

02-339-CD
S & T BANK -vs- FULLINGTON GMC SALES, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

S&T BANK,

Plaintiff,

vs.

FULLINGTON GMC SALES, INC.,

Defendant.

CIVIL DIVISION

NO.:2002-00339-CD

TYPE OF PLEADING:

PRAECIPE TO SATISFY JUDGMENT

FILED ON BEHALF OF:
S&T Bank, Plaintiff

COUNSEL OF RECORD FOR THIS
PARTY:

James F. Grenen, Esquire
Pa. I.D. #46478

GRENNEN & BIRSIC, P.C.
One Gateway Center
Nine West
Pittsburgh, PA 15222
(412) 281-7650

FILED

JUN 17 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

S&T BANK,)	CIVIL DIVISION
)	
Plaintiff,)	NO.: 2002-00339-CD
)	
vs.)	
)	
FULLINGTON GMC SALES, INC.,)	
)	
Defendant.)	

PRAECIPE TO SATISFY JUDGMENT

TO: PROTHONOTARY

SIR:

Kindly mark the judgment satisfied in the above-captioned matter and mark the docket accordingly.

GRENE & BIRSIC, P.C.

By: _____

James F. Grene, Esquire
Pa. I.D.#46478
One Gateway Center, Nine West
Pittsburgh, PA 15222
(412) 281-7650

Sworn to and subscribed before me

this 13th day of June, 2002.

Rebecca G. Blazina
Notary Public

Notarial Seal
Rebecca G. Blazina, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires June 2, 2003
Member, Pennsylvania Association of Notaries

FILED

JUN 17 2002

\$7.00

Donor p.d.

013371 atty

William A. Shaw

Prothonotary

(2) Sub to atty p.d.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

CERTIFICATE OF SATISFACTION OF JUDGMENT

S & T Bank

No.: 2002-00339-CD

Vs.

Debt: \$571,651.84

Fullington GMC Sales, Inc.

Atty's Comm.:

Interest From:

Cost: \$7.00

NOW, Monday, June 17, 2002 , directions for satisfaction having been received, and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 17th day of June, A.D. 2002.

Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

S&T BANK,

Plaintiff,

vs.

FULLINGTON GMC SALES, INC.,

Defendant.

CIVIL DIVISION

NO.: 2002-339-CD

ISSUE NO.:

TYPE OF PLEADING:

COMPLAINT IN CONFESSION OF
JUDGMENT

CODE -

FILED ON BEHALF OF:
S&T Bank, Plaintiff

COUNSEL OF RECORD FOR THIS PARTY:

James F. Grenen, Esquire
Pa. I.D. #46478

GRENNEN & BIRSIC, P.C.
One Gateway Center
Nine West
Pittsburgh, PA 15222
(412) 281-7650

I HEREBY CERTIFY THAT THE ADDRESS
OF THE PLAINTIFF IS:

800 Philadelphia Street
Indiana, PA 15701

AND THE DEFENDANT IS:

P.O. Box 211
Route 9 & I-80
Clearfield, PA 16830

ATTORNEY FOR PLAINTIFF

FILED

MAR 06 2002

William A. Shaw
Prothonotary

30 p/b by Atty Grennan
statement to Atty
notice to DEM.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

S&T BANK,)	CIVIL DIVISION
)	
Plaintiff,)	NO.: 2002-339-CD
)	
vs.)	
)	
FULLINGTON GMC SALES, INC.,)	
)	
Defendant.)	
)	

COMPLAINT IN CONFESSION OF JUDGMENT

S&T Bank, by its attorneys, Grenen & Birsic, P.C., files this Complaint in Confession of Judgment as follows:

1. S&T Bank is a commercial bank existing under the laws of the Commonwealth of Pennsylvania, with its principal office located at 800 Philadelphia Street, Indiana, PA 15701 (hereinafter referred to as "Plaintiff").

2. Fullington GMC Sales, Inc. is a corporation existing under the laws of the Commonwealth of Pennsylvania whose last known address is P.O. Box 211, Route 879 & I-80, Clearfield, PA 16830 (hereinafter referred to as "Defendant").

3. On or about February 6, 1998, Defendant executed a Promissory Note ("Note") in favor of Plaintiff in the original principal amount of \$750,000.00, which Note authorized the confession of judgment against the Defendant. A copy of said Note, which copy is a true and correct reproduction of the original Note, is marked **Exhibit "A,"** attached hereto and made a part hereof.

4. Judgment is not being entered by confession against a natural person in connection with a consumer credit transaction.

5. The aforesaid Note has not been released, transferred or assigned.

6. Judgment has not been entered against the Defendant on the aforesaid Note in any jurisdiction.

7. The aforesaid Note authorizes the entry of judgment without default thereon or the occurrence of a condition precedent.

8. The itemization of the amount due, including interest and attorneys' fees as authorized by the Note, is as follows:

Principal	\$516,436.19
Interest to 02/28/02	\$ 3,247.30
Attorneys' fees	<u>\$ 51,968.35</u>
(10% of unpaid principal and interest)	
 TOTAL	 \$571,651.84

WHEREFORE, the Plaintiff, as authorized by the Warrant of Attorney contained in the Note, demands judgment against the Defendant in the total sum of \$571,651.84, with interest on the principal sum (\$516,439.19) from March 1, 2002, at the contract rate, and brings said instrument to Court to recover the said sum.


GRENN & BIRSIC, P.C.

BY: _____

James P. Grenen, Esquire
Attorneys for Plaintiff, S&T Bank
One Gateway Center - Nine West
Pittsburgh, PA 15222
(412) 281-7650

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

S&T BANK,

Plaintiff,

vs.

FULLINGTON GMC SALES, INC.,

Defendant.

) CIVIL DIVISION

)

)

)

)

)

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)

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NO.: 2002-339-CO

CONFESSION OF JUDGMENT

Pursuant to the Warrant of Attorney contained in the aforementioned Promissory Note, the original or copy of which is attached to the Complaint filed in this action, I appear for the Defendant and confess judgment in favor of Plaintiff and against the Defendant as follows:

Principal	\$516,436.19
Interest to 02/28/02	\$ 3,247.30
Attorneys' fees	<u>\$ 51,968.35</u>
(10% of unpaid principal and interest)	
 TOTAL	 \$571,651.84

with interest from March 1, 2002 on the principal sum (\$516,436.19) at the contract rate.

GREENEN & BIRSIC, P.C.

Dated: 3-5-02

By: _____



James F. Grenen, Esquire
Attorneys for Defendant
Pro Hac Vice

EXHIBIT "A"



COPY

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call	Collateral	Account	Officer	Initials
\$750,000.00						4000000481	130	
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.								

Borrower: FULLINGTON GMC SALES, INC.
PO BOX 211, ROUTE 879 & I-80
CLEARFIELD, PA 16830

Lender: S&T BANK
DEALER CENTER
34 N MAIN ST
HOMER CITY, PA 15748

Principal Amount: \$750,000.00

Initial Rate: 9.000%

Date of Note: 2/6/98

PROMISE TO PAY. FULLINGTON GMC SALES, INC. ("Borrower") promises to pay to S&T BANK ("Lender"), or order, in lawful money of the United States of America, on demand, the principal amount of Seven Hundred Fifty Thousand & 00/100 Dollars (\$750,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan immediately upon Lender's demand. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning February 28, 1998, with all subsequent interest payments to be due on the same day of each month after that. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing. Unless otherwise agreed or required by applicable law, payments will be applied first to accrued unpaid interest, then to principal, and any remaining amount to any unpaid collection costs and late charges.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an index which is Lender's Prime Rate (the "Index"). This is the rate Lender charges, or would charge, on 90-day unsecured loans to the most creditworthy corporate customers. This rate may or may not be the lowest rate available from Lender at any given time. Lender will tell Borrower the current Index rate upon Borrower's request. Borrower understands that Lender may make loans based on other rates as well. The interest rate change will not occur more often than each day. The Index currently is 8.500% per annum. The interest rate to be applied to the unpaid principal balance of this Note will be at a rate of 0.500 percentage points over the Index, resulting in an initial rate of 9.000% per annum. NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, they will reduce the principal balance due.

LATE CHARGE. If a regularly scheduled interest payment is 16 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment or \$20.00, whichever is greater. If Lender demands payment of this loan, and Borrower does not pay the loan within 16 days after Lender's demand, Borrower also will be charged either 5.000% of the sum of the unpaid principal plus accrued unpaid interest or \$20.00, whichever is greater.

DEFAULT. Borrower will be in default if any of the following happens: (a) Borrower fails to make any payment when due. (b) Borrower breaks any promise Borrower has made to Lender, or Borrower fails to comply with or to perform when due any other term, obligation, covenant, or condition contained in this Note or any agreement related to this Note, or in any other agreement or loan Borrower has with Lender. (c) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the Related Documents. (d) Any representation or statement made or furnished to Lender by Borrower or on Borrower's behalf is false or misleading in any material respect either now or at the time made or furnished. (e) Borrower becomes insolvent, a receiver is appointed for any part of Borrower's property, Borrower makes an assignment for the benefit of creditors, or any proceeding is commenced either by Borrower or against Borrower under any bankruptcy or insolvency laws. (f) Any creditor tries to take any of Borrower's property on or in which Lender has a lien or security interest. This includes a garnishment of any of Borrower's accounts with Lender. (g) Any guarantor dies or any of the other events described in this default section occurs with respect to any guarantor of this Note. (h) A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired. (i) Lender in good faith deems itself insecure.

LENDER'S RIGHTS. Upon default, Lender may, after giving such notices as required by applicable law, declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower also will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law. If judgment is entered in connection with this Note, interest will continue to accrue on this Note after judgment at the interest rate applicable to this Note at the time judgment is entered. This Note has been delivered to Lender and accepted by Lender in the Commonwealth of Pennsylvania. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of INDIANA County, the Commonwealth of Pennsylvania. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other. This Note shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

RIGHT OF SETOFF. Borrower grants to Lender a contractual possessory security interest in, and hereby assigns, conveys, delivers, pledges, and transfers to Lender all Borrower's right, title and interest in and to, Borrower's accounts with Lender (whether checking, savings, or some other account), including without limitation all accounts held jointly with someone else and all accounts Borrower may open in the future, excluding however all IRA and Keogh accounts, and all trust accounts for which the grant of a security interest would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on this Note against any and all such accounts.

LINE OF CREDIT. This Note evidences a revolving line of credit. Advances under this Note may be requested orally by Borrower or as provided in this paragraph. All oral requests shall be confirmed in writing on the day of the request. All communications, instructions, or directions by telephone or otherwise to Lender are to be directed to Lender's office shown above. Advances shall be limited to 100% of the auction price or 80% of wholesale black book value. Borrower agrees to be liable for all sums either: (a) advanced in accordance with the instructions of an authorized person or (b) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements

PROMISSORY NOTE
(Continued)

Page 2

on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (a) Borrower or any guarantor is in default under the terms of this Note or any agreement that Borrower or any guarantor has with Lender, including any agreement made in connection with the signing of this Note; (b) Borrower or any guarantor ceases doing business or is insolvent; (c) any guarantor seeks, claims or otherwise attempts to limit, modify or revoke such guarantor's guarantee of this Note or any other loan with Lender; (d) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender; or (e) Lender in good faith deems itself insecure under this Note or any other agreement between Lender and Borrower.

GENERAL PROVISIONS. This Note is payable on demand. The inclusion of specific default provisions or rights of Lender shall not preclude Lender's right to declare payment of this Note on its demand. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, protest and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan, or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. If any portion of this Note is for any reason determined to be unenforceable, it will not affect the enforceability of any other provisions of this Note.

CONFESSION OF JUDGMENT. BORROWER HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OR THE PROTHONOTARY OR CLERK OF ANY COURT IN THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE, TO APPEAR AT ANY TIME FOR BORROWER WITH OR WITHOUT A DEFAULT UNDER THIS NOTE, AND WITH OR WITHOUT COMPLAINT FILED, AS OF ANY TERM, CONFESS OR ENTER JUDGMENT AGAINST BORROWER FOR THE ENTIRE PRINCIPAL BALANCE OF THIS NOTE, ALL ACCRUED INTEREST, LATE CHARGES, AND ANY AND ALL AMOUNTS EXPENDED OR ADVANCED BY LENDER RELATING TO ANY COLLATERAL SECURING THIS NOTE TOGETHER WITH INTEREST ON SUCH AMOUNTS, TOGETHER WITH COSTS OF SUIT, AND AN ATTORNEY'S COMMISSION OF TEN PERCENT (10%) OF THE UNPAID PRINCIPAL BALANCE AND ACCRUED INTEREST FOR COLLECTION, BUT IN ANY EVENT NOT LESS THAN FIVE HUNDRED DOLLARS (\$500) ON WHICH JUDGMENT OR JUDGMENTS ONE OR MORE EXECUTIONS MAY ISSUE IMMEDIATELY; AND FOR SO DOING, THIS NOTE OR A COPY OF THIS NOTE VERIFIED BY AFFIDAVIT SHALL BE SUFFICIENT WARRANT. THE AUTHORITY GRANTED IN THIS NOTE TO CONFESS JUDGMENT AGAINST BORROWER SHALL NOT BE EXHAUSTED BY ANY EXERCISE OF THAT AUTHORITY, BUT SHALL CONTINUE FROM TIME TO TIME AND AT ALL TIMES UNTIL PAYMENT IN FULL OF ALL AMOUNTS DUE UNDER THIS NOTE. BORROWER HEREBY WAIVES ANY RIGHT BORROWER MAY HAVE TO NOTICE OR TO A HEARING IN CONNECTION WITH ANY SUCH CONFESSION OF JUDGMENT AND STATES THAT EITHER A REPRESENTATIVE OF LENDER SPECIFICALLY CALLED THIS CONFESSION OF JUDGMENT PROVISION TO BORROWER'S ATTENTION OR BORROWER HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE AND ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THE NOTE.

THIS NOTE HAS BEEN SIGNED AND SEALED BY THE UNDERSIGNED.

BORROWER:

FULLINGTON GMC SALES, INC.

By  (SEAL)
J. RICHARD FULLINGTON, JR., CEO/President

ATTEST:


Secretary or Assistant Secretary

(Corporate Seal)

Mar-06-02 03:48pm From-

VERIFICATION

J. Jeffrey Smead, Executive Vice President, Chief Credit Officer and duly authorized representative of S&T Bank, deposes and says subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities that the facts set forth in the foregoing Complaint in Confession of Judgment are true and correct to his information and belief.

By: 

J. Jeffrey Smead
Executive Vice President
Chief Credit Officer

NO.: 2002-339-CO

Deputy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

S&T Bank
Plaintiff(s)

No.: 2002-00339-CD

Real Debt: \$571,651.84

Atty's Comm:

Vs.

Costs: \$

Int. From: March 5, 2002

Fullington GMC Sales, Inc.
Defendant(s)

Entry: \$20.00

Instrument: Confession of Judgment

Date of Entry: March 6, 2002

Expires: March 6, 2007

Certified from the record this March 6, 2002

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment, Debt,
Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney