

08-1925-CD
Ford Motor Credit vs J. Baumgartner al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

FORD MOTOR CREDIT CO.

Plaintiff

v.

JASON M BAUMGARTNER and WENDY L
BAUMGARTNER

Defendant(s)

)
) NO. 08-1925-CD
)
)
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)

**COMPLAINT IN CIVIL
ACTION**

Filed on behalf of:
FORD MOTOR CREDIT CO.

Counsel of Record for This Party:

Gregg L. Morris, Esquire
Pa I.D. #69006

Patenaude & Felix, A.P.C.
213 E. Main Street
Carnegie, PA 15106
(412) 429-7675

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FILED Atty pd.
M 11:25 AM 09 OCT 09 2008 95.00
OCT 09 2008 ICC Sheriff
William A. Sharp
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

FORD MOTOR CREDIT CO.

)

Plaintiff

) NO.

)

)

v.

)

)

JASON M BAUMGARTNER and WENDY L
BAUMGARTNER

)

)

Defendant(s)

)

NOTICE TO DEFEND

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 an 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.

Usted ha sido demandado en corte. Si usted desea defenderse de las demandas que se presentan mas adelante en las siguientes paginas, debe tomar accion dentro de los proximos veinte (20) dias despues de la notificacion de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aqui en contra suya. Se le advierte de que si usted fall de tomar accion como se describe anteriormente, el caso pude proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier reclamacion o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin mas aviso adicional. Usted puede perder dinero o propiedad au otros derechos importantes para usted.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSO A PERSONAS QUE CALIFICAN.

CLEARFIELD COUNTY COURTHOUSE
DAVID S. MEHOLICK, COURT
ADMINISTRATOR
230 EAST MARKET STREET
CLEARFIELD, PA 16830
814-765-2641

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

FORD MOTOR CREDIT CO.)	
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Plaintiff)	NO.
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)	
v.)	
)	
JASON M BAUMGARTNER and WENDY L)	
BAUMGARTNER)	
)	
Defendant(s))	

COMPLAINT IN CIVIL ACTION

AND NOW, comes Plaintiff, FORD MOTOR CREDIT CO. , by and through its attorney, GREGG MORRIS, ESQUIRE and the law offices of PATERNAUDE & FELIX, A.P.C. and files the following **Complaint in Civil Action**, and in support thereof aver as follows:

1. Plaintiff, FORD MOTOR CREDIT CO. , is a corporation with offices at 1335 S CLEARVIEW AVE MESA, ARIZONA 85208.
2. Defendant is JASON M BAUMGARTNER, an adult individual, believed to currently reside at 45 LEE RD ROCKTON, PENNSYLVANIA 15856.
3. Defendant is, WENDY L BAUMGARTNER, an adult individual, who is believed to currently reside at 1603 E CARAMILLO COLORADO SPRINGS, COLORADO 80909-0000.
4. On or about , the aforesaid Defendant(s) entered into a written Automobile Retail Installment Contract (Hereinafter "Contract") to purchase a "Vehicle" from a dealer (Seller) as more fully set forth in said Contract. A true and correct copy of the Contract is attached hereto, marked as Plaintiff's Exhibit "A" and incorporated by reference.

5. "Seller" thereafter assigned the Contract to Plaintiff, FORD MOTOR CREDIT CO. .

6. Pursuant to the terms of the Contract, Defendant(s) was/were to make 60 of \$482.00 commencing on 9/25/2001.

7. The terms of the Contract provide for termination upon satisfaction by Defendant of all obligations provided thereunder.

8. Plaintiff avers that Defendant(s) defaulted under the Contract by failing to make payments to Plaintiff as promised.

9. Due to Defendant's default under the Contract, Plaintiff exercised its rights to terminate the Contract and retake possession of the vehicle.

10. After calculating early termination charges due to Plaintiff, and proceeds from sale, if any, Plaintiff avers that a deficiency balance of \$8,373.17 is due from Defendant(s) as of August 22, 2006.

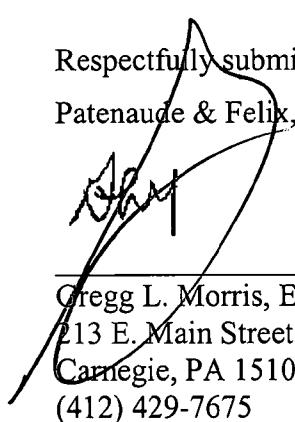
11. The terms of the Contract provide that Defendant(s) will pay Plaintiff's reasonable attorney's fees.

13. Plaintiff avers that such attorney's fees will amount to \$2,800.00.

14. Despite repeated requests, Defendant(s) have willfully failed and/or refused to pay the aforesaid sum due.

WHEREFORE, Plaintiff demands Judgment in its favor, and against Defendant(s), in the amount of \$8,373.17, interest from the date of breach, reasonable attorney's fees in the amount of \$2,800.00 with continuing interest at the legal rate thereon from the date of Judgment plus costs. The damages requested are less than the maximum amount for compulsory arbitration as set by the Court.

Respectfully submitted:
Patenaude & Felix, A.P.C.



Gregg L. Morris, Esquire
213 E. Main Street
Carnegie, PA 15106
(412) 429-7675

Date: October 07, 2008

FOR FILING OFFICER

CREDIT SALE CONTRACT, SECURITY AGREEMENT, FINANCING STATEMENT AND DISCLOSURES (DEALER — INTEREST TO FOLLOW)

Customer Number	Contract Number	Face \$ 17662.16	087192807	Yr. Maturity 08/25/2006	4719459-2903	4719459-8273
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Buyer: Name, Address, Zip Code

JASON M BAUMGARTNER
MENDY L BAUMGARTNER
1683 E CARMILLO ST
COLORADO SPRINGS CO 80909

Seller/Secured Party: Name, Address, Zip Code

PHIL LONG MITSUBISHI
211 WEST ARVADA
COLORADO SPRINGS CO 80906

DISCLOSURE

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate. 21.00	The dollar amount the credit will cost you. \$ 11257.84	The amount of credit provided to you or on your behalf. \$ 17662.16	The amount you will have paid after you have made all payments as scheduled. \$ 24920.00	The total cost of your purchase on credit, including your down payment of \$ 5000.00

Number of Payments	Amount of Payments	When Payments Are Due
60	482.00	BEGINNING 08/25/2001 AND ON THE SAME DAY EACH MONTH THEREAFTER UNTIL 08/25/2006
	N/A	
	N/A	
	N/A	

Insurance — Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign, or initial, and agree to pay the additional cost.

Type	Premium and Term	Signature
Credit Life	N/A	I want credit life insurance _____ Signature/initial _____
Credit Disability	N/A	I want credit disability insurance _____ Signature/initial _____
Credit Life and Disability	N/A	I want credit life and disability insurance _____ Signature/initial _____

You may obtain property insurance from anyone you want that is acceptable to the Seller. If you obtain the insurance from the Seller, you will pay \$ **N/A** Security: You are giving a security interest in: [] the goods or property being purchased.

[] (brief description of other property): _____

Filing Fees: \$ **16.50** Late Charge: If a payment is more than 10 days late, you will be charged \$15.00.

Prepayment: If you pay off early, you may be charged a minimum finance charge.

See your 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 an estimate

The following applies if checked:

[] THIS CONTRACT DOES NOT PROVIDE FOR AUTOMOBILE LIABILITY INSURANCE, AND SAID BUYER ALSO STATES THAT HE OR SHE ~~MADE~~ / HAS NOT (STRIKE WORDS NOT APPLICABLE) IN EFFECT AN AUTOMOBILE LIABILITY POLICY AS DEFINED IN SECTION 42-7-103 (2), COLORADO REVISED STATUTES, ON THE MOTOR VEHICLE SOLD BY THIS CONTRACT.

[] This contract will be assigned to, and payments should be made to:

FAIRLANE CREDIT LLC
P.O. BOX 105449 ATLANTA GA 30348-5449

See reverse side for Notice to Buyer, holders and assignees.

ITEMIZATION OF AMOUNT FINANCED

1. \$ **26846.66** cash price (including tax of \$ **315.66**)

2. \$ **5000.00** cash down payment/rebate

3. \$ **0.00** trade-in (\$0 if loan payoff exceeds trade-in value in 5(b) below)

4. \$ **15846.66** Unpaid balance of cash price (add 2 & 3 and then subtract from 1)

5. Amounts paid to others on your behalf:

a. \$ **16.50** Filing fees to Public Officials

b. \$ **N/A** for payoff of excess of existing loan over trade-in value

\$ **N/A** trade-in value

\$ **N/A** payoff balance on existing loan

c. \$ **N/A** to insurance companies*

d. \$ **N/A** *

\$ **16.50** Total of 5a through 5d

6. \$ **1500.00** to **AUTOMOTIVE WARRANTY SERVICES**

7. \$ **299.00** to **PHIL LONG MITSUBISHI**

8. \$ **17662.16** Amount Financed (4, 5, 6 & 7)

*Seller may retain a portion of this amount

CONTRACT AND PROMISE TO PAY

The terms Buyer, Seller, Payment Schedule, Amount Financed, Contract Date, Annual Percentage Rate and Maturity Date refer to the like terms and corresponding names or amounts as disclosed above. Buyer agrees to purchase from Seller, on the terms set forth in this Credit Sale Contract and Security Agreement, the property described below in the security agreement. Buyer, jointly and severally if more than one, promises to pay to the order of the Seller, or its assignee, at the address shown above, or as otherwise instructed, and in accordance with the Payment Schedule, the Amount Financed with interest on the unpaid balance from the Contract Date at the Annual Percentage Rate. Unless sooner paid, the entire balance of the Amount Financed and interest thereon shall be due on the Maturity Date, in any event, even upon full prepayment of this contract, the Seller is entitled to a minimum Finance Charge (inclusive of earned Finance Charge) of \$ **15.00**. Partial prepayments shall not excuse or postpone subsequent installments. Interest as provided above will continue in effect after default and after judgment and until all amounts under the contract or judgment are paid in full. A fee of \$25.00 will be assessed upon return or dishonor of a check or other instrument tendered as payment.

At the option of the holder of this contract ("holder"), the unpaid balance of this contract and all other obligations of Buyer to the holder, direct or indirect, absolute or contingent, now existing or hereafter arising, including, but not limited to, the provisions of Section 5-1-111 of the Colorado Uniform Consumer Credit Code (UCCC) to become immediately due and payable without notice or demand if (a) any payment required by this contract is not made when due, (b) a default or event of default occurs under any contract or security agreement or other instrument executed as security for or in connection with this contract, (c) the Buyer or any of them shall die, or (d) the holder at any time in good faith believes that the prospect of any payment required by this contract is impaired, whether or not such holder is caused by any act or failure to act by any Buyer or any of any guarantor of this contract (hereinafter referred to as "any other signer").

Buyer and any other signer waive presentment, notice of dishonor and protest and assent to any extension of time with respect to any payment due under this contract, to any substitution or release of collateral and to the addition or release of any party. No waiver of any payment or other right under this contract shall operate as a waiver of any other payment or right. If the holder enforces this contract upon default, Buyer or any other signer shall pay or reimburse the holder for, (a) reasonable expenses incurred in realizing on any Security therefor and (b) if referred to an attorney not a salaried employee of the holder, reasonable attorney's fees not in excess of 15% of the unpaid debt after default, or, if allowed by the UCCC, such additional fees as may be directed by the Court.

This contract (a) is secured by the property described below in the security agreement and (b) shall be construed under and governed by the laws of Colorado. If there is more than one Buyer, all of the provisions of this contract shall apply to each and any of them.

Buyer represents that the primary purpose of this transaction is **PERSONAL**.
(Personal, family, household, investment, agricultural, or business)
If any payment is not paid in full within 10 days after its scheduled due date, Buyer will pay a delinquency charge of \$15.00, and Seller shall notify Buyer of the delinquency charge assessed, as set forth in Section 5-2-203(4), C.R.S.

SECURITY AGREEMENT

To secure the payment of the foregoing contract and any and all liabilities, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter arising (all hereinafter sometimes called "Obligations") of the Buyer, or any of them, to the Secured Party, the Buyer grants to the Secured Party a security interest in the following property and any and all additions, accessions, attachments, accessories, repairs, replacements, substitutions and proceeds thereof, thereto or therefrom (hereinafter sometimes called "Collateral"):

1998 MITSUBISHI ECLIPSE GST CO 4A30X5AF3HE121642

By signing this Credit Sale Contract and Security Agreement the Buyer agrees to all of the terms on the front and reverse side hereof and acknowledges receipt of a copy hereof with all applicable blanks filled in.

Buyer's
Signature(s)

08/11/2001
Date

Seller/
Secured
Party

PHIL LONG MITSUBISHI

By:

08/11/2001
Date

EX-A

ADDITIONAL PROVISIONS

FURTHER WARRANTIES AND COVENANTS OF THE BUYER. The Buyer hereby warrants and covenants that:

1. Except for the security interest granted hereby, the Buyer is the owner of the Collateral free from any prior lien, security interest or encumbrance; and the Buyer will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.
2. The Buyer will not sell or offer to sell or otherwise transfer or encumber the Collateral or any interest therein without the prior written consent of the Secured Party. The Collateral will be located at and kept at Buyer's address shown on the reverse side hereof and shall not be removed from the State of Colorado without the prior written consent of the Secured Party.
3. The Buyer will immediately notify the Secured Party in writing of any change in address from that shown in this agreement and will also upon demand furnish to the Secured Party such further information and will execute and deliver to the Secured Party such financing statements, mortgages and other papers and will do all such acts and things as the Secured Party may at any time or from time to time reasonably request and/or as may be necessary or appropriate to establish and maintain a valid security interest in the Collateral as security for the Obligation, subject to no prior liens or encumbrances.
4. The Buyer will keep the Collateral at all times insured against risks of loss or damage by fire (including so-called extended coverage), theft and such other casualties as the Secured Party may reasonably require, all in such amounts, under such forms of policies, upon such terms, for such periods and written by such companies or underwriters as the Secured Party may approve, losses in all cases to be payable to the Secured Party and the Buyer as their interest may appear. All policies of insurance shall provide for at least ten days prior written notice of cancellation to the Secured Party; and the Buyer shall furnish the Secured Party with certificates of such insurance or other evidence satisfactory to the Secured Party as to compliance with the provisions of this paragraph. The Secured Party may act as attorney for the Buyer in making, adjusting and settling claims under or cancelling such insurance and endorsing the Buyer's name on any drafts drawn by insurers of the Collateral.
5. The Buyer will keep the Collateral free from any adverse lien, security interest or encumbrance and in good order and repair, will not waste or destroy the Collateral or any part thereof and will not use the Collateral in violation of any applicable statute, ordinance or policy of insurance thereon. The Secured Party may examine and inspect the Collateral at any reasonable time or times wherever located.
6. The Buyer will pay promptly when due all taxes and assessments upon the Collateral or for its use or operation.

ADDITIONAL RIGHTS OF PARTIES. At its option, but without obligation to do so, the Secured Party may: (1) discharge taxes, liens, or security interests or other encumbrances at any time levied or placed on the Collateral; (2) place and pay for insurance on Collateral in the event Buyer fails to keep the Collateral insured and order and pay for the repair, maintenance and preservation of the Collateral; (3) pay any fees and charges necessary to determine the existence of or to perfect, release or satisfy any security related thereto; and (4) pay for license, certificate of title or registration fees. The Buyer agrees to reimburse the Secured Party on demand for any payment made or any expense incurred by the Secured Party pursuant to the foregoing authorization. Until default the Buyer may have possession of the Collateral and use the same in any lawful manner not inconsistent with this Agreement.

EVENTS OF DEFAULT — REMEDIES. Upon the happening of any of the following events or conditions, namely: (i) default in the payment or performance of any of the Obligations or of any covenant or liability contained or referred to herein or in any agreement evidencing any of the Obligations; (ii) any warranty, representation or statement made or furnished to the Secured Party by or on behalf of the Buyer in connection with this agreement proving to have been false in any material respect when made or furnished; (iii) loss, theft, substantial damage, destruction, sale or encumbrance to or of any of the Collateral, or the making of any levy, seizure or attachment thereof or thereon; (iv) default, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy or insolvency laws by, against or of Buyer or any guarantor or surety for the Buyer, thereupon, or at any time thereafter (such default not having previously been cured), the Secured Party at its option may declare all of the Obligations to be immediately due and payable, subject to any notice required by law or agreement, and shall then have the remedies of a Secured Party under the Uniform Commercial Code of Colorado, or other applicable law, including, without limitation thereto, the right to take possession of the Collateral, and anything found therein, and for that purpose may pursue the Collateral wherever the same may be found and with or without legal process, but without a breach of the peace, may enter any premises where the Collateral may be found and take possession thereof and remove the same (subject to any applicable limitations including § 4-9-503, C.R.S., regarding mobile homes). In the event the Secured Party institutes legal proceedings to regain possession of the Collateral, Buyer knowingly and voluntarily waives his or her right to a hearing prior to losing possession of the Collateral by means of a court order, and agrees that the Secured Party may obtain an order for possession prior to hearing as provided in C.R.C.P. 104(d)(4).

Borrower hereby waives all right of homestead exemption in the Collateral, including that granted by § 38-41-201.6, C.R.S., and waives any other statutory exemptions, including those granted by § 13-54-102, C.R.S., insofar as such exemptions pertain to the Collateral described in this Security Agreement.

The Secured Party may require the Buyer to make the Collateral available to the Secured Party at a place to be designated by the Secured Party which is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Secured Party will give at least ten days written notice to Buyer at the address shown on the reverse side hereof of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. Expenses of retaking, holding, preparing for sale, selling or the like shall, subject to CCCC limits if applicable, include the Secured Party's reasonable attorney's fees and cost.

GENERAL. This agreement and the security interest in the Collateral created hereby shall terminate when the Obligation has been paid in full. No waiver by the Secured Party of any default shall be effective unless in writing nor operate as a waiver of any other default or of the same default on a future occasion. All rights of the Secured Party hereunder shall inure to the benefit of its successors and assigns; and all obligations of the Buyer shall bind the heirs, legal representatives, successors and assigns of the Buyer. If there be more than one Buyer, their obligations hereunder shall be joint and several. This agreement shall take effect when signed by the parties hereto. This agreement shall be construed under and governed by the laws of Colorado.

Should any provision of this Credit Sale Contract, Security Agreement, Financing Statement and Disclosures violate any federal, state or local law or ordinance, that provision shall be deemed amended to so comply with such law or ordinance, and shall be construed in a manner so as to comply.

NOTICE — If this sale is for a used motor vehicle:

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.

IF THIS TRANSACTION CONTAINS A FEE OR PREMIUM FOR GUARANTEED AUTOMOBILE PROTECTION, ALL HOLDERS AND ASSIGNEES OF THIS CONSUMER CREDIT TRANSACTION ARE SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE ORIGINAL CREDITOR RESULTING FROM THE DEBTOR'S PURCHASE OF GUARANTEED AUTOMOBILE PROTECTION.

ASSIGNMENT

For value received, the within Credit Sale Contract and Security Agreement and all the right, title and interest of the undersigned therein and thereunder, and the property therein described and secured are hereby sold, transferred, conveyed and assigned to:

Fairlane Credit

Its successors and assigns, with full authority to do every act and thing necessary to collect and discharge same. The undersigned expressly warrants that the within Security Agreement arose from the bona fide time sale to Buyer, grantor of the security interest in the property described therein and secured thereby, that the title to said property at the time of said sale was vested in the undersigned free and clear of all liens and encumbrances, that the undersigned had the legal right to and properly assign and deliver such title as well as said property to Buyer at the time of the sale thereof, that said property was not misrepresented in any way to Buyer, and that the statements of Buyer in his credit statement are true to the best of the knowledge and belief of the undersigned. The undersigned further warrants that the Collateral is free and clear of all claims, liens and encumbrances whatsoever, except the within security interest, that the Security Agreement is genuine and in all respects what it purports to be, that the undersigned is the owner of said Credit Sale Contract and Security Agreement and has the right to sell and assign same, THAT BUYER VOLUNTARILY PURCHASED SAID PROPERTY FOR THE TOTAL SALE PRICE RATHER THAN FOR THE CASH PRICE, that the down payment received as mentioned was paid in full by the Buyer in cash and/or trade-in as stated herein, that the Buyer is of lawful age and competent, that the property is correctly described therein, that the signature(s) of the Buyer(s) is (are) genuine, and that the undersigned has made all disclosures and given all notices required by the Federal Consumer Credit Protection Act. The undersigned further warrants that this Obligation of the borrower did not arise from a referral sale or a home solicitation sale.

In the event any of the above warranties are held to be false, causing monetary loss to the assignee, the undersigned agrees to save harmless the assignee herein and to pay all attorney's fees and other costs incurred by said assignee in enforcing said warranties against the undersigned.

Dated: _____

PHIL LONG MITSUBISHI

Secured Party (Seller)

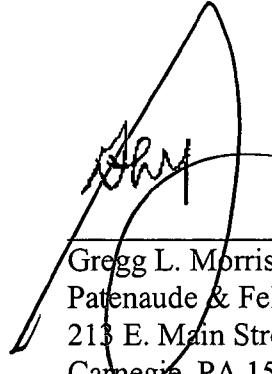
By _____

Authorized Signature

VERIFICATION

The undersigned, Gregg L. Morris, hereby states that he is the attorney for Plaintiff in this action and verifies that the statements made in the foregoing pleading are true and correct to the best of his knowledge, information and belief. Counsel has signed the verification at the request of Plaintiff as a matter of time and convenience. Plaintiff has represented to counsel that there is a debt due and owing from Defendant to Plaintiff in the amount as set forth within the foregoing pleading. Plaintiff has provided counsel with all relevant information in order to allow counsel to sign this verification. Plaintiff agrees to provide a verification signed by Plaintiff upon request by Defendant. The statements are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Date: October 07, 2008



Gregg L. Morris, Esquire
Patenaude & Felix, A.P.C.
213 E. Main Street
Carnegie, PA 15106
(412) 429-7675

YVW 3808

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
NO: 08-1925-CD

FORD MOTOR CREDIT CO.

vs

JASON M. BAUMGARTNER and WENDY L. BAUMGARTNER
COMPLAINT

SERVICE # 1 OF 1

SERVE BY: 11/08/2008 HEARING: PAGE: 104765

DEFENDANT: JASON M. BAUMGARTNER
ADDRESS: 45 LEE RD APT D
ROCKTON, PA 15856

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT OCCUPIED

ATTEMPTS 11/4/08 - 10:55 AM N/H _____

S
FILED
07/3:34 AM
NOV 06 2008
William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF'S RETURN

NOW, 11-06-08 AT 10:30 AM / PM SERVED THE WITHIN

COMPLAINT ON JASON M. BAUMGARTNER, DEFENDANT

BY HANDING TO Wendy Baumgartner / wife

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 45 Lee RD., APT D. Rockton Pa. 15856

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT FOR JASON M. BAUMGARTNER

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO JASON M. BAUMGARTNER

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Jerome M. Nevins
Deputy Signature
Jerome M. Nevins
Print Deputy Name

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

FORD MOTOR CREDIT CO., :
Plaintiff :
vs. : No. 08-1925 C.D.
JASON M. BAUMGARTNER and :
WENDY L. BAUMGARTNER, :
Defendants :
Type of Pleading: Answer to Complaint
New Matter and Counterclaim
Filed on behalf of: Jason M. Baumgartner
and Wendy L. Baumgartner, Defendants
Counsel of Record for this party:
HOPKINS HELTZEL LLP
DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519
LEA ANN HELTZEL, Esquire
Attorney at Law
Supreme Court No. 83998
100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801
(814) 375-0300

NOTICE TO PLEAD

You are hereby notified to plead
to the within pleading within
twenty (20) days of service thereof
or default judgment may be entered
against you.


David J. Hopkins, Esquire
Attorney for Defendants

FILED
01/17/2008
DEC 04 2008
William A. Shaw
Prothonotary/Clerk of Courts
Atty Hopkins
GIC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

FORD MOTOR CREDIT CO. :
Plaintiff :
vs. : No. 08-1925 C.D.
JASON M. BAUMGARTNER and :
WENDY L. BAUMGARTNER, :
Defendants :
:

ANSWER TO COMPLAINT, NEW MATTER AND COUNTERCLAIM

AND NOW, comes Plaintiffs, Jason M. Baumgartner and Wendy L. Baumgartner, by and through their attorneys, Hopkins Heltzel LLP, and answers the Complaint in Civil Action of Ford Motor Credit Co. as follows:

ANSWER TO COMPLAINT

1. Admitted.
2. Admitted.
3. Admitted in part and denied in part. Defendants Wendy L. Baumgartner admits she is an adult individual. Her current address is 45 Lee Road, Rockton, Pennsylvania 15856.
4. Admitted.
5. Neither admitted nor denied. Defendants after a reasonable investigation are unable to admit or deny the allegations set forth in paragraph 5 of Plaintiff's Complaint and strict proof is demanded at trial.
6. Admitted.

7. Denied. No answer is required of this paragraph. The contract speaks for itself.

8. Denied. Defendants did not default under the contract, rather, the motor vehicle provided by the manufacturer and dealership was defective.

9. Admitted in part and denied in part. Defendants deny a default under the contract. Defendants admit Plaintiff repossessed the motor vehicle.

10. Neither admitted nor denied. Defendants are without the sufficient knowledge to admit or deny the allegations set forth in paragraph 10 and strict proof is demanded at trial.

11. Admitted.

12. There is no paragraph 12 to this Complaint.

13. Denied. Attorney's fees of \$2,800.00 are not warranted inasmuch as Defendants have not defaulted under the terms of the contract and further inasmuch as said fees are not reasonable.

14. Admitted.

15. Plaintiff's Complaint appears to stop with paragraph 14 without a "Wherefore" clause.

WHEREFORE, Defendants, Jason M. Baumgartner and Wendy L. Baumgartner, respectfully request this Honorable Court to find in Defendants favor and dismiss Plaintiff's Complaint with prejudice.

NEW MATTER

16. Plaintiff's Complaint must fail inasmuch as Plaintiff has failed to set forth a cause of action upon which relief can be granted.

17. Plaintiff's claims are barred inasmuch as the motor vehicle sold to Defendants by Phil Long Mitsubishi was defective.

18. The claims of Plaintiff are barred by the statute of limitations inasmuch as the vehicle was repossessed and sold in 2002.

COUNTERCLAIM

AND NOW comes, Plaintiffs on the Counterclaim, Jason M. Baumgartner and Wendy L. Baumgartner, (hereinafter "Baumgartner") and files the within Counterclaim against Defendant on the Counterclaim, Ford Motor Credit Co., (hereinafter "FMCC") and in support thereof says as follows:

1. Plaintiffs on the Counterclaim, Jason M. Baumgartner and Wendy L. Baumgarter, are adult individuals who reside at 45 Lee Road, Rockton, Pennsylvania 15856.

2. Defendant on the Counterclaim, Ford Motor Credit Co., is a corporation with offices at 1335 South Clearview Avenue, Mesa, Arizona 85208.

3. On or about October 9, 2008, Defendants on the Counterclaim filed a Complaint in Civil Action, a photocopy of which is attached hereto and incorporated by reference herein.

4. Said Complaint seeks money from Baumgartner as a result of a motor vehicle that was repossessed from Baumgartner in 2002 and sold in 2002.

5. The statute of limitations on said actions is four (4) years commencing in 2002. The filing of a civil action against Baumgartner at a time when FMCC knew or should have known that they had no legal right to collect said funds constitutes a breach

of Pennsylvania Statutes. It is vexatious and improper, and as a result thereof, Baumgartner is entitled to an award of attorney's fees.

6. The amount of Baumgartner's attorney's fees are as yet known but are anticipated to be approximately \$5,000.00.

WHEREFORE, Plaintiffs on the Counterclaim, Jason M. Baumgartner and Wendy L. Baumgartner, respectfully request this Honorable Court enter judgment in favor of Baumgartner and against Ford Motor Credit Co. in the amount of attorney's fees incurred by Baumgartner in this litigation believed to be approximately \$5,000.00 and for such other relief as the Court deems fair, just and equitable.

Respectfully submitted,



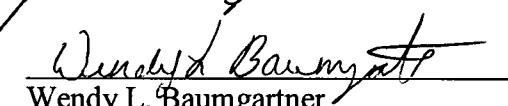
David J. Hopkins, Esquire
Attorney for Plaintiff

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.



Jason M. Baumgartner



Wendy L. Baumgartner

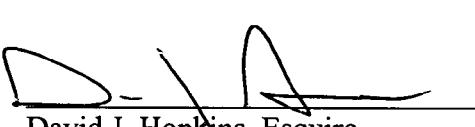
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

FORD MOTOR CREDIT CO., :
Plaintiff :
vs. : No. 08-1925 C.D.
JASON M. BAUMGARTNER and :
WENDY L. BAUMGARTNER, :
Defendants :
:

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Defendant's Answer to Complaint, New Matter and Counterclaim, filed on behalf of Jason M. Baumgartner and Wendy L. Baumgartner, was forwarded by first class mail, postage prepaid, on the 4th day of December, 2008 to all counsel of record, addressed as follows:

Gregg L. Morris, Esquire
Patenaude & Felix, A.P.C.
213 E. Main Street
Carnegie, PA 15106



David J. Hopkins, Esquire
Attorney for Jason M. Baumgartner
and Wendy L. Baumgartner

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104765
NO: 08-1925-CD
SERVICES 1
COMPLAINT

PLAINTIFF: FORD MOTOR CREDIT CO.
vs.
DEFENDANT: JASON M. BAUMGARTNER and WENDY L. BAUMGARTNER

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	PATENAUME	27805	10.00
SHERIFF HAWKINS	PATENAUME	27805	48.42

S
FILED
0/3:30pm
FEB 04 2009
William A. Shaw
Prothonotary/Clerk of Courts
LM

Sworn to Before Me This

So Answers,

Day of 2008



Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

FILED

FEB 19 2009
m 13 2009
William A. Shaw
Prothonotary/Clerk of Courts
no 96

FORD MOTOR CREDIT CO.,
Plaintiff

vs.

JASON M. BAUMGARTNER and
WENDY L. BAUMGARTNER,
Defendants

No. 08-1925 C.D.

Type of Pleading: Joint Praeclipe to
Withdraw Complaint and Counterclaim

Filed on behalf of: Plaintiff and Defendants

Counsel of Record for Defendant:
HOPKINS HELTZEL LLP

DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519
100 Meadow Lane, Suite 5
DuBois, PA 15801
(814) 375-0300

Counsel of Record for Plaintiff
PATENAUDA & FELIX, A.P.C.

GREGG L. MORRIS, Esquire
Attorney at Law
Supreme Court No. 69006
213 E. Main Street
Carnegie, PA 15106
(412) 429-7675

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

FORD MOTOR CREDIT CO. :
Plaintiff :
vs. : No. 08-1925 C.D.
JASON M. BAUMGARTNER and :
WENDY L. BAUMGARTNER, :
Defendants :
.

JOINT PRAECIPE TO WITHDRAW COMPLAINT AND COUNTERCLAIM

TO: PROTHONOTARY:

Kindly withdraw the Complaint filed in the above captioned matter.

PATENAUME & FELIX, A.P.C.

By: _____

Gregg L. Morris, Esquire
Attorney for Plaintiff
Pa I.D. #69006
213 E. Main Street
Carnegie, PA 15106

Kindly withdraw the Counterclaim filed in the above captioned matter.

HOPKINS HELTZEL LLP

By: _____

David J. Hopkins, Esquire
Attorney for Defendants
Pa I.D. # 42519
100 Meadow Lane, Suite 5
DuBois, PA 15801

I, GREGG MORRIS, attorney for Plaintiff, FORD MOTOR CREDIT CO. , hereby certify that a true and correct copy of foregoing document was served this date by ordinary mail upon the following:

David Hopkins, Esq..
100 Meadow Lane Suite 5
Dubois PA 15801

Date: February 16, 2009

Gregg L. Morris, Esquire
Paterno & Felix, A.P.C.
213 E. Main Street
Carnegie, PA 15106
(412) 429-7675