

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

NO.

DEFENDANT

COMPLAINT

COMES NOW Plaintiff, , and files this Complaint for damages against Defendant , and for cause of action against the Defendant states as follows:

PARTIES AND JURISDICTION

1. is a corporation organized and existing under the laws of the State of Mississippi, having its principal place of business at .

2. Defendant or ("Defendant") is an adult resident citizen of County, Mississippi, who may be served with process of this Court at his/her residence addresses of .

3. Jurisdiction is proper in this Court pursuant to Mississippi Code Annotated Sec. 9-7-81 and Rule 82 of the Mississippi Rules of Civil Procedure.

4. Venue before this Court is proper in that pursuant to Mississippi Code Annotated Sec. 11-11-3, inasmuch as the Defendant is an adult resident citizen of County, Mississippi.

FACTS

5. is in the business of selling automobiles, including retail sales of .

6. On or about , Defendant appeared at place of business where he/she negotiated the purchase of ( ) , VIN (" "), for the purchase price of \$ .

7. In connection with the agreement and contract to purchase the above-described , the Defendant executed purchase orders setting forth a description of the vehicle and the purchase price of \$ . The final draft of the purchase order was executed by the Defendant and the manager of evidencing acceptance of the terms of the agreement. True and correct copies of the , purchase orders are attached hereto collectively as Exhibit " ".

8. As consideration for the purchase and as an inducement to to deliver possession of the above-described to , tendered a check drawn on dated , in the total amount of \$ . A true and correct copy of the check is attached hereto as Exhibit " ". In return, titled the in Defendant's name, and did not list a lien holder.

9. refused to honor the aforesaid check on the basis that did not maintain an account at , and that the account number appearing on the check was not a valid account number. This information was confirmed by , an officer of , whose Affidavit is attached hereto as Exhibit " ".

10. Following the dishonor of this check, the Defendant made numerous representations regarding forthcoming payment to . Yet, no payment was forthcoming, and the Defendant has refused and continues to refuse payment. See Affidavit of attached hereto as Exhibit " ".

11. Upon receipt of title, and without having paid \_\_\_\_\_ for the purchase of the \_\_\_\_\_, the Defendant sold the \_\_\_\_\_ to \_\_\_\_\_ and applied the proceeds of sale to a lease agreement on a \_\_\_\_\_ VIN \_\_\_\_\_, the Defendant using the guise of ownership of the \_\_\_\_\_ to sell the \_\_\_\_\_ and pre-pay the lease on the new vehicle in full. This transaction was consummated on or about \_\_\_\_\_, \_\_\_\_\_, without the knowledge or consent of \_\_\_\_\_.

12. This entire transaction was performed without knowledge by \_\_\_\_\_ that the \_\_\_\_\_ had not been paid for and that, in fact, the Defendant owed \_\_\_\_\_ the purchase price of \$ \_\_\_\_\_. See Affidavit of \_\_\_\_\_ attached hereto as Exhibit " \_\_\_\_\_".

13. The Defendant's possession of the \_\_\_\_\_ leased from \_\_\_\_\_ is a direct result of an artifice or scheme to defraud \_\_\_\_\_ and/or \_\_\_\_\_ and convert the \_\_\_\_\_ to his/her own use and benefit.

#### COUNT I - BREACH OF CONTRACT

14. Plaintiff reincorporates and realleges Paragraphs 1-13 above.

15. In executing the purchase order forms, Defendant \_\_\_\_\_ agreed to purchase the \_\_\_\_\_ for the price of \$ \_\_\_\_\_.

16. Defendant has refused to honor the terms of his/her agreement to purchase \_\_\_\_\_ resulting in a breach of his/her contractual obligation to \_\_\_\_\_.

17. Based on the default in performance and resulting breach of contract, by the Defendant, \_\_\_\_\_ is entitled to recover, damages based on its loss due to the breach.

#### COUNT II - FRAUD

18. Plaintiff reincorporates and realleges Paragraphs 1-17 above.

19. The Defendant, with full knowledge that no account existed in his/her name at \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, presented a check drawn on the non-existent account as an inducement to \_\_\_\_\_ to deliver possession of the \_\_\_\_\_.

20. By presenting the worthless check drawn on a non-existent account, the Defendant created a presumption of his/her intent to defraud by issuance of such a check pursuant to Mississippi Code Annotated Sec. 97-19-57 and Sec. 97-19-61.

21. \_\_\_\_\_ was induced by this false and fraudulent representation to deliver, and did deliver the \_\_\_\_\_, for which \_\_\_\_\_ has received no payment, compensation or other return whatsoever.

22. As a direct and proximate result of the Defendant's false representations and presentation of a worthless check to induce action by \_\_\_\_\_, \_\_\_\_\_ has suffered damage through the fraudulent deprivation of personal property.

23. \_\_\_\_\_ is entitled to recover damages for all actual loss occasioned by the Defendant's fraud, together with exemplary and/or punitive damages due to the intentional, unjustified and malicious nature of the fraudulent conduct and deprivation.

24. In addition to or as an alternative to the damages set forth above, \_\_\_\_\_ is entitled to an award of the civil penalty for violation of the bad check statute, as set forth in Mississippi Code Annotated Sec. 11-7-12.

#### COUNT III- CONVERSION

25. Plaintiff reincorporates and realleges Paragraphs 1-24 above.

26. In appropriating the \_\_\_\_\_ to his/her own use and benefit without compensation to \_\_\_\_\_, the Defendant has intentionally and maliciously converted the property of \_\_\_\_\_.

27. The Defendant's conversion of the property has resulted in a deprivation of the use, enjoyment, and benefit of the property by \_\_\_\_\_.

28. Based on the conversion, \_\_\_\_\_ is entitled to recover the value of the property. Additionally, given the intentional, willful and malicious nature of the conversion, \_\_\_\_\_ is entitled to recovery of exemplary or punitive damages.

COUNT IV - CONSTRUCTIVE TRUST TO  
PREVENT UNJUST ENRICHMENT

29. Plaintiff reincorporates and realleges Paragraph 1-28 above.

30. By virtue of the Defendant's scheme or artifice to defraud, the Defendant now unfairly holds a property interest which justly and fairly belongs to \_\_\_\_\_.

31. In acquiring the \_\_\_\_\_ and ultimately the \_\_\_\_\_ under the circumstances set forth above, Defendant's fraudulent activities are such that the Defendant may not in good conscience be allowed to retain a beneficial or actual interest in the property.

32. Any further benefit to the Defendant based on the use and enjoyment of the fraudulently conveyed property will only result in a further unjust enrichment to the Defendant at the further expense of \_\_\_\_\_.

33. Based on these facts and the nature of the Defendant's actions, the Court should find the existence of a constructive trust and declare the Defendant trustee from the time of first possession of the \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, for the \_\_\_\_\_, the funds received in the sell of the \_\_\_\_\_, and trustee over the \_\_\_\_\_ vehicle currently possessed by the Defendant, until such time as an independent trustee can be appointed by this court.

34. As trustee of the constructive trust, the Defendant should be made to account for all proceeds, property, loss and/or damage and/or depreciation to property for the time period of \_\_\_\_\_, \_\_\_\_\_, up and through the time that this Court appoints an independent trustee and the vehicle and/or other property is delivered to that trustee.

WHEREFORE, PREMISES CONSIDERED, \_\_\_\_\_ prays that upon a hearing of this matter, a judgment be entered in its favor on all counts in all following particulars:

- (a) For recovery under Counts I, II and III of the unpaid purchase price of \$ \_\_\_\_\_;
- (b) For recovery on Count II for punitive damages in the amount of \$ \_\_\_\_\_, or alternatively, in the amount set forth under the civil bad check statute, Mississippi Code Annotated Sec. 11-7-12;
- (c) Under Count III for an award of punitive damages in the amount of \$ \_\_\_\_\_;
- (d) Under Count IV for the imposition of a constructive trust over the above described \_\_\_\_\_, proceeds from the sale thereof and/or \_\_\_\_\_, with Defendant accountable as trustee from and after \_\_\_\_\_, \_\_\_\_\_, until such time as this Honorable Court appoints an independent trustee and the independent trustee takes possession of the vehicle or other property and further for depreciation from the time the independent trustee takes possession of the vehicle until final judgment of this matter;
- (e) For recovery of \_\_\_\_\_ reasonable attorney's fees incurred in this matter;
- (f) For pre-judgment interest from and after the date of the breach of contract on all liquidated amounts;
- (g) For post-judgment interest as allowed by law; and
- (h) All court costs and expenses.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Respectfully submitted,

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Attorney for

Of counsel:

Telephone:  
MSB #  
Attorney for