

06-179-CD
Manufacturers & Trade vs William
Hassinger et al

Manufacturers vs William Hassinger et al
2006-179-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

MANUFACTURERS AND TRADERS
TRUST COMPANY,

Plaintiff

vs.

WILLIAM T. HASSINGER, t/d/b/a
HASSINGER MOTOR SPORTS & SALES

Defendant

No. 2006-179-CO

COMPLAINT IN CONFESSION OF JUDGMENT

AND NOW, comes the Plaintiff, by and through its attorneys, McQuaide Blasko, and files this Complaint in Confession of Judgment pursuant to Pa.R.Civ.P. 2951(b) *et seq.*, and in support thereof avers as follows:

1. Plaintiff is Manufacturers and Traders Trust Company, a New York banking corporation ("Plaintiff"), with an office at 1331 12th Avenue, Altoona, Blair County, Pennsylvania 16601.
2. Defendant is William T. Hassinger, t/d/b/a Hassinger Motor Sports & Sales, an individual, of 66 New Liberty Road, Philipsburg, Pennsylvania 16866.
3. On March 16, 2004, Defendant executed and delivered to Plaintiff a Promissory Note in consideration of a loan made by Plaintiff to Defendant in the original principal sum of FORTY-TWO THOUSAND and 00/100 (\$42,000.00) DOLLARS (the "Note"). (A true and

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Prothonotary/Clerk of Courts
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correct copy of the Note, which contains the Warrant of Attorney upon which this confession of judgment is based is attached to and incorporated into this Complaint as Exhibit "A.").

4. The Defendant is in default of its obligations under the terms of the Note by virtue of Defendant's failure to make the payment due thereunder September 4, 2004 and subsequent timely payments thereafter.

5. As a result of the Defendant's default of the terms of the Note, Plaintiff is entitled to receive from Defendant all indebtedness due thereunder, being determined as follows:

Outstanding Principal Balance	\$ 39,174.39
Interest through January 23, 2006	\$ 4,378.20
Attorney's Commission (10% of the Outstanding Principal Balance)	<u>\$ 3,917.43</u>
TOTAL	\$ 47,470.02

Plus interest from January 23, 2006 at the daily rate of \$9.93.

6. Judgment may be entered against Defendant with respect to the Note because such document authorizes entry of judgment by confession upon the occurrence of an event of default under the Note.

7. Judgment has not been entered on the Note in any jurisdiction.

8. Judgment is not being entered by confession against a natural person in connection with a consumer credit transaction. (An Affidavit certifying the same is attached to and incorporated into this Complaint as Exhibit "B.")

9. An Affidavit certifying that the transaction upon which this matter is based is not a retail or installment sale, contract or account is attached to and incorporated into this Complaint as Exhibit "C."

10. The Note is less than twenty (20) years old, and a copy is attached hereto as Exhibit "A." Thus, no application for a Court order granting leave to enter judgment after notice is required.

WHEREFORE, Plaintiff demands judgment against Defendant in the sum of FORTY-SEVEN THOUSAND FOUR HUNDRED SEVENTY and 02/100 (\$47,470.02) Dollars, plus interest accruing from January 23, 2006 at the daily rate of \$9.93 and as authorized by the Warrant of Attorney appearing in the Note attached to this Complaint.

Respectfully submitted,

McQUAIDE BLASKO

By:

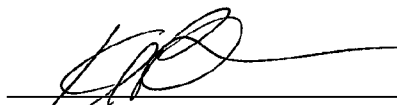

Cristin R. Long, Esq.
Attorneys for Plaintiff
I.D. No. 89605
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 1/31/, 2006

#331487 v1

VERIFICATION

Understanding that false statements made in this verification are subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities, I verify that I am Assistant Vice President of Manufacturers and Traders Trust Company, the Plaintiff in the foregoing Complaint, that I am authorized to make this verification on Plaintiff's behalf, and that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.



Keith P. Mangan
Assistant Vice President

Date: 1/31, 2006.



U.S. Small Business Administration

NOTE

SBA Loan #	LDP 69993840 06
SBA Loan Name	HASSINGER MOTOR SPORTS & SALES
Date	March 16, 2004
Loan Amount	\$42,000.00
Interest Rate	6.25%
Borrower	WILLIAM HASSINGER
Operating Company	
Lender	MANUFACTURERS AND TRADERS TRUST COMPANY

1. PROMISE TO PAY:

In return for the Loan, Borrower promises to pay to the order of Lender the amount of
FORTY-TWO THOUSAND and 00/100 (\$42,000.00)

Dollars,

interest on the unpaid principal balance, and all other amounts required by this Note.

2. DEFINITIONS:

"Collateral" means any property taken as security for payment of this Note or any guarantee of this Note.

"Guarantor" means each person or entity that signs a guarantee of payment of this Note.

"Loan" means the loan evidenced by this Note.

"Loan Documents" means the documents related to this loan signed by Borrower, any Guarantor, or anyone who pledges collateral.

"SBA" means the Small Business Administration, an Agency of the United States of America.

EXHIBIT "A"

3. PAYMENT TERMS:

Borrower must make all payments at the place Lender designates. The payment terms for this Note are:

The interest rate on this Note will fluctuate. The initial interest rate is 6.25% per year. This initial interest rate is the prime rate on the date SBA received the loan application, plus 2.25%. The initial interest rate must remain in effect until the first change period begins.

Borrower must pay principal and interest payments of \$700.00 every month, beginning one month from the month this Note is dated; payments must be made on the 16th calendar day in the months they are due.

Lender will apply each installment payment first to pay interest accrued to the day Lender receives the payment, then to bring principal current, then to pay any late fees, and will apply any remaining balance to reduce principal.

The interest rate will be adjusted quarterly (the "change period").

The "Prime Rate" is the prime rate in effect on the first business day of the month in which an interest rate change occurs, as published in the Wall Street Journal on the next business day.

The adjusted interest rate will be 2.25% above the Prime Rate. Lender will adjust the interest rate on the first calendar day of each change period. The change in interest rate is effective on that day whether or not Lender gives Borrower notice of the change. The initial interest rate must remain in effect until the first change period begins.

Lender must adjust the payment amount at least annually as needed to amortize principal over the remaining term of the note.

If SBA purchases the guaranteed portion of the unpaid principal balance, the interest rate becomes fixed at the rate in effect at the time of the earliest uncured payment default. If there is no uncured payment default, the rate becomes fixed at the rate in effect at the time of purchase.

All remaining principal and accrued interest is due and payable 5 years from the date of Note.

Late Charge: If a payment on this Note is more than 10 days late, Lender may charge Borrower a late fee of up to 5% of the unpaid portion of the regularly scheduled payment.

Loan Prepayment:

Borrower may prepay this Note. Borrower may prepay 20 percent or less of the unpaid principal balance at any time without notice. If Borrower prepays more than 20 percent and the loan has been sold on the secondary market, Borrower must:

- a. Give Lender written notice.
- b. Pay all accrued interest; and
- c. If the prepayment is received less than 21 days from the date Lender receives the notice, pay an amount equal to 21 days' interest from the date lender receives the notice, less any interest accrued during the 21 days and paid under subparagraph b., above.

If Borrower does not prepay within 30 days from the date Lender receives the notice, Borrower must give Lender a new notice.

4. DEFAULT:

Borrower is in default under this Note if Borrower does not make a payment when due under this Note, or if Borrower or Operating Company:

- A. Fails to do anything required by this Note and other Loan Documents;
- B. Defaults on any other loan with Lender;
- C. Does not preserve, or account to Lender's satisfaction for, any of the Collateral or its proceeds;
- D. Does not disclose, or anyone acting on their behalf does not disclose, any material fact to Lender or SBA;
- E. Makes, or anyone acting on their behalf makes, a materially false or misleading representation to Lender or SBA;
- F. Defaults on any loan or agreement with another creditor, if Lender believes the default may materially affect Borrower's ability to pay this Note;
- G. Fails to pay any taxes when due;
- H. Becomes the subject of a proceeding under any bankruptcy or insolvency law;
- I. Has a receiver or liquidator appointed for any part of their business or property;
- J. Makes an assignment for the benefit of creditors;
- K. Has any adverse change in financial condition or business operation that Lender believes may materially affect Borrower's ability to pay this Note;
- L. Reorganizes, merges, consolidates, or otherwise changes ownership or business structure without Lender's prior written consent; or
- M. Becomes the subject of a civil or criminal action that Lender believes may materially affect Borrower's ability to pay this Note.

5. LENDER'S RIGHTS IF THERE IS A DEFAULT:

Without notice or demand and without giving up any of its rights, Lender may:

- A. Require immediate payment of all amounts owing under this Note;
- B. Collect all amounts owing from any Borrower or Guarantor;
- C. File suit and obtain judgment;
- D. Take possession of any Collateral; or
- E. Sell, lease, or otherwise dispose of, any Collateral at public or private sale, with or without advertisement.

6. LENDER'S GENERAL POWERS:

Without notice and without Borrower's consent, Lender may:

- A. Bid on or buy the Collateral at its sale or the sale of another lienholder, at any price it chooses;
- B. Incur expenses to collect amounts due under this Note, enforce the terms of this Note or any other Loan Document, and preserve or dispose of the Collateral. Among other things, the expenses may include payments for property taxes, prior liens, insurance, appraisals, environmental remediation costs, and reasonable attorney's fees and costs. If Lender incurs such expenses, it may demand immediate repayment from Borrower or add the expenses to the principal balance;
- C. Release anyone obligated to pay this Note;
- D. Compromise, release, renew, extend or substitute any of the Collateral; and
- E. Take any action necessary to protect the Collateral or collect amounts owing on this Note.

7. **WHEN FEDERAL LAW APPLIES:**

When SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.

8. **SUCCESSORS AND ASSIGNS:**

Under this Note, Borrower and Operating Company include the successors of each, and Lender includes its successors and assigns.

9. **GENERAL PROVISIONS:**

- A. All individuals and entities signing this Note are jointly and severally liable.
- B. Borrower waives all suretyship defenses.
- C. Borrower must sign all documents necessary at any time to comply with the Loan Documents and to enable Lender to acquire, perfect, or maintain Lender's liens on Collateral.
- D. Lender may exercise any of its rights separately or together, as many times and in any order it chooses. Lender may delay or forgo enforcing any of its rights without giving up any of them.
- E. Borrower may not use an oral statement of Lender or SBA to contradict or alter the written terms of this Note.
- F. If any part of this Note is unenforceable, all other parts remain in effect.
- G. To the extent allowed by law, Borrower waives all demands and notices in connection with this Note, including presentment, demand, protest, and notice of dishonor. Borrower also waives any defenses based upon any claim that Lender did not obtain any guarantee; did not obtain, perfect, or maintain a lien upon Collateral; impaired Collateral; or did not obtain the fair market value of Collateral at a sale.


10. STATE-SPECIFIC PROVISIONS:

Power to Confess Judgment. BORROWER HEREBY EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD, AFTER THE OCCURRENCE OF ANY EVENT OF DEFAULT HEREUNDER, TO APPEAR FOR BORROWER AND, WITH OR WITHOUT COMPLAINT FILED, CONFESS JUDGMENT, OR A SERIES OF JUDGMENTS, AGAINST BORROWER IN FAVOR OF THE BANK OR ANY HOLDER HEREOF FOR THE ENTIRE PRINCIPAL BALANCE OF THIS NOTE, ALL ACCRUED INTEREST AND ALL OTHER AMOUNTS DUE HEREUNDER, TOGETHER WITH COSTS OF SUIT AND AN ATTORNEY'S COMMISSION OF THE GREATER OF TEN PERCENT (10%) OF SUCH PRINCIPAL AND INTEREST OR \$1,000 ADDED AS A REASONABLE ATTORNEY'S FEE, AND FOR DOING SO THIS NOTE OR A COPY VERIFIED BY AFFIDAVIT SHALL BE A SUFFICIENT WARRANT. BORROWER HEREBY FOREVER WAIVES AND RELEASES ALL ERRORS IN SAID PROCEEDINGS AND ALL RIGHTS OF APPEAL AND ALL RELIEF FROM ANY AND ALL APPRAISEMENT, STAY OR EXEMPTION LAWS OF ANY STATE NOW IN FORCE OR HEREAFTER ENACTED. INTEREST ON ANY SUCH JUDGMENT SHALL ACCRUE AT THE DEFAULT RATE. NO SINGLE EXERCISE OF THE FOREGOING POWER TO CONFESS JUDGMENT, OR A SERIES OF JUDGMENTS, SHALL BE DEEMED TO EXHAUST THE POWER, WHETHER OR NOT ANY SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE INVALID, VOIDABLE, OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND IT MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS THE BANK SHALL ELECT UNTIL SUCH TIME AS THE BANK SHALL HAVE RECEIVED PAYMENT IN FULL OF THE DEBT, INTEREST AND COSTS.

11. BORROWER'S NAME(S) AND SIGNATURE(S):

By signing below, each individual or entity becomes obligated under this Note as Borrower.

Notwithstanding any provision in this Note to the contrary:


William Hlassinger

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

MANUFACTURERS AND TRADERS
TRUST COMPANY,

Plaintiff

vs.

WILLIAM T. HASSINGER, d/b/a
HASSINGER MOTOR SPORTS & SALES

Defendant

No.

**PLAINTIFF'S AFFIDAVIT THAT JUDGMENT IS NOT BEING ENTERED BY
CONFESSION AGAINST A NATURAL PERSON IN CONNECTION
WITH A CONSUMER CREDIT TRANSACTION**


COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CENTRE

ss.

I, Keith P. Mangan, being duly sworn according to law, depose and say that:

1. I am the Assistant Vice President of the Special Assets Department of Manufacturers and Traders Trust Company, the Plaintiff in the captioned action and I am authorized to make this affidavit on Plaintiff's behalf.
2. The transactions upon which the judgment is being entered by confession against Defendant in the captioned action were not consumer credit transactions.
3. The transactions upon which the judgment is being entered by confession are in connection with a commercial business transactions.


Keith P. Mangan

Assistant Vice President, Special Assets Department
Manufacturers and Traders Trust Company

Sworn and subscribed
to me this 31st day of
January, 2006.


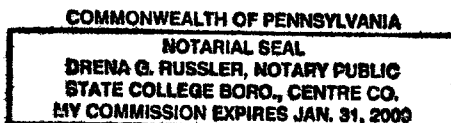

Notary Public

EXHIBIT "B"
(Page 1 of 1)



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

MANUFACTURERS AND TRADERS
TRUST COMPANY,

Plaintiff

vs.

WILLIAM T. HASSINGER, d/b/a
HASSINGER MOTOR SPORTS & SALES

Defendant

No.

**PLAINTIFF'S AFFIDAVIT THAT TRANSACTION DOES NOT ARISE FROM A
RETAIL OR INSTALLMENT SALE, CONTRACT OR ACCOUNT**

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CENTRE

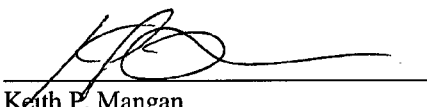
ss.

I, Keith P. Mangan, being duly sworn according to law, depose and say that:

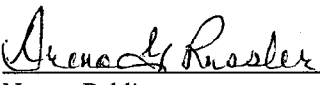
1. I am Assistant Vice President of the Special Assets Department of Manufacturers and Traders Trust Company, the Plaintiff in the captioned action and I am authorized to make this affidavit on Plaintiff's behalf.

2. The transaction upon which the judgment is being entered by confession does not arise from a retail or installment sale, contract or account.

3. The transaction upon which the judgment is being entered by confession is in connection with a commercial business transaction.


Keith P. Mangan
Assistant Vice President, Special Assets Department
Manufacturers and Traders Trust Company

Sworn and subscribed
to me this 31st day of
January, 2006.


Notary Public

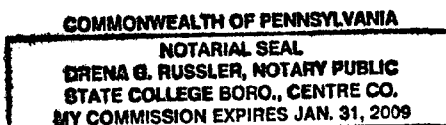


EXHIBIT "C"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

MANUFACTURERS AND TRADERS
TRUST COMPANY,

Plaintiff

vs.

WILLIAM T. HASSINGER, d/b/a
HASSINGER MOTOR SPORTS & SALES

Defendant

No. 2006-179-C0

CONFESSION OF JUDGMENT

Pursuant to the authority contained in the Warrant of Attorney contained in the Promissory Note given by Defendant William T. Hassinger to Plaintiff, a copy of which is attached to the Complaint filed in the captioned action, we appear for Defendant and confess judgment in favor of Plaintiff and against Defendant as follows:

Outstanding Principal Balance	\$ 39,174.39
Interest through January 23, 2006	\$ 4,378.20
Attorney's Commission (10% of the Outstanding Principal Balance)	<u>\$ 3,917.43</u>
TOTAL	\$ 47,470.02

Plus interest from January 23, 2006 at the daily rate of \$9.93.

As a result of Defendant's default of the terms of the Promissory Note, Plaintiff is entitled to receive from Defendant all indebtedness due under the Note in the total amount of \$47,470.02, plus interest at the daily rate of \$9.93 from January 23, 2006.

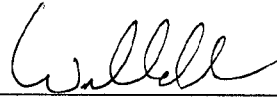
Respectfully submitted,

McQUAIDE BLASKO

By: 

Cristin R. Long, Esq.
Attorneys for Plaintiff
I.D. No. 89605
811 University Drive
State College, PA 16801
(814) 238-4926

Judgment entered as above this 2ND day of FEB, 2006.



Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

MANUFACTURERS AND TRADERS
TRUST COMPANY,

Plaintiff

vs.

WILLIAM T. HASSINGER, d/b/a
HASSINGER MOTOR SPORTS & SALES


Defendant

No. 2006-179-CY

NOTICE OF ENTRY OF JUDGMENT BY CONFESSION

To: William T. Hassinger t/d/b/a
Hassinger Motor Sports & Sales
66 New Liberty Road
Philipsburg, Pennsylvania 16866

You are hereby notified that on FEB. 2, 200~~6~~⁶, a judgment was entered in the Court of Common Pleas of Clearfield County, Pennsylvania at the above term and number, in the amount of \$47,470.02, which amount includes an attorney's commission, plus interest from January 23, 2006, at the daily rate of \$9.93 and costs of suit pursuant to the terms of the Promissory Note given by you to Manufacturers and Traders Trust Company, dated March 16, 2004.



Prothonotary

Dated: FEB. 2, 2006, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

MANUFACTURERS AND TRADERS
TRUST COMPANY,

Plaintiff

vs.

WILLIAM T. HASSINGER, d/b/a
HASSINGER MOTOR SPORTS & SALES,
Defendant

No. 2006-179-CD

NOTICE OF DEFENDANT'S RIGHTS

To: William T. Hassinger
d/b/a Hassinger Motor Sports & Sales, Defendant

A judgment in the amount of \$47,470.02 has been entered against you and in favor of the plaintiff without any prior notice or hearing pursuant to a confession of judgment contained in a written agreement or other paper allegedly signed by you. The sheriff may take your money or other property to pay the judgment at any time after thirty (30) days after the date on which this notice is served on you.

You may have legal rights to defeat the judgment or to prevent your money or property from being taken. YOU MUST FILE A PETITION SEEKING RELIEF FROM THE JUDGMENT AND PRESENT TO A JUDGE WITHIN THIRTY (30) DAYS AFTER THE DATE ON WHICH THIS NOTICE IS SERVED ON YOU OR YOU MAY LOSE YOUR RIGHTS.

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. Meholic, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 - ext. 5982

McQUAIDE, BLASKO, FLEMING & FAULKNER,
INC.

By: 

Cristin R. Long, Esquire
I.D. No. 89605
McQuaide Blasko
811 University Drive
State College, PA 16801
(814) 238-4926

FILED 3/28/06
MAR 28 2006
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and 1 cc Aff. of
Address
William A. Shaw
Prothonotary/Clerk of Courts
66 New Liberty Rd.
Philipsburg, PA
16806

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

MANUFACTURERS AND TRADERS
TRUST COMPANY,

Plaintiff

vs.

WILLIAM T. HASSINGER, d/b/a
HASSINGER MOTOR SPORTS & SALES,
Defendant

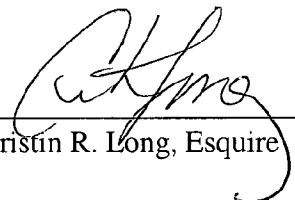
No. 2006-179-CD

AFFIDAVIT OF ADDRESS

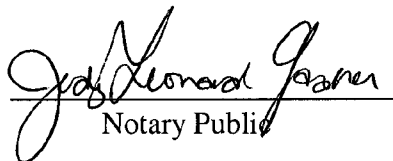
I, Cristin R. Long, being duly sworn according to law, hereby certify that the
precise address of the Plaintiff is 1331 12th Avenue, Altoona, PA 16601, and that the last known
address of the Defendant is as follows:

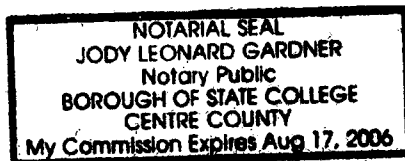
66 New Liberty Road
Philipsburg, PA 16866.


Dated: 3/20/06


Cristin R. Long, Esquire

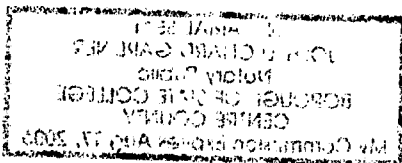
Sworn to and subscribed
before me this 20th day of
March, 2006.


Notary Public



FILED ^{icc Def.}
m/2:2006
MAR 28 2006 

William A. Shaw
Prothonotary/Clerk of Courts



FILED

MAR 28 2006

William A. Straw
Prothonotary Clerk
County of New York