IN THE SUPREME COURT OF MISSISSIPPI
2008-CA-01925

CNRS&Z, INC. APPELLANT

VERSUS

RANDY MEDIOUS APPELLEE

BRIEF OF THE APPELLANT

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Supreme Court may evaluate possible disqualification or recusal.

1. Hon. Prentiss G. Harrell
   Circuit Judge of Marion County

2. Joshua Fortenberry, Esq.
   Trial Attorney for Appellee Randy Medious

3. Randy Medious
   Appellee

4. Clayton Hinton
   President of CNRS&Z, Inc.

ATTORNEY FOR APPELLANT

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STATEMENT OF THE ISSUE

The Circuit Court of Marion County erred when it found that CNRS&Z, Inc. had breached a contract to sell and finance a 2006 Chevrolet Impala.

STATEMENT OF THE CASE

This matter arises from the Amended Judgment of the Circuit Court of Marion County, entered on October 10, 2008. Appellant CNRS&Z, Inc., timely perfected its appeal.

NATURE OF THE CASE AND COURSE OF PROCEEDINGS BELOW

This case arose when CNRS&Z, Inc., filed an action for replevin in the Circuit Court of Marion County, alleging that Randy Medious had not secured financing, and establishing that his collateral and first payment had been returned to him. R. 4-9. Medious was timely served and the matter was set for a date certain of June 27th, 2008, in Lawrence County, Mississippi. R. 10-11. The Court refused to grant replevin at that time, and the matter was set for trial on August 6, 2008.

Testimony was had, and at the conclusion of the testimony, the Court ordered that the parties brief the Court on the issue of whether the contract entered between the parties had been consummated. T. 79. The parties briefed the Court, and the Court entered its judgment on October 2, 2008, and amended the judgment on October 10, 2008. R. 30-34. Afterwards, Medious failed to make payments, and CNRS&Z, Inc., had to repossess the vehicle. On appeal is the money judgment against CNRS&Z, Inc.

STATEMENT OF THE FACTS

Randy Medious contracted to buy a 2006 Chevy Impala from CNRS&Z, Inc., d/b/ a Nu-2-U Auto Sales, on May 1, 2008. Exhibit 1. As part of the contracting process Medious executed a credit application and numerous other documents. T. 26, Exhibits 2-4. One of those forms was a consent for Credit Acceptance Corporation to evaluate Medious's credit-worthiness for purposes of financing the purchase of the 2006 Impala. Exhibit 4. Credit Acceptance was unable to finance Medious's purchase of the vehicle, and informed Medious and CNRS&Z, Inc. at the same time, and returned Medious's first payment via Western Union, and reassigned the contract to CNRS&Z, Inc. T. Medious failed to obtain other financing from banks. R. 32. Medious understood that his purchase of the vehicle was contingent on the trade-in, and on financing being approved. T. 13.

At roughly the same time, CNRS&Z, Inc. returned Medious his trade-in and demanded the return of the 2006 Impala. R. 30. Medious refused to return the vehicle, and made no payments on either the Impala or his trade-in. R. 30. The trade-in was repossessed, and CNRS&Z, Inc., filed the action for replevin. After judgment was rendered for Medious in the Circuit Court of Marion County, he failed to make payments and CNRS&Z, Inc., repossessed the vehicle and sold it.

SUMMARY OF THE ARGUMENT

The Circuit Court of Marion County erred as a matter of law when it ruled that CNRS&Z, Inc. breached a retail installment contract it had with Randy Medious. This Contract was contingent on financing, and nowhere in its body or in any of the attached documents is CNRS&Z, Inc., required to finance the car for Medious. In fact, Medious is permitted under the terms of the contract to secure the financing of his choice, or to pay cash for the vehicle.

Additionally, the Circuit Court erred as a matter of law when it ruled that Medious did not breach the contract. Medious was unable to perform the contract and in fact perpetrated a fraud on the court by testifying that he had the funds to bring the car current, a fact brought home to CNRS&Z, Inc., when three weeks after the Circuit Court entered its judgment Medious failed to bring his payments current, necessitating the repossession of the vehicle through self-help.

Finally, the Circuit Court erred when it held that CNRS&Z, Inc., was responsible for the value of Medious's trade-in, which was repossessed when Medious stopped making payments on it after it was returned to him. CNRS&Z, Inc., returned the collateral promptly when it was informed that Credit Acceptance could not finance Medious. Any bailment terminated at the time when CNRS&Z, Inc., returned Medious his collateral, and they had no further legal responsibility for the trade-in.

ARGUMENT

The Circuit Court of Marion County erred as a matter of law when it ruled that CNRS&Z, Inc. breached a retail installment contract it had with Randy Medious.

STANDARD OF REVIEW

The decisions of a circuit judge sitting without a jury are reviewed as a chancellor's decisions, under a two-fold standard of review: questions of fact are reviewed for clear error or abuse of discretion, and questions of law are reviewed *de novo*. *Rush v. Wallace Rentals, LLC*, 837 So. 2d 191, 194 (¶11) (Miss. 2003) (citing *Bell v. Parker*, 563 So. 2d 594 (Miss. 1990)). The interpretation of contracts is a matter of law, and is reviewed *de novo*. *Cherry Bark Builders v. Wagner*, 781 So. 2D 919, 921 (¶5) (Miss. Ct. App. 2001).

1. The Circuit Court of Marion County erred as a matter of law when it ruled that CNRS&Z, Inc. breached a retail installment contract it had with Randy Medious.

Mississippi adheres to the principle of contract interpretation known as the four-corners rule. *One South, Inc. v. Hollowell*, 963 So. 2D 1156, 1162 (Miss. 2007). If the four corners of the document do not suffice to render a contract effectual as to all of its clauses, then the Court is to look to the canons of construction; finally, if after applying the four corners and canons of construction the contract cannot be read as to give effect to all of its clauses, the Court may consider parol evidence. *Kendrick v. Huckaby*, 955 So. 2D 950, 952 (Miss. Ct. App. 2007). As part of this legal principle, all documents signed contemporarily with the contract between the same parties are interpreted as part of the contract, even absent an integration agreement. *Sullivan v. Mounger*, 882 So. 2D

950, 952 (Miss. 2004). In this case, Medious executed a number of documents at the point of sale: the retail installment contract, a consent for credit check, and several other documents. The plain language of the consent indicates that Medious was permitting Credit Acceptance to review his creditworthiness to determine whether they would finance him. Each obligation of the parties had to be completed before the contract could be binding.

In effect, the actions taken by CNRS&Z, Inc. were rescission of the contract. Medious could not perform the essential terms of the contract, inasmuch as he could not obtain financing, as he testified. Nor could he pay the cash price for the vehicle. The contract does not obligate CNRS&Z, Inc., to bear the burden of financing Medious; it only permits Medious to either finance the vehicle or pay cash for it. The Court erroneously held that the contract bound CNRS&Z, Inc., to the terms of financing. There is simply no support in the document for such an interpretation.

At no time did Medious ever have title to the vehicle. The transaction between Medious and Nu-2-U was a so-called spot-delivery transaction, as Medious did not receive title to the vehicle. Contrast with *Hobbs Automotive Inc. v. Dorsey,* 914 So. 2d 148 (Miss. 2005), where a similar contract was deemed to not be a spot-delivery transaction, because the Dorseys had in fact received the title to their vehicle from Hobbs Automotive. Under no circumstances could the contract be considered complete, consummated, or otherwise fully performed.

2. The Circuit Court erred as a matter of law when it ruled that Medious did not breach the contract.

Medious used the car without paying for it for a period of four months. He permitted his trade-in to be repossessed. He failed to secure other financing. Finally, after securing a judgment in his failure, he was unable to bring the balance of the vehicle current, resulting in the ultimate repossession of the vehicle and its eventual resale. Under the contract, Medious was required to insure the vehicle. He did not do so. Each of these was required under the contract, and none of them were performed. It is irrefutable that Medious breached the contract.

3. Finally, the Circuit Court erred when it held that CNRS&Z, Inc., was responsible for the value of Medious's trade-in, which was repossessed when Medious stopped making payments on it after it was returned to him.

Medious testified, and his attorney confirmed, that he was not seeking the value of his repossessed collateral. T. 23-24. The Court ruled that there was no counterclaim before the court for the repossessed 2002 Buick Rendezvous. *Id.* Medious and his attorney each stated that they were not pursuing that claim; in effect, they expressly abandoned it during the trial. T. 23-24. The Court, therefore, had no authority to render a judgment ordering that CNRS&Z, Inc., be liable for the value of the repossessed car. *Estate of Stevens v. Wetzel*, 762 So. 2D 293, 296 (¶15) (Miss. 2000).

CONCLUSION

The Circuit Court of Marion County erred as a matter of law when it held that CNRS&Z, Inc., had breached a retail installment contract between it and Medious. First, the evidence is plain that Medious did not meet his obligations under the contract, in that he did not obtain financing, nor did he pay the cash price for the vehicle. There was no requirement that CNRS&Z, Inc., finance the vehicle for Medious, and no such promise was ever made. Medious permitted his trade-in, the one element of the contract he could have performed, to be repossessed.

Second, Medious breached every material term of the contract. He did not obtain financing, he did not pay cash for the vehicle, he did not preserve his collateral, and he did not obtain insurance on the vehicel.

Third, the Circuit Court ordered a judgment on a claim that Medious did not seek relief for. Medious testified that he was not seeking the value of his collateral. His attorney confirmed that such relief was not sought. The Circuit Court had no authority to render a judgment incorporating a claim so thoroughly abandoned.

For the foregoing reason, this Court should reverse and render the decision of the Circuit Court of Marion County.

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CERTIFICATE OF SERVICE

I, Alexander Ignatiev, attorney for Appellant, do hereby certify that I have this day mailed for filing, via United States mail, postage prepaid, the original and four (4) copies of the foregoing Brief of the Appellant to the Clerk of the Supreme Court of Mississippi, Ms. Betty Sephton, Post Office Box 249, Jackson, Mississippi, 39205-0249.

THIS the 29th day of May, A.D. 2009.

ALEXANDER IGNATIEV

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CERTIFICATE OF SERVICE

I, Alexander Ignatiev, attorney for Appellant, do hereby certify that I have this day mailed, via United States mail, postage prepaid, a copy of the foregoing Brief of the Appellant to the following:

Hon. Prentiss G. Harrell
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Appellee

THIS the 29th day of May, A.D. 2009.

ALEXANDER IGNATIEV