

01-1143-CD
PROMISTAR BANK -vs- KEVIN M. BRINK et al

PROMISTAR BANK, (IN THE COURT OF COMMON PLEAS OF
Plaintiff) CLEARFIELD COUNTY, PENNSYLVANIA
(NO. 2001- 1143-CO
)
vs. (CIVIL ACTION - LAW
)
KEVIN M. BRINK and ()
SAMUEL D. BRINK, ()
Defendants ()
) C O M P L A I N T
) IN REPLEVIN
(
) COUNSEL OF RECORD FOR PLAINTIFF:
(ANDREW P. GATES, ESQ.
) 2 N. Front St.
(Clearfield, PA 16830
) Telephone: (814) 765-1766
) ID#
(
(THOMAS A. YOUNG, ESQ.,
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(Johnstown, PA 15901
) Telephone No. (814) 535-3513
(ID# 05966

FILED

JUL 16 2001

William A. Shaw
Prothonotary

PROMISTAR BANK, (IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff (NO. 2001-
)
vs. (CIVIL ACTION - LAW
)
KEVIN M. BRINK and (
SAMUEL D. BRINK,)
Defendants ()
)
) C O M P L A I N T

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DAVID S. MEHOLICK, COURT ADMINISTRATOR
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

Telephone: (814) 765-2641 Ext. 5982

ANDREW P. GATES, ESQ.
Attorney for Plaintiff
2 N. Front St.
Clearfield, PA 16830

THOMAS A. YOUNG, ESQ.,
Attorney for Plaintiff
131 Market St., Suite 200
Johnstown, PA 15901

PROMISTAR BANK, (IN THE COURT OF COMMON PLEAS OF
Plaintiff) CLEARFIELD COUNTY, PENNSYLVANIA
(NO. 2001-
vs.)
)
KEVIN M. BRINK and ()
SAMUEL D. BRINK, ()
Defendants ()
) C O M P L A I N T

AND NOW COMES the Plaintiff, Promistar Bank, by and through its attorney, Thomas A. Young, and files the following Complaint:

1. The Plaintiff is Promistar Bank, a state chartered bank, with its principal office and place of business at 532-534 Main Street, Johnstown, Cambria County, Pennsylvania.
2. The Defendant, Kevin M. Brink, is an adult individual whose last known residence is R. D. #1 Box 154, Irvona, Clearfield County, Pennsylvania 16656-9612.
3. The Defendant, Samuel D. Brink, is an adult individual whose last known residence is R. D. #1 Box 548, La Jose, Clearfield County, Pennsylvania 15753.
4. On or about the 15th day of September, 2000, Kevin M. Brink and Samuel D. Brink purchased from Courtesy Ford, Inc., 401 Pleasant Valley Blvd., Altoona, PA 16602, a 1999 Ford Mustang, VIN # 1FAFP4042XF146137, Title No. 53357058703 BR. The cost of said Ford Mustang was \$10,680.00. A copy of Defendants' Certificate of Title showing Plaintiff's lien is attached hereto and marked Exhibit "A".
5. Promistar Bank was formerly known as Laurel Bank.
6. In connection with said purchase, the Defendants signed a Pennsylvania

Motor Vehicle Installment Sale Contract for \$10,680.00, which was assigned to Laurel Bank, now Promistar Bank, the Plaintiff. A copy of said Pennsylvania Motor Vehicle Installment Sale Contract is attached hereto and marked Exhibit "B".

7. By the terms of said Installment Sale Contract, the Defendants promised to pay to Plaintiff the sum of \$10,680.00, with interest at the rate of 9.5% per annum, in monthly installments of \$299.89 beginning on the 15th day of October, 2000 and continuing on the 15th day of each month thereafter for a period of forty-two (42) months.

8. By the terms of said Pennsylvania Motor Vehicle Installment Sale Contract, Plaintiff was given a security interest in said 1999 Ford Mustang.

9. Defendants, Kevin M. Brink and Samuel D. Brink, have defaulted on the Pennsylvania Motor Vehicle Installment Sale Contract by failing to make regular monthly payments as promised. The account is currently due for the April 15, 2001 payment.

10. Because of the default above referred to, Plaintiff has exercised its right to accelerate the balance of the loan.

11. The value of the 1999 Ford Mustang which is the subject of this action is believed to be \$10,000.00.

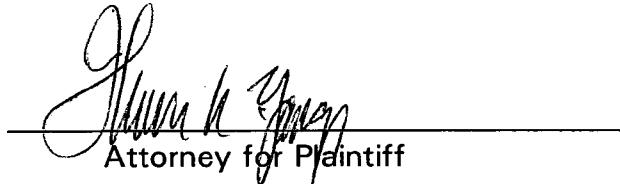
12. The Pennsylvania Motor Vehicle Installment Sale Contract provides that the Plaintiff has the right to repossess the 1999 Ford Mustang, or to bring a replevin action to accomplish the same result.

13. Because Defendants, Kevin M. Brink and Samuel D. Brink, have defaulted

in their payments, Plaintiff is exercising its rights under the Pennsylvania Motor Vehicle Installment Sale Contract, and is entitled to possession of the said 1999 Ford Mustang.

14. Defendants, Kevin M. Brink and Samuel D. Brink, currently owe the Plaintiff the sum of \$9,314.56, as well as a reasonable attorney's commission of 15%, or \$1,397.19, for a total of \$10,711.75.

WHEREFORE, Plaintiff asks for a judgment awarding possession of said 1999 Ford Mustang to the Plaintiff, and for a money judgment in the amount of \$10,000.00, which is the value of the property, together with interest, attorney's fees and costs.



John H. Young
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA

CERTIFICATE OF TITLE FOR A VEHICLE

5,212

002730056005723-003

1FAPP4042XF146137

VEHICLE IDENTIFICATION NUMBER

1999

FORD

53357058703 BR

CP

BODY TYPE

0

DUP

SEAT CAP

PRIOR TITLE STATE

10/03/00

YEAR

MADE OF VEHICLE

TITLE NUMBER

ODOM. PROD. DATE

018956

ODOM. MILES

ODOM. STATUS

4/09/99
DATE PA TITLED10/03/00
DATE OF ISSUE

UNLADEN WEIGHT

GVWR

GCWR

TITLE BRANDS

ODOMETER STATUS	
0	ACTUAL MILEAGE
1	MEILEAGE EXCEEDS THE MECHANICAL LIMITS
2	NOT THE ACTUAL MILEAGE
3	NOT THE ACTUAL MILEAGE-ODOMETER TAMPERING VERIFIED
4	EXEMPT FROM ODOMETER DISCLOSURE

REGISTERED OWNER(S)

KEVIN M & SAMUEL O
BRINK
R R 1 BOX 154
IRVONA PA 16656

Department of Transportation

FIRST LIEN FAVOR OF:

LAUREL BANK

SECOND LIEN FAVOR OF:

TITLE BRANDS	
A	ANTIQUE VEHICLE
C	CLASSIC VEHICLE
D	COLLECTIBLE VEHICLE
F	OUT OF COUNTRY
G	ORIGINALLY MFGD. FOR NON-U.S. DISTRIBUTION
H	AGRICULTURAL VEHICLE
L	LOGGING VEHICLE
P	IS WAS A POLICE VEHICLE
R	RECONSTRUCTED
S	STREET ROD
T	RECOVERED THEFT VEHICLE
V	VEHICLE CONTAINS REISSUED VIN
W	FLOOD VEHICLE
X	IS WAS A TAXI

FIRST LIEN RELEASED:

DATE

If a second lienholder is listed upon satisfaction of the first lien, the first lienholder must forward this Title to the Bureau of Motor Vehicles with the appropriate form and fee.

BY _____ AUTHORIZED REPRESENTATIVE

SECOND LIEN RELEASED _____ DATE

MAILING ADDRESS

BY _____ AUTHORIZED REPRESENTATIVE

LAUREL BANK
532-534 MAIN ST
JOHNSTOWN PA 15901

I certify as of the date of issue, the official records of the Pennsylvania Department of Transportation reflect that the person(s) or company named herein is the lawful owner of the said vehicle.

D. APPLICATION FOR TITLE AND LIEN INFORMATION

SUBSCRIBED AND SWEARN
TO BEFORE ME:

MO. DAY YEAR

SIGNATURE OF PERSON ADMINISTERING OATH

The undersigned hereby makes application for Certificate of Title to the vehicle described above, subject to the encumbrances and other legal claims set forth here.

SIGNATURE OF APPLICANT OR AUTHORIZED SIGNER

SIGNATURE OF CO-APPLICANT/TITLE OF AUTHORIZED SIGNER

EXHIBIT A

If a co-purchaser other than your spouse is listed and you want the title to be listed as "Joint Tenants With Right of Survivorship" (On death of one owner, title goes to surviving owner) CHECK HERE Otherwise, the title will be issued as "Tenants in Common" (On death of one owner, interest of deceased owner goes to his/her heirs or estate).1ST LIEN DATE: IF NO LIEN, CHECK

1ST LIENHOLDER

STREET

CITY STATE ZIP

FINANCIAL INSTITUTION NUMBER

2ND LIEN DATE: IF NO LIEN, CHECK

2ND LIENHOLDER

STREET

CITY STATE ZIP

FINANCIAL INSTITUTION NUMBER

STORE IN A SAFE PLACE. IF LOST, APPLY FOR A DUPLICATE. ANY ALTERATION OR ERASURE voids THIS TITLE.

009674658

PENNSYLVANIA
MOTOR VEHICLE-INSTALLMENT SALE CONTRACT,

Dated 09/15/2000

42454785

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all scheduled payments.	Total Sale Price The total cost of your purchase on credit, including your downpayment
9.5000 %	\$ 1915.38	\$ 10680.00	\$ 12595.38	\$ 5358.50 of \$ 17953.88

Your Payment Schedule will be:

No. of Payments	Amount of Payments	When Payments Are Due
42	\$ 299.89	Monthly, beginning 10/15/2000
	\$	

Filing Fees: \$ 5.00

Late Charge: If a payment is late, you will be charged 2% of the portion of the payment which is late for each month, or part of a month greater than 10 days, that it remains unpaid. See below and any other Contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties. e means estimate

In this Contract

we are
the SELLER.

COURTESY FORD, INC.

401 PLEASANT VALLEY B ALTOONA, PA 16602

Address

Zip Code

You are
the BUYER(S).

KEVIN M BRINK

SAMUEL D BRINK

RR1 BOX154 IRVONA PA 16656

Name(s)

Address(es)

Zip Code(s)

If there is more than one Buyer, each promises, separately and together, to pay all sums due us and to perform all agreements in this Contract.

TRADE-IN: N/A

You have traded in
the following vehicle: 99 EXPLORER FORD

Year and Make

Description

If a balance is still owing on the vehicle you have traded in, the Seller will pay off this amount on your behalf. You warrant and represent to us that any Trade-In is free from lien, claim, encumbrance or security interest, except as shown in the "Itemization of Amount Financed" as the "Lien Payoff."

PROPERTY INSURANCE: You may choose the person through whom insurance is obtained against loss or damage to the Vehicle and against liability arising out of use or ownership of the Vehicle. In this Contract, you are promising to insure the Vehicle and keep it insured.

CREDIT INSURANCE IS NOT REQUIRED: Credit Life Insurance and Credit Accident & Health (Disability) Insurance are not required to obtain credit, and will not be provided unless you sign below and agree to pay the additional cost(s). Please read the "NOTICE OF PROPOSED CREDIT INSURANCE" on the reverse side. Your insurance certificate or policy will tell you the MAXIMUM amount of insurance available. All insurance purchased will be for the term of the credit.

By signing, you select Single Credit Life Insurance, What is your
which costs \$ N/A age? Years

By signing, you select Single Credit Accident &
Health Insurance, which costs \$ N/A What is your
age? Years

Signature of Buyer to be insured for Single Credit Life Insurance

Signature of Buyer to be insured for Single Credit Accident & Health Insurance

By signing, you both select Joint Credit Life Insurance, which costs \$ N/A What are
your ages?

By signing, you both select Joint Credit
Accident & Health Insurance, which costs \$ N/A What are
your ages? Percentage
to be insured

1. _____

1. _____ %

2. _____

2. _____ %

Signatures of both Buyers to be insured for Joint Credit Life Insurance

Signatures of both Buyers to be insured for Joint
Credit Accident & Health InsuranceAMERICAN REPUBLIC
Insurer:

VEHICLE: You have agreed to purchase, under the terms of this Contract, the following motor vehicle and its extra equipment, which is called the "Vehicle" in this Contract.

N/U	Year and Make	Series	Body Style	No. Cyl.	Truck Ton Capacity	Serial Number
USED	99 FORD	MUST	CP			1FAFP4042XF146137

Equipped A.T. P.S. AM-FM Stereo 5 Spd. Other
with A.C. P.W. AM-FM Tape Vinyl Top

ASSIGNEE: We may assign this Contract and Security Agreement to a sales finance company which is the "Assignee." If the Assignee assigns the Contract to a subsequent assignee, the term also refers to such subsequent assignee. After the assignment, all rights and benefits of the Seller in this Contract and in the Security Agreement shall belong to, and be enforceable by, the Assignee. The Assignee will notify you when and if Seller makes an assignment.

LAUREL BANK
532-534 Main Street, Johnstown, PA 15901

CO-SIGNER: Any person signing the Co-Signer's Agreement below promises separately and together with all Co-Signer(s) and Buyer(s), to pay all sums due and to perform all agreements in this Contract. Co-Signer will not be an Owner of the Vehicle.

CO-OWNER: Any person signing the Co-Owner's Security Agreement below gives up any interest in the Vehicle and agrees separately and

EXHIBIT B

Total Sale Price The total cost of your purchase on credit, including your downpayment
5358.50

IF YOU DO NOT MEET YOUR CONTRACT OBLIGATIONS, YOU MAY LOSE THE MOTOR VEHICLE AND PROPERTY THAT YOU BOUGHT WITH THIS CONTRACT, AND/OR MONEY ON DEPOSIT WITH THE ASSIGNEE.

This Contract is between Seller and Buyer. All disclosures have been made by Seller. Seller intends to assign this Contract to the Assignee.

Itemization of Amount Financed

Cash Price	15950.00
\$	
Cash Downpayment	N/A
\$	
Trade-In	
Value of Trade-In	17230.00
\$	
Lien Payoff to: FORD	
\$	11871.50
Unpaid Cash Price Balance	
\$	10591.50
To Credit Insurance Company	
\$	N/A
To Public Officials for:	
License, Tags and Registration	
\$	83.50
Lien Fee	
\$	5.00
To SERVICE CONTRACT	
\$	N/A
To COURTESY FORD	
\$	n/a
To GENERAL SYSTEM	
\$	N/A
Paid to Others on Your Behalf (We may retain part):	
To COURTESY FORD	
\$	N/A
Amount Financed	
\$	10680.00
Finance Charge	
\$	1915.38
Total of Payments (Time Balance)	
\$	12595.38

Payment Schedule - You agree to pay to us the Amount Financed plus interest in

41

payments of \$ 299.89 each, and a final payment of \$ 299.89. The first payment will be due on 10/15/00

2. Signatures of both Buyers to be insured for Joint Credit Life Insurance

2. Signatures of both Buyers to be insured for Joint Credit Accident & Health Insurance %

AMERICAN REPUBLIC Insurer

VEHICLE: You have agreed to purchase, under the terms of this Contract, the following motor vehicle and its extra equipment, which is called the "Vehicle" in this Contract.

N/U	Year and Make	Series	Body Style	No. Cyl.	Truck Ton Capacity	Serial Number
USED	99 FORD	MUST	CP			1F AFP 4042XF146137
Equipped with	A.T. A.C.	P.S. P.W.	AM-FM Stereo AM-FM Tape	5 Spd. Vinyl Top	Other	

ASSIGNEE: We may assign this Contract and Security Agreement to a sales finance company which is the "Assignee." If the Assignee assigns the Contract to a subsequent assignee, the term also refers to such subsequent assignee. After the assignment, all rights and benefits of the Seller in this Contract and in the Security Agreement shall belong to, and be enforceable by, the Assignee. The Assignee will notify you when and if Seller makes an assignment.

LAUREL BANK
532-534 Main Street, Johnstown, PA 15901

CO-SIGNER: Any person signing the Co-Signer's Agreement below promises separately and together with all Co-Signer(s) and Buyer(s), to pay all sums due and to perform all agreements in this Contract. Co-Signer will not be an Owner of the Vehicle.

CO-OWNER: Any person signing the Co-Owner's Security Agreement below gives us a security interest in the Vehicle and agrees separately and together with all Co-Owner(s) and Buyer(s), to perform all agreements in the Security Agreement and all other parts of this Contract except the "Promise to Pay" section.

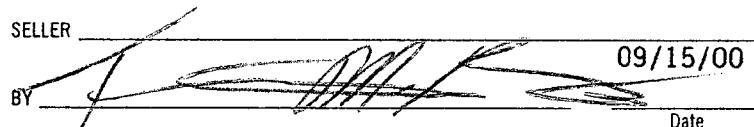
TERMS: The terms shown in the boxes above are part of this Contract.

PROMISE TO PAY: You agree to pay us the Total Sale Price for the Vehicle by making the Cash Downpayment, assigning the Trade-In, if shown above, and paying us the Amount Financed plus interest. You promise to make payments in accordance with the Payment Schedule. You promise to make payments on or before the same day of each month as the first payment due date. You agree to pay all other amounts which may become due under the terms of this Contract. You agree to pay the Seller or Assignee costs of suit. You also agree to pay reasonable attorneys' fees if Seller or Assignee hires an attorney to collect amounts due under this Contract or to protect or get possession of the Vehicle. You agree to make payments at the place or to send payments to the address which the Assignee most recently specifies in the written notice to you.

By signing below, we agree to sell the Vehicle to you under the terms of this Contract.

COURTESY FORD, INC.

SELLER

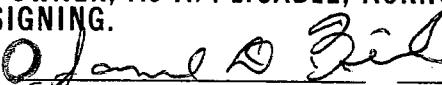
BY  Date 09/15/00

CO-SIGNER: YOU SHOULD READ THE NOTICE TO CO-SIGNER, WHICH HAS BEEN GIVEN TO YOU ON A SEPARATE DOCUMENT, BEFORE SIGNING THE CO-SIGNER'S AGREEMENT.

CO-SIGNER'S AGREEMENT: You, the person (or persons) signing below as "Co-Signer," promise to pay to us all sums due on this Contract and to perform all agreements in this Contract. You intend to be legally bound by all the terms of this Contract, separately and together, with the Buyer. You are making this promise to induce us to make this Contract with the Buyer, even though we will use the proceeds only for the Buyer's benefit. You agree to pay even though we may not have made any prior demand for payment on the Buyer or exercised our security interest. You also acknowledge receiving a completed copy of this Contract.

Co-Signer's Signature	(SEAL)	Address	Date
Co-Signer's Signature	(SEAL)	Address	Date

CO-OWNER'S SECURITY AGREEMENT: You, the person signing below as "Co-Owner," together with the Buyer or otherwise being all of the Owners of the Vehicle, give us a security interest in the Vehicle identified above. You agree to be bound by the terms of the Security Agreement and all other parts of this Contract except the "Promise To Pay" section. You are giving us the security interest to induce us to make this Contract with the Buyer, and to secure the payment by the Buyer of all sums due on this Contract. You will not be responsible for any deficiency which might be due after repossession and sale of the Vehicle.

Co-Owner's Signature	(SEAL)	Address	Date
BUYER, CO-SIGNER AND CO-OWNER, AS APPLICABLE, ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF THIS CONTRACT AT THE TIME OF SIGNING.	 	CO-SIGNER	CO-SIGNER OR CO-OWNER

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

ORIGINAL - White • DEALER COPY - Canary • BORROWER/CO-SIGNER COPY - Pink • COPY - Goldenrod

with at least ten (10) days prior written notice of any cancellation or reduction in coverage. On request, you shall deliver the policy or other evidence of insurance coverage to us. In the event of the loss, theft or damage to the Vehicle, you will immediately notify us in writing and file a proof of loss with the insurer.

a. **OUR RIGHT TO FILE PROOF OF LOSS:** In the event of any loss or damage to the Vehicle, if you fail or refuse to file a claim or proof of loss with the insurance company, you agree that the Seller, Assignee, any subsequent assignee, or any authorized employee of any of them ("we") may file a proof of loss with the insurance company, in your name and acting as your agent, with respect to the insured claim. You agree that you do not have the right to, and will not, revoke the power you have given us to file a proof of loss. You agree that we may exercise this power for our benefit and not for your benefit, except as provided in this Contract and by law.

b. **OUR RIGHT TO ENDORSE INSURANCE CHECKS:** You agree that the Seller, Assignee, any subsequent assignee, or an authorized employee of any of them ("we") may endorse your name, acting as your agent, to any check, draft or other instrument we receive in payment of an insured loss or return of insurance premiums. You agree that you do not have the right to, and will not, revoke the power you have given us to make your endorsement. You agree that we may exercise this power for our benefit and not for your benefit, except as provided in this Contract and by law.

c. **USE OF PROCEEDS:** We may apply any insurance proceeds we receive to repair or replace the Vehicle if, in our opinion, it is economically feasible and you are not then in default of this Contract. Otherwise, we will apply the insurance proceeds to reduce the unpaid balance due us. After the balance due us is paid, any excess will belong to you.

11. **OUR RIGHTS IF YOU BREAK YOUR PROMISES ABOUT THE SECURITY INTEREST, VEHICLE OR INSURANCE:** If you fail to keep your promises to pay filing fees, taxes, liens or the costs necessary to keep the Vehicle in good condition and repair, we may advance any money you promised to pay. If you fail to keep your promises about required insurance, we may advance money to obtain insurance to cover loss, theft, or damage to the Vehicle. We have the choice of whether or not to advance any money for these purposes. Such insurance

a. **NOTICE:** We will send you a Notice of Repossession to your last address we know about. This Notice will tell you how to buy back (redeem) the Vehicle. You will NOT have the right to reinstate the Contract. This means you will have to pay the total balance on the Contract and other amounts due. You may not get the Vehicle back by paying delinquent installments. This Notice will tell you other information required by law.

b. **REDEMPTION:** You have the right to buy back (redeem) the Vehicle within 15 days of the mailing of the Notice and at any later time before we sell the Vehicle. If you do not redeem, you give up all claim to the Vehicle.

c. **SALE:** If you don't redeem, we will sell the Vehicle. The money received at sale will be used to pay costs and expenses you owe, and then to pay the amount you owe on the Contract.

d. **SURPLUS OR DEFICIENCY:** If there is money left, we will pay it to the Buyer. If there is not enough money from the sale to pay what you owe, Buyer and Co-Signer agree to pay what is still owed to us.

e. **EXPENSES:** You agree to pay the costs of repossessing, storing, repairing, preparing for sale and selling the Vehicle as may be allowed by law. These costs will only be due if:

1. Default exceeds fifteen (15) days at the time of repossession;
2. The amount of costs are actual, necessary and reasonable; and
3. We can prove the costs were paid.

16. **HEIRS AND PERSONAL REPRESENTATIVES BOUND:** After your death, this Contract shall be enforceable against your heirs and personal representatives of your estate.

17. **GOVERNING LAW:** This Contract is to be interpreted according to the law of Pennsylvania.

18. **SEVERABILITY OF PROVISIONS:** If for any reason any part of this Contract shall become illegal, void or unenforceable, that part shall not be a part of this Contract.

19. **ASSIGNMENT BY BUYER:** Buyer shall not assign this Contract.

20. **THERE ARE NO WARRANTIES BY SELLER, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, UNLESS WE HAVE GIVEN YOU A SEPARATE WRITTEN WARRANTY.**

Buyer's Guide Window Sticker. If the Car which is described on the face of this Contract has a Buyer's Guide Window Sticker required by the Federal Trade Commission Used Car Trade Regulation Rule, the following notice applies:

The information you see on the window form for this Vehicle is part of this Contract. Information on the window form overrides any contrary provisions in the contract of sale.

NOTICE—ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

NOTICE OF PROPOSED CREDIT INSURANCE

The signer(s) of this Contract hereby take(s) notice that Group Credit Life Insurance coverage or Group Credit Accident and Disability Insurance coverage will be applicable to this Contract if so marked on the front of this Contract, and each such type of coverage will be written by the insurance company named. This insurance, subject to acceptance by the insurer, covers only the person or persons signing the request for such insurance. The amount of charge is indicated for each type of Credit Insurance to be purchased. The term of insurance will commence as of the date the indebtedness is incurred and will expire on the original scheduled maturity date of the indebtedness. Subject to acceptance by the insurer and within 30 days, there will be delivered to the insured debtor(s) a certificate of insurance more fully describing the insurance. In the event of prepayment of the indebtedness, a refund of insurance charges will be made when due.

NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION.

THE PROVISION BELOW IS NOT PART OF THE PENNSYLVANIA MOTOR VEHICLE INSTALLMENT SALE CONTRACT BETWEEN THE BUYER AND SELLER.

ASSIGNMENT

To induce you, the "Assignee" identified on the face of this Contract or as follows, _____ (Name) to purchase the within Contract, the Seller hereby warrants and represents, and continues to warrant and represent that: the sale has been made in strict conformity with all applicable federal, state and local laws and regulations, including, but not limited to, Article 2 of the Pennsylvania Uniform Commercial Code (13 Pa. C.S.A. §§2101 et seq.); our title to the Contract and the Vehicle covered thereby is absolute, free of all liens, encumbrances and security interests, and is subject only to the rights of the Buyer as set forth therein; the Contract is genuine, the signatures thereon are not forgeries, arose from the sale of the Vehicle therein described, and all parties thereto are of full age and had capacity to contract; the description of the Vehicle and extra equipment is complete and correct; the cash downpayment and/or trade-in allowance were actually received and no part thereof consisted of notes, post-dated checks, other credit advanced by us to Buyer or rebates or similar payments from us to the Buyer (however, manufacturer rebates may constitute all or a part of the downpayment); all warranties and statements therein are true; there is owing thereon the Amount Financed plus interest at the Annual Percentage Rate of the Contract set forth therein; we are duly licensed under the Pennsylvania Motor Vehicle Sales Finance Act and have duly complied with all requirements thereof with respect to the transaction and with the federal Truth-in-Lending Act and with any other federal or state law, rule or regulation applicable to this Contract; a motor vehicle title certificate showing a lien or encumbrance in favor of Assignee has been or will be applied for promptly; the registration of the Vehicle has not been suspended and the Seller knows of no facts which may result in the suspension of said registration under the Pennsylvania Motor Vehicle Financial Responsibility Act; the Buyer(s) named in the within Contract is (are) personally known to the Seller to be the same identical person(s) whose signature(s) is (are) affixed to this Contract; and Seller has no knowledge of facts impairing the validity or value of the Contract. If any such warranties or representations should be breached at any time, Seller shall repurchase said Contract from Assignee, on demand, and will pay therefor, in cash, the amount owing thereon, computed as set forth below, and said remedy shall be cumulative and not exclusive, and shall not affect any other right or remedy that Assignee might have at law or in equity against Seller. In the event that Buyer fails or refuses to make any payment due hereunder on the assertion, either oral or written, that the Vehicle is defective, not as represented to the Buyer by Seller, or that Seller refuses to honor any warranty or service agreement of Seller or manufacturer, Seller agrees that, on being advised of Assignee of such claim of Buyer, Seller will repurchase the Contract from Assignee and pay Assignee for same immediately in accordance with the repurchase terms set forth below, and Seller further agrees to hold Assignee harmless from any other claims of Buyer, including attorneys' fees, costs and expenses incurred in defending against claims asserted by Buyer and including claims for refund of payments made by Buyer to Assignee. If the Seller contracts to purchase property insurance on behalf of the Buyer, and that insurance is cancelled by the insurance company prior to its scheduled expiration date, Seller will attempt to place comparable coverage with another insurance company on behalf of the Buyer. If Seller is unable to do so, Seller will notify Buyer and pay to Buyer any additional costs incurred by the Buyer in obtaining replacement insurance for the unexpired period of the original insurance policy.

By signing and dating the Contract, as Seller, delivering the Contract to the Assignee and accepting payment for it, Seller authorizes the Assignee to act as the Seller's agent for the purpose of completing or correcting the identification of the Assignee in this Assignment to reflect the true Assignee who purchased the Contract and/or for the purpose of signing Seller's name to this Assignment, without recourse, if the Assignment is delivered without the Seller's signature. Assignee may exercise the power given in this paragraph for the benefit of the Assignee and not for the benefit of the Seller. Seller does not have the right to, and agrees not to, revoke the power given in this paragraph.

In the event that Seller is required by this Assignment to repurchase the Contract and/or Vehicle, Seller shall pay to Assignee, in cash, the full unpaid balance of the Contract as of the date of repurchase, plus any then earned Finance Charge and any and all costs and expenses paid or incurred by Assignee in respect thereto, including reasonable attorneys' fees, in connection with claims by or against any Buyer, Owner or persons in possession of the Vehicle and/or by or against Seller.

For value received, Seller hereby sells, assigns and transfers unto the Assignee, its successors and assigns, the within Contract, all moneys due and to become due thereunder, and all right, title and interest in and to the Vehicle therein described, with full power in the Assignee in its or our name to take such legal or other action which we might have taken save for this Assignment. Unless Seller marks either of the endorsements below, titled "WITH FULL RECOURSE" or "WITH REPURCHASE," Seller's assignment shall, except for the provisions of the paragraph titled "Assignment," be without recourse.

WITH FULL RECOURSE—Seller agrees that, in addition to the paragraph above titled "Assignment," in the event of default by Buyer in the full payment on the due date thereof of any installment payable under the Contract or in the prompt performance of any other obligation to be performed under the Contract by Buyer, Seller will, on demand by Assignee, forthwith repurchase the Contract from Assignee for a repurchase price, in cash, computed as set forth above.

WITH REPURCHASE—Seller agrees that, in addition to the provisions of the paragraph above titled "Assignment," in the event of any default by Buyer which shall entitle Assignee to repossess the Vehicle, Seller will, if the Vehicle is repossessed by Assignee and delivered to Seller, and without regard to the then condition of the Vehicle, forthwith repurchase the Contract and the Vehicle from Assignee for a repurchase price, in cash, computed as set forth above.

By signing below, we agree to the terms of the Assignment.

Seller *Secretary for Plaintiff* By _____

Date _____

ADDITIONAL TERMS AND CONDITIONS

1. HOW THE TOTAL OF PAYMENTS IS COMPUTED: The Total of Payments is the sum of the Amount Financed and the Finance Charge. The Finance Charge consists solely of interest computed daily on the outstanding balance of the Amount Financed. The Finance Charge shown on the front side has been computed on the assumption that we will receive all payments on their scheduled due dates.

2. COMPUTING INTEREST: We will charge interest on a daily basis on the outstanding balance subject to interest on each day of the loan term. The daily interest rate is equal to the Annual Percentage Rate divided by the number of days in that calendar year. Buyer agrees that because interest is calculated on a daily basis, late payments will result in additional interest (and, if applicable, a late charge). Early payments will result in less interest being charged. Early and/or late payments will cause the amount of the final payment to change.

3. LATE CHARGE: Buyer agrees to pay a late charge for any payment not made within 10 days after its due date. The late charge will be 2% per month on the unpaid amount of the payment. We will consider any part of a month in excess of 10 days to be a full month. The late charge will be due when earned. No late charge will be due if the reason that the payment is late is because, after default, the entire outstanding balance on this Contract is due. No late charge will be due if the only reason that the payment is late is because of a late charge assessed on an earlier payment.

4. APPLICATION OF PAYMENTS: We will apply payments in the following order of priority: first to interest; and then to principal, late charges, fees, and any other amounts you owe in the order that we may choose.

5. PREPAYMENT: You may prepay, in full or in part, the amount owed on this Contract at any time without penalty. If you prepay the Contract in part, you agree to continue to make regularly scheduled payments until you pay all amounts due under this Contract. This will reduce the number of payments you will make.

6. WAIVERS:

a. WAIVER BY SELLER AND ASSIGNEE: We and Assignee waive the right to treat any property as security for the repayment of this Contract, except for the Vehicle and the other security specifically mentioned in this Contract.

b. WAIVERS BY BUYER, CO-SIGNER AND CO-OWNER: You agree to make all payments on or before they are due without our having to ask. If you don't, we may enforce our rights without notifying you in advance. You give up any right you may have to require that we enforce our rights against some other person or property before we enforce our rights against you. You agree that we may give up our rights against some other person but not against you. You waive due diligence in collection and all defenses based on suretyship and impairment of collateral or security.

7. INTEREST AFTER MATURITY AND JUDGMENT: Interest at the rate provided in this Contract shall continue to accrue on the unpaid balance until paid in full, even after maturity and/or after we get a judgment against you for the amounts due. This will apply even if the maturity occurs because of acceleration. If at any time interest as provided for in this paragraph is not permitted by law, interest shall accrue at the highest rate allowed by applicable law beginning at that time.

8. YOUR PROMISES ABOUT OUR SECURITY INTEREST: You will not permit anyone other than us to obtain a security interest or other rights in the Vehicle. You will pay all filing fees necessary for us to obtain and maintain our security interest in the Vehicle. You will assist us in having our security interest noted on the Certificate of Title to the Vehicle. You will not sell or give away the Vehicle. If someone puts a lien on the Vehicle, you will pay the obligation and clear the lien.

9. YOUR PROMISES ABOUT THE VEHICLE: You will keep the Vehicle in good condition and repair. You will pay all taxes and charges on the Vehicle. You will pay all costs of maintaining the Vehicle. You will not abuse the Vehicle or permit anything to be done to the Vehicle which will reduce its value, other than for normal wear and use. You will not use the Vehicle for illegal purposes or for hire or lease. You will not move the Vehicle from your address shown on the front of this Contract to a new permanent place of garaging without notifying us in advance.

10. YOUR PROMISES ABOUT INSURANCE: You will keep the Vehicle insured against fire, theft, and collision until all sums due us are paid in full. The insurance coverage must be satisfactory to us and protect your interests and our interests at the time of any insured loss. The insurance must name us as "loss-payee" on the policy. The insurance must be written by an insurance company qualified to do business in Pennsylvania and licensed to sell insurance in the state where the Vehicle is permanently garaged. The insurance policy must provide us with at least ten (10) days' prior written notice of any cancellation or reduction in coverage. On request, you shall deliver the policy or other evidence of insurance coverage to us. In the event of the loss, theft or damage to the Vehicle, you will immediately notify us in writing and file a proof of loss with the insurer.

a. OUR RIGHT TO FILE PROOF OF LOSS: In the event of any loss or damage to the Vehicle, if you fail or refuse to file a claim or proof of loss with the insurance company, you agree that the Seller, Assignee, any subsequent assignee, or any authorized employee of any of them ("we") may file a proof of loss with the insurance company, in your name and acting as your agent, with respect to the insured claim. You agree that you do not have the right to, and will not, revoke the power you have given us to file a proof of loss. You agree that we may exercise this power for our benefit and not for your benefit, except as provided in this Contract and by law.

b. OUR RIGHT TO ENDORSE INSURANCE CHECKS: You agree that the Seller, Assignee, any subsequent assignee, or an authorized employee of any of them ("we") may endorse your name, acting as your agent, to any check, draft or other instrument we receive in payment of an insured loss or return of insurance premiums. You agree that you do not have the right to, and will not, revoke the power you have given us to make your endorsement. You agree that we may exercise this power for our benefit and not for your benefit, except as provided in this Contract and by law.

c. USE OF PROCEEDS: We may apply any insurance proceeds we receive to repair or replace the Vehicle if, in our opinion, it is economically feasible and you are not then in default of this Contract. Otherwise, we will apply the insurance proceeds to reduce the unpaid balance due us. After the balance due us is paid, any excess will belong to you.

11. OUR RIGHTS IF YOU BREAK YOUR PROMISES ABOUT THE SECURITY INTEREST, VEHICLE OR INSURANCE: If you fail to keep your promises to pay filing fees, taxes, liens or the costs necessary to keep the Vehicle in good condition and repair, we may advance any money you promised to pay. If you fail to keep your promises about required insurance, we may advance money to obtain insurance to cover loss, theft, or damage to the Vehicle. We

will be limited to an amount not greater than what you owe on this Contract. THE INSURANCE WE PURCHASE MAY BE SIGNIFICANTLY MORE EXPENSIVE AND PROVIDE YOU LESS COVERAGE THAN INSURANCE YOU COULD PURCHASE YOURSELF.

We will add any money we advance on your behalf to the balance on which we impose Finance Charges at the Annual Percentage Rate of this Contract. You agree to repay the money advanced as we alone may specify: (i) immediately on demand, or (ii) along with your monthly payments. If we choose to allow you to repay the money advanced along with your monthly payments, we can choose the amount of these payments and how long you have to repay. If any of our rights stated in this paragraph are not permitted by law, we still have the other rights mentioned. Our payments on your behalf will not cure your failure to perform your promises in this Contract.

12. DEFAULT: In this paragraph "You" means the Buyer, Co-Signer and Co-Owner, or any one of them. You will be in "Default" of the Contract if any one or more of the following things happen:

- a. You do not make any payment on or before it is due;
- b. You do not keep any promise you made in this Contract;
- c. You do not keep any promise you made in another Contract, Note, Loan or Agreement with Seller or Assignee;
- d. You made any untrue statement in the credit application for this Contract;
- e. You committed any forgery in connection with this Contract;
- f. You die, are convicted of a crime involving fraud or dishonesty, or are found by a court with jurisdiction to do so to be incapacitated;
- g. You file bankruptcy or insolvency proceedings, or anyone files bankruptcy or insolvency proceedings against you;
- h. You take the Vehicle outside the United States or Canada without our written consent;
- i. You use the Vehicle or allow someone else to use it in a way that causes it not to be covered by your insurance;
- j. You do something that causes the Vehicle to be subject to confiscation by government authorities;
- k. The Vehicle is lost, stolen, destroyed or damaged beyond economical repair, and not fixed or found within a reasonable time; or
- l. Another creditor tries to take the Vehicle or your money on deposit with Assignee by legal process.

13. OUR RIGHTS IF YOU ARE IN DEFAULT OF THIS CONTRACT: If you are in Default of this Contract, we may enforce our rights according to law. We may also do the things specifically mentioned in this Contract. We may do one of these things and at the same time or later do another. Some of the things we may do are the following:

a. ACCELERATION: We can demand that you pay to us the entire unpaid balance owing on the Contract and all unpaid Finance Charges and other money due. You agree that you will pay this money to us in one single payment immediately upon receiving our demand.

b. REPOSSESSION: We can repossess the Vehicle, unless prohibited by law. We can do this ourselves, have a qualified person do it for us, or have a government official (by replevin) do it for us. You agree that we can peacefully come on to your property to do this. We may take any other things found in the Vehicle, but will return these things to you if you ask. If you want these things back, you agree to ask us in a letter sent to us by certified mail within 24 hours. If you do not send us this letter, you give up any claim to these things. You agree that we may use your license plates in repossessing the Vehicle and taking it to a place for storage.

c. VOLUNTARY DELIVERY: We can ask you to give us the Vehicle at a reasonably convenient place. You agree to give us the Vehicle if we ask.

d. DELAY IN ENFORCEMENT: We can delay enforcing our rights under this Contract without losing any rights.

14. ACCELERATION OF THE OUTSTANDING BALANCE: If Borrower (or any one of them if there is more than one) is now or becomes in the future an executive officer of the Lender with respect to whom federal law requires that all credit granted by Lender be due and payable on demand, then, during such times as federal law so requires, all credit granted shall be due and payable on demand. If the credit is due and payable on demand, Lender can at such times require that the entire outstanding balance be paid immediately in one payment and, subject to applicable law, Borrower will be in Default of this Agreement if payment is not made as required.

15. SOME THINGS YOU SHOULD KNOW IF WE REPOSSESS THE VEHICLE: If we repossess without using a government official (by replevin):

a. NOTICE: We will send you a Notice of Repossession to your last address we know about. This Notice will tell you how to buy back (redeem) the Vehicle. You will NOT have the right to reinstate the Contract. This means you will have to pay the total balance on the Contract and other amounts due. You may not get the Vehicle back by paying delinquent installments. This Notice will tell you other information required by law.

b. REDEMPTION: You have the right to buy back (redeem) the Vehicle within 15 days of the mailing of the Notice and at any later time before we sell the Vehicle. If you do not redeem, you give up all claim to the Vehicle.

c. SALE: If you don't redeem, we will sell the Vehicle. The money received at sale will be used to pay costs and expenses you owe, and then to pay the amount you owe on the Contract.

d. SURPLUS OR DEFICIENCY: If there is money left, we will pay it to the Buyer. If there is not enough money from the sale to pay what you owe, Buyer and Co-Signer agree to pay what is still owed to us.

e. EXPENSES: You agree to pay the costs of repossessing, storing, repairing, preparing for sale and selling the Vehicle as may be allowed by law. These costs will only be due if:

1. Default exceeds fifteen (15) days at the time of repossession;
2. The amount of costs are actual, necessary and reasonable; and
3. We can prove the costs were paid.

16. HEIRS AND PERSONAL REPRESENTATIVES BOUND: After your death, this Contract shall be enforceable against your heirs and personal representatives of your estate.

17. GOVERNING LAW: This Contract is to be interpreted according to the law of Pennsylvania.

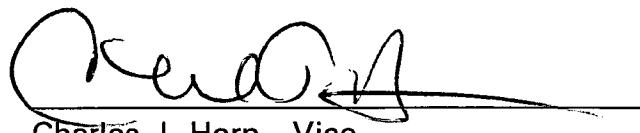
18. SEVERABILITY OF PROVISIONS: If for any reason any part of this Contract shall become illegal, void or unenforceable, that part shall not be a part of this Contract.

19. ASSIGNMENT BY BUYER: Buyer shall not assign this Contract.

20. THERE ARE NO WARRANTIES BY SELLER, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

VERIFICATION

I, **CHARLES J. HORN**, Vice President of Promistar Bank, verify that the statements made in the Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A., §4904 relating to unsworn falsification to authorities.



Charles J. Horn, Vice
President, Promistar Bank

Dated: July 10, 2001

ANDREW P. GATES, ESQ.
2 N. Front St.
Clearfield, PA 16830

THOMAS A. YOUNG
Attorney at Law
131 MARKET STREET
SUITE 200
JOHNSTOWN, PA 15901

NO.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PROMISTAR BANK,

Plaintiff

vs.

KEVIN M. BRINK and
SAMUEL D. BRINK,

Defendants

COMPLAINT IN REPLEVIN

ANDREW P. GATES, ESQ.
2 N. Front St.
Clearfield, PA 16830

THOMAS A. YOUNG
Attorney at Law
131 MARKET STREET
SUITE 200
JOHNSTOWN, PA 15901

FILED

RECEIVED
JUL 16 2001
3:40 P.M.
William A. Shaw
Prothonotary

PA
\$80.00

3cc atty Young

ANDREW P. GATES, ESQ.
2 N. Front St.
Clearfield, PA 16830

THOMAS A. YOUNG
Attorney at Law
131 MARKET STREET
SUITE 200
JOHNSTOWN, PA 15901

PROMISTAR BANK,

Plaintiff

vs.

KEVIN M. BRINK and
SAMUEL D. BRINK,

Defendants

(IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA
(NO. 2001- 1143 CO
)
(CIVIL ACTION - LAW
)
)
) C O M P L A I N T

PETITION UNDER RULE 1081 PRCP

The Petition of Promistar Bank respectfully represents:

1. That it is the Plaintiff in an action of replevin filed in the Court of Common Pleas of Cambria County, Pennsylvania.
2. That Petitioner financed the purchase of a 1999 Ford Mustang, VIN No. 1FAFP4042XF146137, Title No. 53357058703 BR, from Courtesy Ford, Inc., 401 Pleasant Valley Blvd., Altoona, PA 16602.
3. That the Respondents, Kevin M. Brink and Samuel D. Brink, promised to pay the amount financed at the rate of \$299.89 per month beginning October 15, 2000, and have failed to make their payments as promised.
4. That the cash price of the 1999 Ford Mustang was \$10,680.00, which was financed by the Petitioner.
5. That Petitioner has contacted Respondents repeatedly to learn the location of the 1999 Ford Mustang so that it may exercise its repossession rights, and Respondents refuse to reveal the location of the collateral.

FILED

ORG JUN 1 2001
to
cc William A. Shaw
Prothonotary

CLEARFIELD COUNTY, PENNSYLVANIA

PROMISTAR BANK,

Plaintiff

vs.

KEVIN M. BRINK and
SAMUEL D. BRINK,

Defendants

PETITION UNDER RULE 1081 PRCP

FILED

WILL 16.2001
O/340/33
William A. Shaw
Prothonotary
Thomas A. Young

ANDREW P. GATES, ESQ.
2 N. Front St.
Clearfield, PA 16830

THOMAS A. YOUNG

Attorney at Law
131 MARKET STREET
SUITE 200
JOHNSTOWN, PA 15901

PROMISTAR BANK, (IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff (NO. 2001- 1143 CO
)
vs. (CIVIL ACTION - LAW
)
KEVIN M. BRINK and ()
SAMUEL D. BRINK, ()
Defendants () C O M P L A I N T

PETITION UNDER RULE 1081 PRCP

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FILED

JUL 16 2001

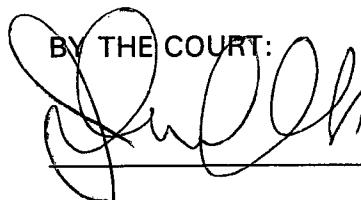
William A. Shaw
Prothonotary

PROMISTAR BANK, (IN THE COURT OF COMMON PLEAS OF
Plaintiff) CLEARFIELD COUNTY, PENNSYLVANIA
(NO. 2001-
)
vs. (CIVIL ACTION - LAW
)
KEVIN M. BRINK and ()
SAMUEL D. BRINK, ()
Defendants ()
C O M P L A I N T

O R D E R

AND NOW, this 17th day of July, 2001, it appearing to the Court that the Defendants/Respondents in this replevin action have not revealed the location of the Petitioner's pledged collateral, the Defendants/Respondents, KEVIN M. BRINK and SAMUEL D. BRINK, are hereby ordered to appear before this Court on the 10 day of Sept., 2001, at 10:30 o'clock, A.M. to give testimony under oath as to the whereabouts of the property described in the Petition.

If the Defendants/Respondents, KEVIN M. BRINK and SAMUEL D. BRINK, reveal the whereabouts of the property to Andrew P. Gates, Esq., 2 N. Front St., Clearfield, PA 16830, Telephone No. (814) 765-1766, or to Thomas A. Young, Esq., 131 Market St., Suite 200, Johnstown, PA 15901, Telephone No. (814) 535-3513, at least twenty-four (24) hours prior to the above hearing date, and if the pledged collateral is at the location given by the Defendants/Respondents, then the Defendants/Respondents are excused from appearing before the Court as ordered above.

BY THE COURT:

J.

FILED

JUL 17 2001

010:20/m
William A. Shaw GES
Prothonotary
2 CENTS TO SHFF
1 CENT TO GATE

ANDREW P. GATES, ESQ.
2 N. Front St.
Clearfield, PA 16830

THOMAS A. YOUNG
Attorney at Law
131 MARKET STREET
SUITE 200
JOHNSTOWN, PA 15901

JA

NO.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PROMISTAR BANK,

Plaintiff

vs.

KEVIN M. BRINK and
SAMUEL D. BRINK,

Defendants

PETITION UNDER RULE 1081 PRCP

ANDREW P. GATES, ESQ.
2 N. Front St.
Clearfield, PA 16830

FILED
JUL 16 2001
O/340/856 Ctr Young
William A. Shaw
Prothonotary
2 Sherman

THOMAS A. YOUNG
Attorney at Law
131 MARKET STREET
SUITE 200
JOHNSTOWN, PA 15901

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11259

PROMISTAR BANK

01-1143-CD

VS.

BRINK, KEVIN M. & SAMUEL D.

COMPLAINT IN REPLEVIN & PETITION & ORDER

SHERIFF RETURNS

NOW JULY 26, 2001 AT 10:40 AM DST SERVED THE WITHIN COMPLAINT IN REPLEVIN & PETITION & ORDER ON KEVIN M. BRINK, DEFENDANT AT EMPLOYMENT, BRINK TRUCKING, S.R. 53, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO KEVIN M. BRINK A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN REPLEVIN & PETITION & ORDER AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: MORGILLO/MARSHALL

NOW JULY 26, 2001 AT 10:40 AM DST SERVED THE WITHIN COMPLAINT IN REPLEVIN, PETITION & ORDER ON SAMUEL D. BRINK, DEFENDANT AT EMPLOYMENT, BRINK TRUCKING, S.R. 53, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO SAMUEL D. BRINK A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN REPLEVIN, PETITION & ORDER AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: MORGILLO/MARSHALL

Return Costs

Cost	Description
41.89	SHFF. HAWKINS PAID BY: PLFF.
20.00	SURCHARGE PAID BY: PLFF.

FILED
012-29-01
JUL 31 2001
FBI

**William A. Shaw
Prothonotary**

Sworn to Before Me This

31st Day Of July 2001
William A. Shaw

So Answers,

Chester A. Hawkins
by Maelyn Harr
Chester A. Hawkins
Sheriff

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PROMISTAR BANK,
Plaintiff

*

VS.

*

Docket No. 01-1143-CD

*

KEVIN M. BRINK and
SAMUEL D. BRINK
Defendants

*

*

Type of Pleading:
ANSWER & NEW MATTER

Filed on Behalf of:
DEFENDANTS: Kevin M. Brink and
Samuel D. Brink

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
PA I.D. No. 16332

P. O. Box 1320
110 North Second Street
Clearfield, PA 16830
(814) 765-9611

FILED

SEP 04 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PROMISTAR BANK,
Plaintiff

*

VS.

Docket No. 01-1143-CD

*

KEVIN M. BRINK and
SAMUEL D. BRINK
Defendants

*

*

NOTICE TO PLEAD

A petition or motion has been filed against you in Court. If you wish to defend against the claims set forth in the following pages, you must take action by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you within Twenty (20) days. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any relief claimed in the Complaint by the Plaintiff.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PROMISTAR BANK,
Plaintiff

*

VS.

Docket No. 01-1143-CD

*

KEVIN M. BRINK and
SAMUEL D. BRINK
Defendants

*

*

ANSWER

COMES NOW, Defendants, KEVIN M. BRINK and SAMUEL D. BRINK, by and through their attorney, Dwight L. Koerber, Jr., Esquire, and file the within Answer & New Matter to the Complaint filed herein.

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Upon reasonable investigation, Defendants have been unable to determine whether or not such assignment has been completed. Accordingly, the allegations set forth herein are denied. Strict proof of same is required at trial.

7. Admitted.

8. Legal conclusion. No answer required.

9. Admitted, subject to explanation set forth in New Matter.

10. Legal conclusion. No answer required.

11. Denied. To the contrary, the subject motor vehicle was in a motor vehicle accident and the value of it is disputed. See New Matter.

12. Admitted, subject to the explanation set forth in New Matter.

13. Legal conclusion. No answer required.

14. Denied, for the reasons set forth in New Matter. It is also denied that 15% is a reasonable attorney's commission.

NEW MATTER

15. In further support of their position herein, Defendants offer the following new matter:

16. There is no need for a replevin action, as Plaintiff has actually seen the vehicle and has elected not to repossess it in view of the fact that the vehicle had been subject to a motor vehicle accident.

17. Defendants offered the said vehicle to Plaintiff, along with the entitlement to receive the proceeds from the insurance check that would be issued, but Plaintiff chose not to accept the vehicle and the offer of the insurance check.

18. By virtue of the course of action which Plaintiff has taken, in initiating a replevin action and then refusing to accept the vehicle, Plaintiff should be estopped from taking further legal proceedings against Defendants, as they have elected a remedy and then have chosen not to pursue it.

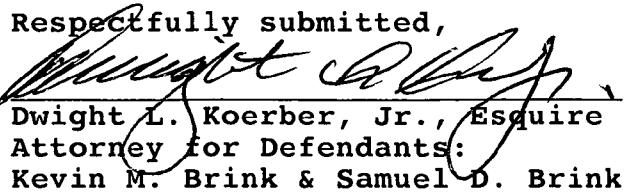
19. A requirement, in conjunction with the purchase of the said vehicle, was that Defendants would maintain collision insurance on it.

20. Defendants have fulfilled their obligation to maintain insurance on the said vehicle.

21. An implied understanding between the parties, when Plaintiff required that there be insurance on said vehicle, was that if the vehicle were to be totaled from a wreck that the proceeds from the insurance policy would be serve as a satisfactory payment of Defendants' debt to Plaintiff. For that reason, Plaintiff should be estopped from seeking to secure an independent judgment against Defendants in this proceeding, as Defendants have offered the car and the insurance proceeds in satisfaction of the claim of Plaintiff.

WHEREFORE, Defendants pray that judgment be entered in their favor and against Plaintiff.

Respectfully submitted,


Dwight L. Koerber, Jr., Esquire
Attorney for Defendants:
Kevin M. Brink & Samuel D. Brink

VERIFICATION

I, Dwight L. Koerber, Jr., Attorney at Law, upon information, knowledge, and belief, hereby state that the facts set forth in the foregoing Answer and New Matter are true and correct.

9/04/01
DATE


Dwight L. Koerber, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PROMISTAR BANK,
Plaintiff

*

VS.

Docket No. 01-1143-CD

*

KEVIN M. BRINK and
SAMUEL D. BRINK
Defendants

*

*

CERTIFICATE OF SERVICE

I certify that on the 4th of September of 2001, the undersigned served a true and correct copy of the foregoing Answer and New Matter entered in this matter upon counsel for Plaintiff. Such documents were served by United States First Class Mail upon the following:

Andrew P. Gates, Esquire
GATES & SEAMAN
P. O. Box 846
Clearfield, PA 16830

Thomas A. Young, Esquire
131 Market Street
Suite 200
Johnstown, PA 15901


Dwight L. Koerber, Jr. Esquire
Attorney for Defendants:
KEVIN M. BRINK & SAMUEL D. BRINK

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

PROMISTAR BANK,

PLAINTIFF

VS.

KEVIN M. BRINK & SAMUEL D. BRINK,
DEFENDANTS

DOCKET NO. 01-1143-CD

ANSWER AND NEW MATTER

FILED

SEP 29 2001
Suzanne C. Koenber
William A. Shaw
Prothonotary
Ket

Law Office

DWIGHT L. KOERBER, JR.
ATTORNEY-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

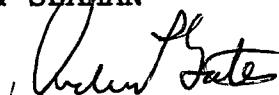
PROMISTAR BANK, Plaintiff :
vs. : No. 01-01143-CD
KEVIN M. BRINK and :
SAMUEL D. BRINK, :
Defendants :
:

PRAECIPE

TO WILLIAM A. SHAW, PROTHONOTARY:

Please mark the above captioned case as "Settled,
Discontinued and Ended".

GATES & SEAMAN
By:


Andrew P. Gates, Esquire
Attorney for Plaintiff

Date: October 9, 2001

FILED

OCT 09 2001

William A. Shaw
Prothonotary

EWS

FILED

OCT 09 2001

01/10/2001 W.A.

William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Promistar Bank

Vs.

No. 2001-01143-CD

Kevin M. Brink
Samuel D. Brink

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on October 9, 2001 marked:

Settled, Discontinued and Ended

Record costs in the sum of \$141.89 have been paid in full by 80.00 by Plaintiff & 61.89 by Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 9th day of October A.D. 2001.



William A. Shaw, Prothonotary