

STATE OF LOUISIANA

: _____ JUDICIAL DISTRICT

VS

: PARISH OF _____, LOUISIANA

\$ _____

: DOCKET NO. _____, _____

**MEMORANDUM IN OPPOSITION TO
EXCEPTION OF NO RIGHT OF ACTION**

PROCEDURAL HISTORY:

Pursuant to La. R.S. 40:2600 et.seq. (The Louisiana Forfeiture Act), the State has filed a Petition for Forfeiture against \$_____ United States Currency which it seized on _____, 20____. Claimant presented the State with a CLAIM for his property pursuant to La.R.S. 40:2610 and has filed an answer pursuant to La. R.S. 40:2612 (E) in which he essentially denied the allegations of the State. (See: answer)

Your Defendant, _____, subsequently filed a Motion for Summary Judgment, asking this Court for return of its money and for costs and attorney fees. Prior to the hearing on the Motion for Summary Judgment, the Plaintiff, State of Louisiana, filed an Exception of No Right of Action alleging that _____, has no right of action because it is not an AInterest Holder@, AOwner@, nor a ASecured Party@ pursuant to applicable Louisiana law.

The hearing on the Exception of No Right of Action is scheduled for _____, 20____, at _____ o'clock ____M., and the parties have agreed to submit the matter to the Court without argument based on Memoranda submitted.

LAW AND ARGUMENT:

Peremptory exception pleading objection of no right of action tests whether plaintiff has any interest in judicially enforcing right asserted; essential function of objection is to provide a threshold device which terminates suits brought by me who has no interest in enforcing judicially right asserted. Falcon Line, Inc. vs. Plaquemine Contracting Co., Inc., Ap. 1 Cir. 1996, 672 So.2d 356.

The State of Louisiana alleges that _____ has no right of action to claim the \$_____ because it divested itself of ownership of said money and also divested itself from being an interest holder of said money. The State also alleges that _____ is not a secured party pursuant to La. R.S. 10:9-105.

Pursuant to the Argument to Purchase Auto entered into between _____ and _____, _____ was provided monies to purchase vehicles for _____. _____ became the agent for _____, to purchase vehicles on behalf of _____.

La. R.S. 40:2601 provides in pertinent part as follows:

- (1) AOwner@ means a person, other than an interest holder, who has an interest in property and, if required by law, is in compliance with any statute requiring recordation or reflection in public records in order to perfect the interest against a bona fide purchaser for value.

The State cannot argue that _____ does not have an interest in the property, the subject of this lawsuit. The agreement between _____ and _____ is clear that _____ has complete control of the monies provided to _____ including prior approval of all purchases made with the use of these funds. The State of Louisiana argues that because _____ signed a promissory note _____ has divested itself of any interest in these monies.

Although _____ signed a promissory note, the agreement is the controlling document as noted on the promissory note. The agreement sets out all conditions related to the use of these monies by _____. These monies were to be used with prior approval by _____. This agreement could be styled an employment contract between _____ and _____. At no time did _____ divest itself of its ownership interest in these monies, in truth and in fact, _____ continued control over the monies subsequent to the signing of the agreement, and should, therefore, be considered an owner as provided in La. R.S. 40:2601, et seq.

CONCLUSION:

_____ is an owner as provided in La. R.S. 40:2601, et. seq, and as a result has the right to pursue the return of the monies illegally seized from _____.

Respectfully Submitted,

Attorney for Defendant

_____, LA _____
(_____)_____
La. Bar Roll No. _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Memorandum in Opposition to Exception of No Right of Action has this date been served upon the Office of the District Attorney for the Parish of _____, Louisiana, by hand delivering a copy of the same.

_____, Louisiana, this _____ day of _____ 20____.

