

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

FORD MOTOR CREDIT COMPANY LLC,	§	
Plaintiff,	§	
	§	
v.	§	
	§	Civil Action No.: 5:18-cv-00186
BART REAGOR AND RICK DYKES,	§	
Defendants.	§	

JOINT PRETRIAL ORDER

On October 1, 2019 at 9:00 AM, a jury will hear evidence and arguments on the issue of the amount of damages Plaintiff Ford Motor Credit Company LLC (“Ford Credit”) is entitled to recover from Defendant Bart Reagor (“Reagor”) in the above-captioned action. Ford Credit and Reagor (collectively, the “Parties”) respectfully submit this Joint Pretrial Order (the “Order”).¹

I. SUMMARY OF THE PARTIES’ CLAIMS AND DEFENSES

A. Ford Credit’s damages claim

Ford Credit provided floorplan financing and a capital loan to Reagor-Dykes Amarillo, L.P., Reagor-Dykes Auto Company L.P., Reagor-Dykes Floydada, L.P., Reagor-Dykes Imports, L.P., Reagor-Dykes Motors, L.P., and Reagor-Dykes Plainview, L.P. (the “Dealerships”). The Dealerships used that financing to purchase new and used motor vehicle inventory. Reagor personally guaranteed the Dealerships’ debts to Ford Credit, including the Dealerships’ floorplan financing and capital loan obligations.

¹ The signatures of counsel below do not constitute either party’s agreement with, or admission or adoption of, any portion of this Order concerning the contentions of the other party to this action.

This dispute arose after the Dealerships defaulted on their obligations to Ford Credit.² On May 24, 2019, the Court granted summary judgment for Ford Credit finding that Reagor defaulted on his guaranties to Ford Credit. Dkt. 48. The Court specifically held that Reagor's guaranties "unambiguously require [him] to repay all of the [D]ealerships' obligations to [Ford Credit], including interest, costs, expenses, and attorneys' fees." *Id.* At the time Ford Credit filed its Complaint against Reagor, the Dealerships owed Ford Credit approximately \$113,374,000.00. Dkt. 11.

Ford Credit incurred ongoing and additional costs and expenses in connection with the Dealerships' defaults including expenses related to, without limitation, unpaid customer trades; unpaid tax, title, and license fees and expenses; transportation expenses; security expenses; vehicle recovery expenses; and on-site expenses. As of August 25, 2019, Ford Credit's costs and expenses, exclusive of attorneys' fees and costs, total \$2,526,826.27. Ford Credit has incurred an additional \$1,417,408.16 for attorneys' fees and costs.

For these reasons, and for the reasons set forth in Ford Credit's pleadings and motions filed in this case, Ford Credit is entitled to a judgment against Reagor in the amount of \$46,288,070.14. This amount constitutes the total outstanding indebtedness due and owing to Ford Credit as of August 25, 2019. This amount also reflects a set off or reduction in the total owed to Ford Credit for proceeds received from the liquidation and sale of the Dealerships' vehicle inventory, proceeds from the sale of furniture, fixtures, and equipment, and other monies received through litigation. The judgment amount also includes all costs and expenses Ford Credit incurred in pursuing those recoveries and in enforcing Ford

² Defendant Rick Dykes ("Dykes") also personally guaranteed the Dealerships' obligations. Ford Credit's claims against Mr. Dykes have been resolved and discontinued. *See* Dkts. 46-47.

Credit's rights against the Dealerships and their guarantors. In addition to the judgment amount, Ford Credit is entitled to statutory interest from August 25, 2019 until the judgment is paid.

Ford Credit contends Reagor's objections to Ford Credit's damages claim lack merit and that Reagor has waived any affirmative "commercially reasonable disposition of collateral" defense. Ford Credit's damages claim accurately credits its recovery of proceeds from the commercially reasonable liquidation and sale of the Dealerships' vehicle inventory, proceeds from the commercially reasonable sale of furniture, fixtures, and equipment, and other monies received through litigation. Ford Credit's damages claim also accurately accounts for all costs and expenses incurred by Ford Credit in pursuing those recoveries.

Reagor's only remaining objection – concerning Ford Credit's attorneys' fees and costs – is also without merit. As this Court has already held, Reagor's guaranties unambiguously require him to "repay all of the dealerships' obligations" to Ford Credit, "including interest, costs, expenses, and attorneys' fees." Dkt. 48. Specifically, Reagor promised that he would personally repay all such amounts and make Ford Credit whole for "all losses, costs, attorneys' fees or expenses" suffered as a result of the Reagor-Dykes Dealerships' default under their respective wholesale financing agreements, and pay Ford Credit a "reasonable attorney's fee (15% if permitted by law)" if those guaranties were "placed with an attorney for collection." Dkt. 30, Ex. C at A21, D at A25, F at A35, H at A47, P at A100-104, Q at A106-110, S at A118, U at A131, W at A141, X at A145.

The plain language of those guaranties obligates Reagor to pay any and all costs, fees, and legal expenses incurred by Ford Credit as a result of the Dealerships' defaults, whether

incurred in the Dealerships' bankruptcies or in pursuing the Dealerships' guarantors. *See* Dkt. 21 at ¶¶ 25, 48, 66, 110, 129, 146; Dkt. 23 at ¶¶ 25, 48, 66, 110, 129, 146.

Similarly, Ford Credit also contends that Reagor's statutory challenge to costs fails because 28 U.S.C. § 1920 is inapplicable. Section 1920 does not apply when, as here, a contract expressly authorizes costs and fees. *See* Dkt. 48. Further, an order directing the Parties to bear their own fees and costs would ignore the unambiguous terms set forth in Reagor's guaranties. *See* Dkt. 48.

Finally, Ford Credit's attorneys' fees are reasonable. Ford Credit's total attorneys' fees and costs (\$1,417,408.16, as of July 10, 2019) account for less than 3 percent of the total judgment that Ford Credit seeks against Reagor – and far less than the amount that Ford Credit would otherwise be entitled to recover under Reagor's guaranties (specified as "15%" of the total indebtedness, "if permitted by law"). *See* Dkt. 30, Ex. C at A21, D at A25, F at A35, H at A47, P at A100-104, Q at A106-110, S at A118, U at A131, W at A141, X at A145.

B. Reagor's contentions

Reagor contends that it is Ford Credit's burden to establish by a preponderance of the evidence the following:

(1) The amount owed by each Dealership to Ford Credit (Because this litigation involves six separate contracts, Reagor contends that Ford Credit is required to establish the amount owed by each Dealership).

(2) That the disposition of each Dealership's collateral was conducted in a commercially reasonable manner. This is a statutory duty that cannot be waived. Tex. Bus. & Com. Code §§ 9.602(7); 9.610(b); and 9.627.

- (3) The amount obtained by Ford Credit from the disposition of each Dealership's collateral.
- (4) The amount of "other monies" that Ford Credit has received in this litigation.
- (5) That the expenses incurred by Ford Credit were reasonable and necessary.
- (6) That the attorneys' fees incurred by Ford Credit were reasonable and necessary.
- (7) That Ford Credit has segregated the attorneys' fees it incurred pursuing other defendants in this lawsuit.

In addition to contending that the bulk of Ford Credit's attorneys' fees are not reasonable and necessary, Reagor also contends that Ford Credit, as an undersecured creditor, is not entitled to recover any attorneys' fees incurred in the Dealerships' bankruptcy (as a matter of law), and that Ford Credit is not entitled to recover any post-bankruptcy petition interest (as a matter of law). Because those attorneys' fees and post-petition interest are not recoverable from the Dealerships, they do not constitute Dealership obligations that can be recovered from Reagor under the guaranty agreements. Reagor also contends that 28 U.S.C. § 1920 prohibits Ford Credit from recovering its costs in this lawsuit.

II. STATEMENT OF STIPULATED FACTS

1. The terms of Reagor's personal guaranties to Ford Credit are undisputed.
2. The terms of the Dealerships' wholesale financing and capital loan agreements with Ford Credit are undisputed.

3. The Court has found that Reagor's guaranties "unambiguously require [Reagor] to repay all of the [Dealerships'] obligations to [Ford Credit], including interests, costs, expenses, and attorneys' fees."

4. Ford Credit has incurred expenses and costs in the liquidation and sale of the Dealerships' vehicle inventory, furniture, fixtures, and equipment.

5. Ford Credit has recovered proceeds from the liquidation and sale of the Dealerships' vehicle inventory, proceeds from the sale of furniture, fixtures, and equipment, and other monies received through litigation.

6. The total indebtedness owed by the Dealerships and Reagor to Ford Credit has been reduced by Ford Credit's recovery of proceeds from the liquidation and sale of the Dealerships' vehicle inventory, proceeds from the sale of furniture, fixtures, and equipment, and other monies received through litigation.

III. LIST OF CONTESTED ISSUES OF FACT

1. The Parties agree that the following issue is a contested issue of fact:

What is the total amount of damages owed by Reagor to Ford Credit?

2. In addition, Reagor contends that the following is also a contested issue of fact:

Did Ford Credit dispose of the Dealerships' collateral in a commercially reasonable manner?

Ford Credit denies that this is a contested issue of fact and contends that Mr. Reagor has waived this issue by not previously raising it or pleading it as an affirmative defense.

IV. LIST OF CONTESTED ISSUES OF LAW

1. The Parties agree that the following issues are contested issues of law:

a. Are Ford Credit's attorneys' fees and costs reasonable?

- b. Whether Ford Credit can recover attorneys' fees that it has incurred in the Dealerships' bankruptcy from Reagor?
 - c. Whether Ford Credit can recover post-bankruptcy petition interest from Reagor?
2. In addition, Reagor contends that the following is also a contested issue of law:
- a. Whether Ford Credit must establish that its attorneys' fees and costs were necessary?

V. ESTIMATED LENGTH OF TRIAL

The Parties estimate that the trial can be completed in two days.

Dated September 13, 2019

Respectfully submitted,

/s/ Michael S. Goldberg

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SO ORDERED, this ____ day of _____, 2019.

HON. SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE