IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

THE BANK OF NOVA SCOTIA ISLAND CENTER BRANCH, Plaintiff, vs. WAYNE R. PETRUS, Defendant.	S.C. 322/1990 ACTION FOR DEBT

THE BANK OF NOVA SCOTIA, by
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MEMORANDUM OPINION
(December 12, 1990)

In this small claims action, The Bank of Nova Scotia seeks a deficiency judgment against the defendant, Wayne R. Petrus, following the repossession and sale of a pickup truck, the collateral for a loan. The defendant claims that the bank initially refused an offer of voluntary surrender of the truck and then delayed unduly before finally repossessing and selling it. For the reasons which follow, the Court reluctantly awards judgment to the plaintiff.

FACTS

In December, 1986, The Bank of Nova Scotia loaned Petrus $10,535.00 to purchase a vehicle. Petrus gave the bank a chattel mortgage for a 1986 Isuzu pickup truck. In June, 1989, the bank sent a notice of default to Petrus. In October, 1989, the defendant advised the bank that he could not continue to pay the monthly loan installments and offered to surrender the vehicle to the bank. At that point, the balance on the note was $5,273.00. The bank officer declined to accept the surrender and suggested that Petrus try to sell the vehicle himself. By January, 1990, the defendant still had not been able to sell the truck. He returned to the bank, made a partial payment on the delinquency and told the loan officer to repossess the collateral. The bank did not do so until April, 1990, when it sold the vehicle for $4,750.00, leaving a deficiency of $249.07, for which it now seeks judgment.

DISCUSSION

Generally, a secured party is under no duty to resell or take possession of its collateral upon a default. USX Credit Corp. v. Lichterman, 876 F.2d 1283, 1287 (7th Cir. 1989). See also, U.C.C., § 9-504(1) (creditor's options after debtor defaults) and § 9-502(1) (no duty to resell after default, unless debtor has paid at least 60% of loan). However, the doctrine of commercial reasonableness requires a secured party in possession of the collateral to dispose of the goods with reasonable promptness. Id. The Uniform Commercial Code does not impose a time limit on the disposition of the collateral. U.C.C. § 9-504; Fletcher v. Cobuzzi, 499 F.Supp. 694 (W.D.Pa. 1980). The trier of fact determines whether the length of time the secured party takes to resell the collateral is reasonable. Swanson v. May, 697 F.2d 1013, 1016 (Wash.App. 1985). See also, Armstrong Ford, Inc. v. Government of the Virgin Islands, 21 V.I. 212, 219-20 (Terr.Ct. 1984).

When the debtor challenges the reasonableness of the sale, the burden of proof is on the holder of the security interest. U.C.C. §§ 9-504(3), 9-507(2) (1981). Some jurisdictions maintain that when a creditor takes possession of the collateral after default and does not take any action to resell it, the creditor is barred from recovering on the debt from the debtor. U.C.C. § 9-504 (1981), see also, Bradford v. Lindsey Chevrolet Co., 161 S.E.2d 904 (Ct.App.Ga. 1968), and Cox Motor Car Co. v. Castle, 402 S.W.2d 429 (Ct.App.Ky. 1966). A secured party is permitted a reasonable length of time to hold collateral before it is deemed to a have exercised its right to retain that collateral as satisfaction of the obligation. Swanson at 1016. Undue delay by the secured party after repossession affects the claim for deficiency. Armstrong Ford, Inc. v. Government of the Virgin Islands, 21 V.I. 212, 219-20 (Terr.Ct. 1984), and Nelson v. Armstrong, 582 P.2d 1100, 1107 (Idaho 1978). If the resale is commercially unreasonable, the creditor is barred from obtaining a deficiency judgment against the debtor. Savoy v. Beneficial Consumer Discount Co., 468 A.2d 465, 467 (Pa. 1983).

The plaintiff was under no legal duty to repossess the pick-up truck, but it was required to promptly dispose of the collateral after repossession. The plaintiff sold the pickup truck for $4,750.00 twenty days after repossession. The bank acted promptly, and the resale amount was reasonable. The written agreement between the parties holds the defendant responsible for any outstanding balance after the resale of the collateral. Therefore, the plaintiff is entitled to a deficiency judgment.

George S. Eltman, Judge