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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

JOHANNA L. ANTONIO, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

WILMINGTON SAVINGS FUND
SOCIETY, FSB, successor-by-merger to
Beneficial Bank, d/b/a WSFS,

Defendant.

FEBRUARY TERM, 2021

No. 302

CONTROL No. 22052651
22062612
22052979

COMMERCE PROGRAM

ORDER

AND NOW, this 9th day of January, 2023, upon consideration of the parties' Cross-Motions for Summary Judgment, the Responses thereto, and all other matters of record, it is hereby **ORDERED AND DECREED** that

1. Summary Judgment is **GRANTED** to Defendant on Plaintiff's Complaint;
2. Summary Judgment is **GRANTED** to Plaintiff on Defendant's Counterclaim;
3. The Motion for Class Certification is **DISMISSED AS MOOT**; and
4. The Complaint is **DISMISSED WITH PREJUDICE**.

DOCKETED

JAN - 9 2023

R. POSTELL
COMMERCE PROGRAM

BY THE COURT:

PAULA PATRICK, J.

210200301-Antonio Vs Wilmington Savings Fund Society, Fsb.



21020030100050

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

JOHANNA L. ANTONIO, individually and on behalf of all others similarly situated,	FEBRUARY TERM, 2021
<i>Plaintiff,</i>	No. 302
v.	CONTROL No. 22052651 22062612 22052979
WILMINGTON SAVINGS FUND SOCIETY, FSB, successor-by-merger to Beneficial Bank, d/b/a WSFS,	COMMERCE PROGRAM
<i>Defendant.</i>	

OPINION

This is an action brought by a consumer on behalf of herself and others similarly situated against Defendant WSFS, successor to Beneficial Bank, for alleged violations of the Uniform Commercial Code in the notice she was given after her vehicle was repossessed. For the reasons which follow, the Court will GRANT Defendant's Motion for Summary Judgment, GRANT Plaintiff's Motion for Summary Judgment on Defendant's Counterclaim, DISMISS the Motion for Class Certification as moot, and dismiss the case.

I. Factual and Procedural History.

The following facts are undisputed. Plaintiff, Johanna Antonio, purchased a car on or about October 25, 2013, which was reflected in a Motor Vehicle Retail Installment Sale Contract. The car was financed through a loan from Beneficial, secured by the vehicle. Defendant Wilmington Savings Fund Society is the successor-by-merger to Beneficial. Plaintiff fell behind in her payments on the loan in October 2015, and Beneficial declared a default. On or about October 16, 2015, Beneficial repossessed the vehicle, and sent Plaintiff a Notice of Repossession, Redemption Rights and Sale. The Notice, found in Plaintiff's Exhibit A to her

Motion for Summary Judgment, lists a tally of “Charges as of Date of Mailing” which includes a total of “\$24,103.17 (plus any costs incurred in retaking, storing and repairing the vehicle.)” The Notice also states, “[t]o learn the exact amount you must pay to redeem the vehicle, call us at (215) 864-3550. If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (215) 864-3550, or write us at Beneficial Bank, Consumer Credit Department, 1818 Market Street, Philadelphia, PA 19103, and request a written explanation.”

Plaintiff did not redeem her vehicle, which was sold in late 2015. On or about December 7, 2015, Beneficial sent Plaintiff a Notice of Deficiency, which stated that the vehicle was sold for less than Plaintiff owed on the loan, and that Plaintiff therefore owed Beneficial \$14,808.84.

Plaintiff filed this Complaint for statutory violations of the Uniform Commercial Code on behalf of herself and other consumers similarly situated on February 3, 2021. Defendant filed its Counterclaim for the amount of the deficiency on March 19, 2021. Before the Court are the parties’ Cross-Motions for Summary Judgment, and Plaintiff’s Motion for Class Certification.

II. Legal Analysis.

Plaintiff brings a single claim against Defendant for violations of the Uniform Commercial Code, specifically 13 Pa. C.S. § 9601, *et seq.*, which govern the repossession of vehicles. Plaintiff argues that the Notice provided to Defendant was misleading and incomplete, and therefore does not conform to the requirements of the statute.

The statute requires the following in a notice of disposition

- (i) the information specified in section 9613(1) (relating to contents and form of notification before disposition of collateral: general);
- (ii) a description of any liability for a deficiency of the person to which the notification is sent;
- (iii) a telephone number from which the amount which must be paid to the secured party to redeem the collateral under section 9623 (relating to right to redeem collateral) is available; and

(iv) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.¹

The statute goes on to state that “[a] particular phrasing of the notification is not required.”²

Finally, it provides a form of notification that “when completed, provides sufficient information.”³ This form of notification is very similar to the notification provided by Beneficial to Plaintiff, but not identical.

The statute concludes

(4) A notification in the form of paragraph (3) is sufficient even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient even if it includes errors in information not required by paragraph (1) unless the error is misleading with respect to rights arising under this division.⁴

Plaintiff makes two main arguments for why the Notice is misleading: first, that the Notice does not include the amount of the daily storage charge, despite the fact that it is a fixed amount that Beneficial could easily have put in the Notice; and second, that the Notice misstates the amount owed by Plaintiff due to 1) the inclusion in Notice of “any costs incurred in...repairing of the vehicle” when no repair costs were incurred by Beneficial, and 2) the omission from the Noticed of storage and repossession fees. The Court cannot agree that these constitute errors that are misleading with respect to rights arising under the statute.

The statute does not require the Notice to list all amounts owed by the borrower. In fact, it contemplates that the lender may require the borrower to call for an exact quote, or to request

¹ 13 Pa. C.S. § 9614 (1).

² *Id.* at paragraph 2.

³ *Id.* at paragraph 3.

⁴ *Id.*

that quote in writing.⁵ Further, the Notice does not pretend that the total listed is the exact total due, but states that in addition to the printed total the borrower owes “any costs incurred in retaking, storing and repairing the vehicle.” This is simply not misleading.

In a recent ruling, the Pennsylvania Superior Court addressed the question of whether a similar Notice of Deficiency was proper under the statute. The Court held that a notice that required the borrower to call a third party for an exact quote of storage and other costs owed to that third party was not a violation of Section 9614.⁶ Although that notice, as here, was not in the exact form provided in paragraph (3) of the statute, the exact form or phrasing is not required. It is true that Beneficial could have listed the daily storage fee in its Notice; however, the statute does not require it to do so.

Plaintiff also argues that the Notice violates another statute, the Consumer Credit Code (formerly the Motor Vehicle Sales Finance Act, or MVSFA), which requires an “itemized statement of the total amount required to redeem.”⁷ However, the Superior Court in *d'Happert* found that the Notice provided to the borrower there, which included a statement of the total required but also said that the borrower needed to call for an exact quote, fulfilled the requirements of that statute as well.⁸

For these reasons, the Court will grant summary judgment to Defendant on Plaintiff's claim.

⁵ 13 Pa. C.S. § 9614(1)(iii) & (3).

⁶ *d'Happert v. First Commonwealth Bank*, 2022 PA Super 132, 282 A.3d 704, 724 (2022).

⁷ 12 Pa.C.S. § 6254(c)(2).

⁸ *d'Happert* at 723.

The Court also grants summary judgment on the Defendant's counterclaim to Plaintiff. The Notice of Deficiency was sent on or about December 7, 2015. Defendant filed its counterclaim for the amount of the deficiency, \$14,808.84, on or about March 19, 2021, over five years later. The statute of limitations breach of contract for the sale of goods, like the vehicle, is four years.⁹

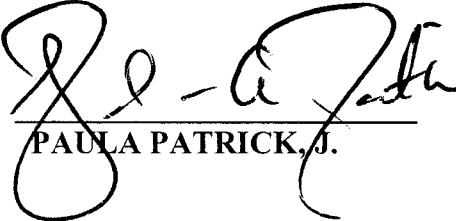
Defendant argues that Plaintiff waived the statute of limitations defense by not raising it in her answer to the Counterclaim. However, in a stipulation signed May 12, 2022, the parties stipulated that "in lieu of amending the parties' New Matter, Plaintiff shall be deemed to have asserted the affirmative defense that Defendant's Counterclaim is barred by the statute of limitations."¹⁰ Accordingly, the defense has not been waived, and the Counterclaim is barred.

Finally, Plaintiff's Motion for Class Certification is moot, as nothing remains pending from either the Complaint or from the Counterclaim.

III. Conclusion.

For all the reasons discussed *supra*, Summary Judgment is GRANTED to Defendant on Plaintiff's Complaint, and GRANTED to Plaintiff on Defendant's Counterclaim. The Motion for Class Certification is DISMISSED AS MOOT, and the Complaint is DISMISSED WITH PREJUDICE.

BY THE COURT:



PAULA PATRICK, J.

⁹ 13 Pa. C.S. §2725.

¹⁰ Stipulation, Exhibit G to Plaintiff's Reply to its Motion for Summary Judgment.