

**Master Cars USA v Leger**

2011 NY Slip Op 30758(U)

March 12, 2011

Supreme Court, Nassau County

Docket Number: 553/08

Judge: F. Dana Winslow

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SCAN

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. F. DANA WINSLOW,**

**Justice  
TRIAL/IAS, PART 4  
NASSAU COUNTY**

**MASTER CARS USA Inc., as assignee of  
QSIDE FEDERAL CREDIT UNION,**

**Plaintiff,**

**MOTION DATE: 12/23/10**

**- against -**

**MOTION SEQ. NO.: 001  
INDEX NO.: 553/08**

**RAYMONDE LEGER and EMMANUEL  
CIVIL,**

**Defendants.**

**The following papers read on this motion (numbered 1):**

**Notice of Motion.....1**

The Court automatically adjourns all motions that are submitted, without opposition for one month, to determine whether or not there was either an administrative delay or excusable neglect. Such adjournment is made without prejudice to the moving party to have the merits of such an adjournment considered in the event that there is a subsequent submission.

Plaintiff's motion for summary judgment pursuant to **CPLR §3212** is determined as follows.

This is an action to recover the balance due on a Loan and Security Agreement (the "Contract") executed by defendants RAYMONDE LEGER ("LEGER") and EMMANUEL CIVIL ("CIVIL") on December 16, 2004 [Motion Exh. A] in connection with their purchase of a 2000 Mercedes Benz vehicle (the "Vehicle") financed by plaintiff MASTER CARS USA, INC.'s ("MASTER CARS") assignee QSIDE FEDERAL CREDIT UNION ("QSIDE").

On or about January 10, 2008, QSIDE commenced an action against MASTER CARS and defendants herein alleging *inter alia* (1) as against LEGER and CIVIL, that there is due and owing under the Contract a total of \$29,347.31, together with interest from December 20, 2007 and reasonable attorney's fees; and (2) as against MASTER CARS, that it (i) failed to properly describe the Vehicle in the documents provided to QSIDE; (ii) failed to resolve the claims of LEGER and CIVIL that MASTER CARS breached its warranties and (iii) refused to repurchase the Contract as provided in an agreement between QSIDE and MASTER CARS requiring *inter*

*alia* MASTER CARS to repurchase the Contract and pay QSIDE the amount owed in such circumstance (the "QSIDE action") [Motion Exh. T]. Plaintiff submits a Verified Answer (the "Answer") of defendants LEGER and CIVIL, dated May 28, 2008, denying the allegations and containing no affirmative defenses or counterclaims [Motion Exh. Z]. By Stipulation of Settlement, dated May 20, 2010, executed by all parties, QSIDE agreed upon receipt by QSIDE of \$30,000 from MASTER CARS, to discontinue the QSIDE action against MASTER CARS. The parties further stipulated to substitute MASTER CARS as plaintiff, to assign QSIDE's right and interest in the Contract to MASTER CARS, and to continue the cause of action against LEGER and CIVIL [Motion Exh. S].

Pursuant to the Contract, defendants were obligated to pay the sum of \$44,846 with interest in seventy-two (72) installments of \$769.97 each, commencing on January 15, 2005. The total price of the Vehicle was \$61,437.84 which included a down payment of \$6,000 with a total amount of payments due of \$55,437.84. According to the affidavit of James Marsala ("Marsala"), vice president of lending of plaintiff's assignor QSIDE, sworn to on October 18, 2010, defendants' account became delinquent when defendants failed to make their scheduled loan payments in December 2006 and that defendants' last payment was made on June 18, 2007. Marsala states that at that time, defendants' outstanding balance amounted to \$28,307.12 and that there is now due and owing \$28,307.12, together with interest of 7.25% per annum from June 18, 2007. Marsala also attests that since commencement of this action, he met with LEGER who allegedly claimed that the Vehicle was not working properly and was sitting in her backyard. Plaintiff also proffers the affidavit of Nariman Baratian, manager and custodian of records of MASTER CARS, sworn to on October 20, 2010, attesting to the loan application procedure as it pertains to defendants and confirming the amount claimed owing as attested to by Marsala. Plaintiff now seeks summary judgment on this claim.

In support of its motion, plaintiff proffers (1) various documents, dated December 16, 2004, executed by defendants in connection with the loan including (i) the Contract and Bill of Sale; (ii) a power train warranty executed by defendants administered by East Coast Warranty Services covering a period of 24 months (the "Warranty") [Motion Exh. D]; and (iii) a Guaranty Agreement [Motion Exh. G]; (2) Notice of Recorded Lien, naming QSIDE as lienholder; (3) 'QSIDE Member Account History' covering the period December 16, 2004 through June 18, 2007, and 'Collection History', indicating the amount of \$28,307.12 was due as of June 18, 2007, which documents Marsala attests were kept in the regular course of business [Motion Exhs. P and Q]; and (4) portions of LEGER's deposition testimony conducted on February 18, 2010.

The portions of the deposition testimony proffered by plaintiff reveal that LEGER acknowledged her signature and CIVIL's signature on various documents executed in connection with the purchase of the Vehicle. Plaintiff also submits invoices for repairs on the Vehicle, dated November 23, 2005, December 8, 2005 and April 24, 2006, which were marked for identification as plaintiff's exhibits during LEGER's deposition [Motion Exhs. 10, 11, 12]. LEGER also testified that she had the Vehicle towed to a Mercedes dealership (not Master Cars) on February

27, 2007 and was told that repairs to the Vehicle would cost \$19,000 [Motion Exh. 17]. Plaintiff proffers a copy of an estimate from a Mercedes dealership for \$19,193.59 [Motion Exh. 16]. The Court notes that said estimate provided a 'date entered' and 'date shipped' of December 1, 2006 but leaves blank an 'invoice date'. LEGER testified that after receiving an estimate for \$19,000, she towed the Vehicle to her backyard where it remains [Motion Exh. 17]. LEGER does not deny that she made no payments on the Contract after May or June of 2007. Rather, she asserts that she "don't have no car." LEGER also testified that she went to QSIDE "to help me which they did not sound like they were going to help me." The Court notes there is also incomplete deposition testimony by LEGER that she purportedly made an attempt to refinance the Vehicle [Motion Exh. 13] and that someone made a promise to her that the Vehicle would be auctioned [Motion Exh. 15].

To prevail on a motion for summary judgment, the movant must establish its right to judgment as a matter of law, by tender of evidentiary proof in admissible form. **CPLR §3212(b); Winegrad v. New York University Medical Center**, 64 N.Y.2d 851; **Zuckerman v. City of New York**, 49 N.Y.2d 557. Upon such proof, the burden shifts to the opponent to "show facts sufficient to require a trial of any issue of fact." **CPLR §3212(b)**.

The Court finds that in the totality of the circumstances, plaintiff has established, by tender of admissible proof, the existence of a debt, the failure to pay, and the damages incurred. Defendants have failed to submit opposition to this motion and, accordingly, have come forth with no admissible evidence to raise an issue of fact regarding their liability for breach of contract. In their Answer or deposition testimony, defendants cite no provision, in the Contract or in the law, that relieves them of their obligations under the Contract and provides no evidence that they ever made claims under the Warranty for any claim. In her deposition testimony LEGER acknowledged that the unpaid balance on the loan from QSIDE is over \$28,000 and that she received letters from QSIDE "all the time."

Based upon the foregoing, it is

**ORDERED**, that plaintiff's motion for summary judgment pursuant to **CPLR §3212** is **granted**. Submit judgment on fifteen days notice together with proof of current amount due.

Plaintiff shall serve a copy of this Order on defendants after entry by personal service pursuant to **CPLR §308(1)** or **(2)** and if pursuant to subsection **(2)**, the affidavit of service shall identify the person of suitable age and discretion and his or her relationship to the person being served. Plaintiff shall file proof of such service together with the submission of a proposed judgment.

This constitutes the Order of the Court.

Dated: 3/12, 2011

*[Handwritten Signature]*

**ENTERED**  
ISC  
 MAR 23 2011  
 NASSAU COUNTY  
 COUNTY CLERK'S OFFICE