 1600 JFK Blvd, Philadelphia, PA 19103.

8. The Bank is licensed by the Pennsylvania Department of Banking and Securities as a Sales Finance Company.

9. The Bank, as a sales finance company, finances the purchase of automobiles in Pennsylvania.

10. The Bank regularly enters into or takes assignment of motor vehicle installment sale contracts with borrowers in Philadelphia and elsewhere in the Commonwealth.

III. STATEMENT OF CLAIM

Mr. Nelson's Experience

11. On or about February 24, 2016, Mr. Nelson financed the purchase of a used 2013

Ford Explorer pursuant to a Retail Installment Sale Contract (“RISC”). (Ex. A, Retail Installment Sale Contract.)

12. The Bank financed the transaction and took a security interest in the vehicle.

13. Under the Nelson RISC, the Bank was the secured party to which monthly payments were required to be made.

14. In or about May 2021, the Bank declared a default.

15. In or about May 2021, the Bank, as the secured party, repossessed Mr. Nelson’s automobile or ordered that it be repossessed.

16. Pennsylvania law requires immediate post-repossession notice to the borrower advising of the repossession and stating, among other things, how many days to act before the sale of the vehicle, whether the vehicle will be sold by public or private sale, whether the debtor may be liable for a deficiency or entitled to a surplus, and other information. The Notice must be delivered in person to the borrower, or sent via registered or certified mail. 12 Pa.C.S. § 6254.

17. On or about May 13, 2021, after the repossession, the Bank prepared a Notice of Plan to Sell Property directed toward Nelson. (“Notice”). On May 14, 2021, the day after the date on the Notice, the Bank mailed the Notice to Nelson via certified mail.

18. Pennsylvania law requires that secured parties like the Bank provide the borrower the right to redeem the vehicle for fifteen days from the date of mailing of the Notice. The Notice must inform the borrower of this right. 12 Pa.C.S. § 6254(3) provides that “[t]he notice of repossession shall contain the following . . . (3) Notice to the buyer of the holder’s intent to resell the motor vehicle at the expiration of 15 days from the date of mailing the notice.” This statute is to read *in pari materia* with the Pennsylvania UCC on the issue of repossession of a motor vehicle.

19. The Notice misstates and understates the amount of time the borrower has to redeem.

20. Specifically, the date of mailing the Notice is May 14, 2021, so the fifteenth and final day for the borrower to redeem would fall on May 29, 2021. By statute, the repossessed vehicle may not be sold or auctioned by the Bank before May 29, 2021.

21. However, the Notice provides, “We will sell the 2013, FORD, EXPLORER at private sale sometime after May 27, 2021.” This is 13 days from the date of mailing the Notice.

22. The Bank, as secured party, sent template forms of Notice to consumers across Pennsylvania providing an inadequate and commercially unreasonable period of time to act to redeem their motor vehicle, i.e., less than 15 days to act.

Ms. Potter’s Experience

23. On or about March 8, 2017, Ms. Potter financed the purchase of a 2017 Chevrolet Impala pursuant to a Retail Installment Sale Contract (“RISC”). (Ex. B, Retail Installment Sale Contract.)

24. The Bank financed the transaction, took an assignment of the contract rights, and took a security interest in the vehicle.

25. Under the Potter RISC, the Bank was the secured party to which monthly payments were required to be made.

26. In or about September 2021, the Bank declared a default.

27. In or about September 2021, the Bank, as the secured party, repossessed Ms. Potter’s automobile or ordered that it be repossessed.

28. On or about September 29, 2021, the Bank issued and mailed to Ms. Potter a Notice of Plan to Sell Property (“Notice”). The Notice states that the Bank will sell the vehicle at a sale sometime after October 13, 2021. This is 14 days from the date of mailing the notice.

29. The Potter Notice suffers from the same defects as the Nelson Notice in that it misstates and understates the statutory time in which the borrower has to redeem.

30. The Bank, as secured party, sent a template form Notice to consumers across Pennsylvania.

Governing Law

31. Article 9 of the Uniform Commercial Code (“UCC”), 13 Pa. C.S. § 9601, et seq., governs the repossession of vehicles in Pennsylvania.

32. Under the UCC, 13 Pa. C.S. § 9610, “[E]very aspect of a disposition of collateral ... must be commercially reasonable[.]” This requirement includes post-repossession notice.

33. Under the UCC, 13 Pa. C.S. § 9611, the Bank was required to provide “reasonable authenticated notification of disposition” and repossession of the collateral.

34. In sending the Notices described above, the Bank failed to provide adequate and reasonable notification of repossession and disposition of collateral to Plaintiffs and the putative class of borrowers.

35. In the course of the repossession and disposition process, the Bank did not act in a commercially reasonable manner toward Plaintiffs and the putative class of borrowers, and did not provide required or adequate notice of repossession.

36. 13 Pa. C.S. § 9625(c)(2) provides for damages for a secured party’s failure to follow the proper procedures upon repossession. The statute allows a consumer debtor such as Plaintiff

(and the putative class) to recover minimum damages of not less than the credit service charge plus 10% of the principal amount of the obligation without evidence of harm.

37. The statutory damages are derived from a simple, straightforward and uniform arithmetic calculation.

38. The two figures needed for the statutory damage calculation are plainly visible on and determinable from the face of the consumer's Retail Installment Sale Contract.

IV. CLASS ALLEGATIONS

39. Plaintiff brings this action on his own behalf and on behalf of a class pursuant to Rules 1701-1717 of the Pennsylvania Rules of Civil Procedure.

40. Plaintiff proposes to define the "Class" as All Persons:

- (a) who financed the purchase of a motor vehicle for consumer use through the Bank, or who financed the purchase through another entity but such finance agreement was thereafter assigned to the Bank;
- (b) from whom the Bank, as secured party, repossessed the vehicle or ordered it repossessed;
- (c) who had a Pennsylvania address as of the date of repossession;
- (d) in the period commencing six years prior to the date of filing of the Complaint through the date of class certification.

41. On information and belief, there are many members in the Class, making the Class so numerous that joinder of all members is impractical. This matter involves form notices sent out to Pennsylvania consumers in Philadelphia County and elsewhere.

42. There are questions of law or fact common to the Class. These include:

- (a) Whether Plaintiffs and the Class financed the purchase of a motor vehicle for consumer use through the Bank, or who financed the purchase through

another entity but such finance agreement was thereafter assigned to the Bank;

- (b) Whether Plaintiffs and the Class pledged their motor vehicle as collateral in the finance agreement;
- (c) Whether the Bank repossessed the vehicle or ordered it repossessed;
- (d) Whether the Bank failed to send the notice of repossession and disposition of collateral (“Notice”) required under Pennsylvania law after repossessing a vehicle.
- (e) The uniform statutory damages provided for failure to send the post-repossession Notice required under the law;

43. The claims of Plaintiffs are typical of those of the Class. All are based on the same factual and legal theories. All class members financed the purchase of a motor vehicle for consumer use through the Bank, or financed the purchase through another entity but such finance agreement was thereafter assigned to the Bank. All class members pledged their vehicle as collateral. The Bank declared a default on all. All class members either were sent inadequate form Notice, or were sent no notice at all.

44. Plaintiffs will fairly and adequately protect the interest of the Class. Plaintiffs have no interest antagonistic to those of the Class.

45. Plaintiffs’ counsel is competent and experienced in consumer class actions in general and in UCC and repossession class actions specifically.

46. The Bank has acted on grounds generally applicable to the Class, thereby making final relief appropriate with respect to the class as a whole.

47. The questions of law and fact common to the Class predominate over any questions affecting only individual members.

48. The prosecution of separate actions by the members of the Class would create a risk of inconsistent or varying adjudications.

49. This class action provides a fair and efficient method for adjudication of the controversy.

50. The class members are consumer debtors who may be unable to locate or afford to hire lawyers, particularly in light of the modest size of any individual recovery.

51. The size of the class and any trial would be readily manageable.

COUNT I
UNIFORM COMMERCIAL CODE

52. Plaintiff repeats the allegations set forth above as if the same were here set forth at length herein.

53. Defendant Bank violated Pennsylvania's Uniform Commercial Code by failing to provide proper notice of repossession and disposition of collateral (i.e. Notice) as set forth above.

54. Defendant Bank failed to act in a commercially reasonable manner by failing to provide a proper timely Notice, 13 Pa. C.S. §§ 9610, 9611–9614.

WHEREFORE, Plaintiffs Gary Nelson and Kaleigh Potter pray that this Court certify the Class and enter judgment for Plaintiffs and the class members:

(a) Awarding statutory damages to Plaintiffs and the class as provided by the UCC, 13 Pa. C.S. § 9625(c);

(b) For interest and costs; and,

(c) Granting such other and further relief as may be deemed just and proper.

Respectfully submitted:

Date: 9/28/2022

/s/ Cary L. Flitter
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bank of America Failed to Properly Notify Borrowers Before Selling Repossessed Vehicles, Class Action Alleges](#)
