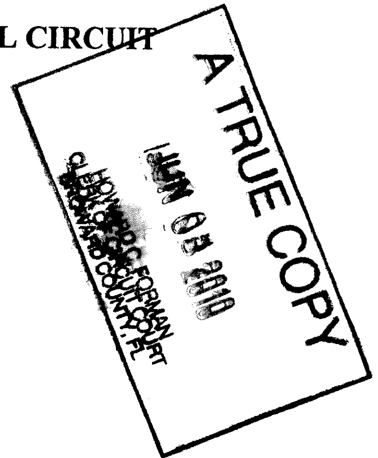
IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY FLORIDA



BRIAN STYLES, an individual

Plaintiff,

vs.

Case No.: 09-043833 (02)

MOVIE STAR MUSCLECARS, INC., a foreign Corporation, GARY PRONMAN Individually, and DAN PRONMAN, Individually.

Defendants.
_____________________________/

DEFENDANTS' AMENDED MOTION TO DISMISS, MOTION TO STRIKE COUNTS II AND III OF AMENDED COMPLAINT AS FALSE AND SCANDALOUS PLEADINGS, MOTION FOR ATTORNEYS' FEES AND SANCTIONS PURSUANT TO FLORIDA STATUTES §57.105 and §772.11 AND INCORPORATED MEMORANDUM OF LAW

Defendants GARY PRONMAN, DAN PRONMAN, and MOVIE STAR MUSCLE CARS, INC. (hereinafter collectively referred to as "Defendants") by and through their undersigned attorney, hereby file this their Amended Motion to Dismiss, Motion to Strike Counts II and III of Amended Complaint as False and/or Scandalous Pleadings, Motion for Attorneys' Fees Pursuant to Florida Statutes §57.105 and §772.11, and Incorporated Memorandum of Law and in support thereof state as follows:

SUMMARY OF THE ARGUMENT

This controversy predominantly centers upon an extraordinarily simple oral contract for the sale of a single vintage 1969 1/2 Dodge Super Bee A12 automobile (hereinafter referred to as the "Vehicle"), whereby Defendant GARY PRONMAN promised to sell said Vehicle to Plaintiff for $84,000.00. After Plaintiff paid Defendant MSMC said $84,000.00, Defendant GARY PRONMAN, tendered said Vehicle to Plaintiff as promised. Other than the purchase price of the Vehicle, the Plaintiff did not bargain for any other material terms. Accordingly, as a matter of law, any terms not

provided for in the parties' oral contract were provided and governed by Florida's Uniform Commercial Code (hereinafter referred to as the "UCC.")

Because the location of delivery of the Vehicle was not bargained for, per the UCC the place of delivery of the Vehicle was in Canada, the situs of the Vehicle at the time the parties entered into their oral contract. Notwithstanding the foregoing, immediately after Plaintiff purchased the Vehicle, Plaintiff expressed misgivings concerning the fact that the Vehicle was located and titled in Canada. Accordingly, Defendant GARY PRONMAN, without receiving additional consideration from Plaintiff, gratuitously offered to pay the brokerage fee related to titling the Vehicle in the United States pursuant to his right to cure non-conforming tenders as provided for by the UCC. Thereafter, Plaintiff stated "[i]t was the lack of disclosure about the car and deal. That said, you covering the broker fees go a long way in my book toward making it better."

With respect to the "deal," Plaintiff likewise subsequently alleged that Defendants did not have authority to convey title to Plaintiff at the time of the parties' Agreement. Notwithstanding the foregoing and in light of Defendants' right to cure non-conforming tenders under the UCC, it is not genuinely disputed that the Defendants did, in fact, purchase the Vehicle from non-party Legendary Motorcars; that Defendants conveyed whatever interest Defendants had in the Vehicle, present, future, or otherwise to Plaintiff; and that no known person or entity other than Plaintiff is disputing that Plaintiff owns the Vehicle secondary to the parties' contract.

When Plaintiff finally attempted to take possession of the Vehicle after a commercially unreasonable amount of time had passed after Plaintiff's purchase of same, to wit: five (5) weeks, Defendants had incurred incidental damages related to the reasonable cost of transport and storage of the Vehicle. Accordingly, Defendants invoiced Plaintiff for said costs, and when Plaintiff failed and refused to satisfy said invoice Defendants availed themselves of the their rightful statutory remedies for incidental damages under the UCC by withholding delivery of the Vehicle. Thereafter, Plaintiff brought this action. Because Plaintiff's Amended Complaint is wholly frivolous on its face, the

Amended Complaint should be dismissed with prejudice and the Defendants should receive an award of attorneys' fees and costs against the Plaintiff pursuant to Florida Statutes §57.105 and §772.11.

STANDARD FOR DISMISSAL AND SANCTIONS AND/OR ATTORNEYS' FEES PURSUANT TO FLORIDA STATUTES §57.105 AND §772.11

Standard for Motions to Dismiss

A motion to dismiss under rule 1.140(b) tests whether the plaintiff has stated a cause of action. Meadows Cmty. Ass'n v. Russell-Tutty, 928 So. 2d 1276, 1280 (Fla. 3d DCA 2006). In determining whether the Plaintiff has stated a cause of action, Plaintiff's allegations are reviewed in light of the applicable substantive law. Peeler v. Indep. Life & Acc. Ins. Co., 206 So. 2d 34, 36 (Fla. 3d DCA 1967) (citations omitted.) Moreover, in deciding upon a motion to dismiss, the trial court is bound by the four corners of the complaint. Vienneau v. Metro. Life Ins. Co., 548 So. 2d 856, 858 (Fla. 4th DCA 1989). Any exhibit attached to a Complaint, however, shall be considered a part thereof for all purposes. Rule 1.130(b); see also Ginsberg v. Lennar Fla. Holdings, Inc., 645 So. 2d 490, 494 (Fla. 3d DCA 1994) ("When a party attaches exhibits to the complaint those exhibits become part of the pleading and the court will review those exhibits accordingly.") As such, "[w]here complaint allegations are contradicted by exhibits attached to the complaint, the plain meaning of the exhibits control and may be the basis for a motion to dismiss.")

§57.105 Sanctions

Florida Statute §57.105 provides as follows:

> 57.105 Attorneys' fee; sanctions for raising unsupported claims or defenses; damages for delay of litigation—
>
> 1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party or the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that claim or defense when initially presented to the court or at any time before trial:
>
> (a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

(A copy of Florida Statute §57.105 is attached hereto as Exhibit "A.")

§772.11 Reverse Attorney Fees

Moreover, reverse attorneys' fees are available pursuant to Florida Statue §772.11 (the "Civil Theft Statute") upon a showing by a prevailing defendant that a civil theft claim "was without **substantial** fact or legal support." [Emphasis added.] Bronson v. Bronson, 685 So.2d. 994 (Fla. 5th DCA 1997); Standafer v. Schaller, 726 So.2d. 352 (Fla. 2nd DCA 1999). In Skubal v. Cooly, 650 So.2d. 169 (Fla. 4th DCA 1995), the Court underscored that the standard for determining entitlement to attorney's fees under Florida Statute §772.11 is far less stringent than the bad faith standard of §57.105. Id. at 170. Specifically, the Skubal court stated "**while section 57.105 requires a finding of a complete absence of a justiciable issue of either law or fact before a losing party would be obligated to pay the opposing party's attorney's fees, fee awards under chapter 772 merely necessitate a finding that the claim was without substantial fact or legal support**." Id. Thus, the Skulbal court admonishes that "[i]t is unnecessary for the court to find a complete absence of legal and factual support for a civil theft claim before making an award of attorney's fees under section 772.11." Id.

Where a claimant fails to allege that a defendant had a "felonious intent to steal" a civil theft cause of action fails. See Lewis v. Heartsong, 559 So.2d. 453 (Fla. 1st DCA 1990). In Isenhour v. State, 952 So.2d. 1217 (Fla. 4th DCA 2007) the Court articulated the extremely narrow definition for what constitutes "felonious intent":

> The omnibus theft statute found in section 812.014 . . . requires that the defendant have the intent to deprive, either temporarily or permanently, "the other person of a right to the property or a benefit from the property" or "[a]ppropriate the property to his or her own use or to the use of any person not entitled to the use of the property." . . . Felonious intent is an essential element of the crime of grand theft. In order to sustain a conviction for grand theft, the **State must show that the defendant had the**

specific intent to commit the theft at the time of or prior to the commission of the act of taking.

[Emphasis added.]

Finally, with respect to sanctions pursuant to §772.11, the Court should note that a plaintiff's success related to any other additional claims does not preclude statutory rights to attorney fees under the Civil Theft Statute. See Id. at 170. Notwithstanding the foregoing, even if the Plaintiff voluntarily dismisses the civil theft claim, sanctions and the imposition of attorneys' fees may still nevertheless be justified under Florida Statute §57.105. See Capital Partners Inv. v. American Inv. Group, 500 So.2d. 249 (Fla. 4th DCA 1986). (A copy of Florida Statute §772.11 is attached hereto as Exhibit "B.")

ARGUMENT

I. PLAINTIFF'S AMENDED COMPLAINT SHOULD BE DISMISSED AS PLAINTIFF HAS ATTEMPTED TO COMMIT FRAUD UPON THE COURT WITH AN EXHIBIT THAT MISREPRESENTS MATERIAL EVIDENCE

Pursuant to Florida law, an action shall be dismissed with prejudice wherein it is illustrated that the plaintiff has committed fraud on the court, and the fraud permeates the heart of the proceedings. See Kornblum v. Schneider, 609 So.2d 138, 139 (Fla. 4th DCA 1992); Long v. Swofford.805 So.2d 882 (Fla. 3d DCA 2001). As such, Florida courts have the right and obligation to deter fraudulent claims from proceeding in court, by dismissing an entire action with prejudice, when a plaintiff lies about matters which go to the heart of the claim, or where fabrications undermine the integrity of the entire action. Savino v. Florida Drive In Theater Management, Inc.; Tri-Star Invs. Inc. v. Miele, 407 So.2d 292 (Fla. 2d DCA 1981).

In Tramel v. Bass, 672 So.2d 78 (Fla. 1st DCA 1996), the First District Court of Appeal affirmed the trial court's entering of a default judgment against the defendant where the trial court found that the defendant, by omitting a prejudicial six-second portion of a video recording, committed fraud on the court. In this case, Plaintiff has attempted to commit fraud on the Court by

submitting as Exhibit "F" to the Amended Complaint an April 28, 2009 e-mail string between Plaintiff and Defendant GARY PRONMAN that is missing material language in the redacted right-side margin of the email string as presented in Plaintiff's Exhibit "F" and likewise is missing entire communications between the parties precedent and subsequent to the portion of the e-mail string as presented. (A copy of Exhibit "F" of Plaintiff's Amended Complaint is attached hereto as part of Composite Exhibit "C.")

When the pertinent omitted language is reinserted into the e-mail string attached to Plaintiff's Exhibit "F", and stricken through to illustrate which portions of the e-mail string the Plaintiff omitted, it becomes clear that said omissions where material, intentional, and constitute a fraud on the Court as the omitted language directly contradicts and discredits Plaintiff's version of events and destroys Plaintiff's justification for bringing this action, to wit: the omitted communications show that the Defendants seasonably tendered the Vehicle to the Plaintiff; that Plaintiff delayed taking possession of the Vehicle while apparently contriving to circumvent United States customs in order to save the $295.00 broker fee; and that Defendant offered, to the Plaintiff's satisfaction, to pay said broker fee associated with the Vehicle being titled in Canada. The unaltered and unredacted e-mail string with redacted portions stricken through substantially reads as follows:

A. Plaintiff willfully obfuscated the fact that Defendant seasonably tendered the Vehicle to Plaintiff and offered to arrange for same to be delivered to Michigan and/or Buffalo, NY

Plaintiff: 4/27/09 3:46p.m	~~I leave first thing wed am. Where is the car at? Will need an address for pickup later in the month.~~
Def. G. Pronman: 4/27/09 6:46 p.m.	~~The car is in Canada I can arrange the car to be dropped off at Reliable in Michigan~~
Plaintiff: 4/27/09 7:02 p.m.	~~How about buffalo? Is it closer to Michigan? Is it usa titled?~~

Def. G. Pronman:
4/27/09
7:09 p.m.

~~I think it can be arranged in buffalo. Has to brokered in the U.S. it has a Canadian title Delivery to Buffalo including Brokerage is approx $500.00 Give me an address with Zip code and it can be delivered to you~~

B. Plaintiff willfully obfuscated the fact that Plaintiff failed and refused to provide the Defendants with an address and zip code to deliver the Vehicle and instead apparently conspired to circumvent U.S. Customs

Plaintiff:
4/27/09
7:13 p.m.

~~I could flip the title first. Then it would be a usa title. Also, before I get gary harte to ship the cuda, maybe I could get a double trailer to bring them both across at the same time. Thoughts. . .~~

Def. G. Pronman:
4/27/09
7:16 p.m.

~~I don't understand what you are trying to do? Explain your thinking. Are you trying to save the $295 for brokerage~~

Def. G. Pronman:
4/27/09
7:28 p.m.

~~Are you sure you can do this, because for us we always broker the cars back and forth as to avoid any unforeseen issues with customs~~

Plaintiff
4/27/09
7:38 p.m.

~~Yeah, why not?~~

Plaintiff
4/27/09
7:39 p.m.

~~Where is the car? Near Toronto or farther away?~~

Def. G. Pronman:
4/27/09
7:48 p.m.

~~Twenty minutes from Toronto~~

Plaintiff
4/27/09
8:25 p.m.

~~Ok, let me make a call and see if there are any advantages to my approach~~

Def. G. Pronman:
4/27/09
9:57 p.m.

~~Let me know what you decide~~

Plaintiff
4/27/09
10:12 p.m.

Car is safe with your brother in the mean time, right?

Def. G. Pronman:
4/28/09
7:32 a.m.

Of Course you can sleep well at night, Any decision on the Blk T/A

C. Plaintiff willfully obfuscated the fact that Plaintiff complained about the $295.00 broker fee related to changing the Vehicle's title from Canada to the United States and Defendant GARY PRONMAN offered to pay same to Plaintiff's satisfaction

Plaintiff
4/28/09
2:15 p.m.

Regarding the Orange Bee, let me tell you two things that upset me about this de~~al:~~

1) Our arrangement was for you to be my buying agent and find me cars for a fee. ~~Perhaps there is what's~~ you've done here, but I'm confused by paying your company directly rather than ~~the seller directly. Why is your company~~ involved?

2) You did not inform me the car was in Canada with non-US title. This would have ~~influenced, perhaps~~ negatively, buy (sic) buying decision and price negotiated.

Ultimately my concerns are about disclosure. You did not fully disclose the details ~~of this transaction with me.~~ Communication is the key to a successful transaction, and in my opinion, we failed on this one.

Obviously if you get the car into the US at your expense, my concern over #2 is a ~~mute point~~.

Def. G. Pronman
4/28/09
5:47 p.m.

I sell cars from Canada to many of my clients and it is never been an issue. If the car ~~is brokered in the correct way there~~ is no difference from a Canadian title to a U.S. title. We transfer them all the time ~~without any problem, in fact I have a guy~~ in Hollywood FL, for a few bucks more He will even come to your house and do it for ~~you. If it is the $295.00 Brokerage fee~~ that upsets you, To make you happy I will gladly cover it. The transport from Canada is ~~no more expensive than most U.S.~~ destinations and much less than California, Texas, etc.

Plaintiff
4/29/09
7:54 a.m.

~~It was the lack of disclosure about the car and deal. That said, you covering the brokerage dos go a long way in my book toward making this better.~~

(The complete and unaltered copy of the correspondence between the parties originally attached in altered form to Plaintiff's Amended Complaint is attached hereto as part of Composite Exhibit "C.")

As the Plaintiff has willfully omitted and/or altered material evidence from Plaintiff's Exhibit "F" in an apparent attempt to mislead and subvert the very judicial system from which he is seeking redress, the Court should dismiss Plaintiff's Amended Complaint with prejudice.

II. COUNTS I (BREACH OF CONTRACT) AND IV (UNJUST ENRICHMENT) OF THE AMENDED COMPLAINT SHOULD BE DISMISSED

A. Florida's Uniform Commercial Code makes clear that the Defendants actions as alleged in the Plaintiff's Amended Complaint did not constitute a breach of contract

In this fundamentally simple breach of contract case, the Plaintiff's Amended Complaint essentially alleges that Defendants promised to provide Plaintiff with a car of a particular model and make, i.e. a 1969 ½ Dodge Super Bee, in consideration for $84,000.00 and that after Plaintiff tendered said $84,000.00 Defendants failed to deliver title and possession of the vehicle. (Amended Complaint, pg. 6. ¶¶¶ 34 through 36.) As the parties did not reduce their Agreement to writing with precise terms, the Plaintiff did not attach a copy of the parties' Agreement to the Amended Complaint, but instead stated in paragraph 13 of the Amended Complaint "on or about April 24, 2009, Plaintiff accepted Defendant GARY PRONMAN'S offer to sell a 1969 ½ (sic) A12 Plymouth Super Bee on April 22, 2009 (the 'Agreement')." (Amended Complaint, pg. 3. ¶ 13.)

As the aforementioned "Agreement" solely concerned the sale of a Vehicle, e.g. said 1969 ½ A12 Plymouth Super Bee for $84,000.00, the subject controversy concerns a contract for the sale of goods. Consequently, as a matter of law, to the extent that the parties "Agreement" has undefined or missing terms, the rights and obligations of the parties under the "Agreement" are governed by Florida Statutes Chapter 672, Article II Uniform Commercial Code – Sales (hereinafter referred to as the "UCC").

That said, other than alleging that the Plaintiff bargained for a 1969 1/2 Dodge Super Bee for $84,000.00, the Amended Complaint and its exhibits fail to alleged that the Plaintiff bargained for any other terms including, but not limited to, delivery location, assumption of delivery and titling costs, identity of the seller, time and manner the Defendants were to take possession or ownership of

the Vehicle so as to be able to transfer title to same, etc. As such, pursuant to §672.308 of the UCC, because the place of delivery was not bargained for, the place for delivery was the location of the Vehicle at the time the parties entered into their Agreement, to wit: Canada. Moreover, pursuant to §672.503 of the UCC, the Plaintiff had the duty to "furnish facilities reasonably suited to the receipt of the goods." Accordingly, the Plaintiff had a duty to take delivery of the Vehicle within a commercial reasonable period of time at the Vehicle's then present location in Canada. (A copy of §672.308 and §672.503 of the UCC respectively are attached hereto as Composite Exhibit "D.")

Plaintiff's allegations and Exhibit "F" of Plaintiff's Amended Complaint clearly indicate Plaintiff purchased the Vehicle on April 27, 2009, and on even date expressed concern whether the Vehicle was "safe" in Defendant's possession. Notwithstanding the foregoing, according to Plaintiff's Amended Complaint, it was not until five (5) weeks later between the period of June 1, 2009 and June 22, 2009, that Plaintiff that attempted to obtain possession of the Vehicle. (Amended Complaint, pg. 4. ¶ 22). After Plaintiff failed to take delivery of the subject Vehicle after approximately five (5) weeks following purchase of same and expressing concern regarding whether the Vehicle was "safe," per Plaintiff's Amended Complaint and Exhibit "H" attached thereto, Defendants invoiced Plaintiff $925.00, representing $580.00 for the pickup and transport of the subject Vehicle and $345.00 for the warehousing and handling of said Vehicle necessary to keep the Vehicle "safe" between April 27, 2009 and June 1, 2009 when, per Plaintiff's allegations, Plaintiff attempted to pickup the vehicle. (Amended Complaint, Exhibit "H.")

Nevertheless, Plaintiff's Amended Complaint fails to allege that Plaintiff paid, or in any way satisfied said invoice. That said, §672.710 of the UCC entitles the Defendants to incidental damages that include, *inter alia*, "expenses or commissions incurred . . . in the transportation, care and custody of goods after the buyer's breach" and §672.703(1) which authorizes the Defendants to withhold delivery of goods where a buyer fails to make payment on or before delivery or repudiates with respect to part of the contract. As such, pursuant to §672.311(3) of the UCC, such refusal by the

Plaintiff to cooperate may be treated as a breach and pursuant to Florida Statute §671.106(1), **such remedies for breach must be liberally administered**. (Respective copies of the relevant UCC provisions are attached hereto as part of Composite Exhibit "D.")

Notwithstanding the foregoing, despite the parties' barebones oral "Agreement," when Plaintiff balked at having to pay a brokerage fee to transfer tile of the Vehicle from a Canadian title to a United States title the non-redacted April 27, 2009 e-mail referenced in Plaintiff's Amended Complaint and attached in its unaltered form hereto as part of Composite Exhibit " C" clearly shows that Defendant GARY PRONMAN, for the sake of goodwill and in keeping with the Defendants' right to cure nonconforming delivery under pursuant to §672.508 of the UCC, offered to pay the brokerage fee associated with transporting the subject Vehicle from Canada to the Untied States. (Amended Complaint, Exhibit "F.") Thus, the totality of Plaintiff's Amended Complaint and exhibits attached thereto fail to allege ultimate facts sufficient to sustain claims for breach of contract and unjust enrichment and, as such, Counts I and IV of Plaintiff's Amended Complaint should be dismissed.

B. All counts should be dismissed against Defendants DAN PRONMAN and MSMC as Plaintiff's Amended Complaint does not allege that said Defendants were parties to the subject Agreement

Where a complaint alleges, among other things, breach of contract and fraud, but fails to establish that particular named defendants are a party to the subject contract, all claims predicated on the existence of a contract between said defendant and Plaintiff must be viewed as properly dismissed. See Blue Supply Corp. v. Novos Electro Mechanical, Inc., 990 So.2d. 1157 (Fla. 3rd DCA 2008). (the Complaint alleged fraud against an electrician company and its principle individually claiming that said principle committed fraud by knowingly making false representations, but because the Complaint failed to establish that the principle individually entered into the contract, or otherwise was responsible for his own tortuous conduct the Complaint against the principle was dismissed.)

Here, Plaintiff merely alleges "on or about April 22, 2009, [Gary] Pronman solicited [Plaintiff] for the purpose of brokering the sale of a 1969½ (sic) A12 Superbee (the "Vehicle") to [Plaintiff] and "[o]n or about April 24, 2009, [Plaintiff] accepted [Gary] Pronman's offer to sell the Vehicle on the terms articulated by [Gary] Pronman on April 22, 2009 (the 'Agreement.')" (Amended Complaint, pg. 3. ¶¶ 10 and 13.) Notwithstanding the foregoing, nowhere in the Amended Complaint does Plaintiff allege that Defendants DAN PRONMAN, or MSMC were a party to said "Agreement," or otherwise were responsible for their own tortuous conduct so as make said Defendants personally liable to Plaintiff. Accordingly, because all counts of the Amended Complaint are predicated on the existence of a contract, all counts against Defendants DAN PRONMAN and MSMC must be dismissed. Id.

III. COUNT II OF THE AMENDED COMPLAINT SHOULD BE DISMISSED AGAINST ALL DEFENDANTS WITH PREJUDICE AS PLAINTIFF IS UNABLE TO PLEAD SUBSTANTIAL SUPPORTING FACTS OR LAW SUFFICIENT TO SUPPORT A CIVIL THEFT CLAIM

A. Plaintiff failed to properly plead the requisite statutory elements of civil theft

Notwithstanding the tenuous substance of Plaintiff's claims, the manner in which Plaintiff has pled Count II (Civil Theft) is wholly deficient. In order to establish an action for civil theft, a litigant must prove the statutory elements of theft, as well as criminal intent. See Gersh v. Cofman, 769 So.2d. 407, 409 (Fla. 4th DCA 2000). To substantiate the intent requirement under Count II for Civil Theft, however, Plaintiff's Amended Complaint merely states "Defendant's (sic) appropriation of [Plaintiff's] property constitutes theft as defined in Section 812.014(1)(b), Florida Statues." As §812.014(1)(b) describes multiple acts and makes liberal use of disjunctive language such as "or" in describing said acts, Plaintiff's mere invocation of the statute is manifestly insufficient for pleading purposes such that a more particular statement is required by due process.

B. Plaintiff failed to allege that the Defendants had a "felonious intent to steal."

Where a claimant fails to allege that a defendant had a "felonious intent to steal" a civil theft cause of action fails. See Lewis v. Heartsong, 559 So.2d. 453 (Fla. 1st DCA 1990)(court ruled that the complaint was deficient where a store owner failed to allege the defendants, who removed property from the store without consent, and then refused to return same or tender payment, acted with a "felonious intent.") Here, as the facts do not even support Plaintiff's claim for breech of an oral contract, much less the request "felonious intent to steal" Count II of Plaintiff's Amended Complaint alleging civil theft should be dismissed with prejudice.

C. Plaintiff failed to allege that the Defendants had an "intricate sophisticated scheme of deceit and theft."

Where, as here, property at issue is also the subject of a contract between the parties, the litigant who wishes to make a civil theft claim is additionally required to plead and prove that the defendant(s) engaged in "an intricate sophisticated scheme of deceit and theft." See Gersh v. Cofman, 769 So.2d. 407, 409 (Fla. 4th DCA 2000), citing Trend Setter Villas of Deer Creek v. Villas on Green, 569 So.2d. 766, 767 (Fla. 4th DCA 1990). Here, because Plaintiff has not plead an "intricate sophisticated scheme of deceit and theft," nor do the obvious facts of this case support same, Count II of Plaintiff's Amended Complaint should be dismissed with prejudice.

D. Plaintiff failed to set forth substantial facts or legal support to substantiate a claim for civil theft

The Plaintiff's pleadings and evidence in the record are bereft of any **substantial** facts or legal support to form even a *prima facie* case that the Defendants acted with the "felonious intent to steal" necessary to properly allege a claim for civil theft. It bears repeating that in making a claim for civil theft against the Defendants, Plaintiff must demonstrate substantial factual or legal support to allege that Defendants had **the specific intent to commit the theft at the time of or prior to the commission of the act of taking**. See Isenhour, 952 So.2d. at 1217. Keeping in mind that Plaintiff's

Amended Complaint and Exhibits fails to demonstrate even a scintilla, much less substantial factual support that the Defendants (1) committed theft; (2) had the specific intent to commit theft; and (3) had such specific intent prior to at the time Plaintiff wired the foregoing $84,000.00, the Plaintiff's civil theft claim is reduced to patent absurdity worthy of sanctions when one takes into account the parties' e-mail correspondence on April 27, 2009 through April 28, 2009 that evidences that the Defendants tendered the subject Vehicle immediately **after** Plaintiff tendered the subject $84,000.00. In the instant case there is **no substantial evidence or legal support** showing that Defendants intended to withhold delivery of the subject Vehicle, or a refund of the purchase price, **at the time or prior to the time Plaintiff remitted payment** for the subject Vehicle and/or at the time the parties entered into the subject Agreement.

As the plain and obvious facts of this case as pled by the Plaintiff, or otherwise do not support the rigorous requirements of a civil theft claim and Count II of Plaintiff's Amended Complaint fails to properly pled a claim for civil theft as prescribed by law, Count II of Plaintiff's Amended Complaint should be dismissed with prejudice and the Court should enter an Order for attorneys' fees against the Plaintiff for the benefit of the Defendants pursuant to Florida Statute §772.11 as the Plaintiff's civil theft claim is not supported by "**substantial**" law or fact. See Id.

IV. COUNT III OF PLAINTIFF'S AMENDED COMPLAINT SHOULD BE DISMISSED AS TO ALL DEFENDANTS AS PLAINTIFF FAILED TO PLEAD SUFFICIENT FACTS TO SUPPORT A FRAUD CLAIM

A. Plaintiff failed to allege Damages that are separate and distinct from damages resulting from the alleged breach of contract

As a matter of law, no claim for fraud may lie unless "there is damage due to fraud that is separate from damages resulting from any subsequent contractual breach." See Argonaut Dev. Group, Inc., SWH Funding Corp., 150 F. Supp. 2d 1357, 1363 (S.D. Fla. 2001). As such, when the fraud relates to the performance of the contract, the economic loss doctrine will limit the parties to their contractual remedies. See Hotels of Key Largo, Inc. v. RHI Hotels, Inc., 694 So. 2d 74, 78 (Fla.

3d DCA 1997) (observing "where the alleged fraudulent misrepresentation is inseparable from the essence of the parties' agreement, the economic loss rule applies and the parties are limited to pursuing their rights in contract").

Here, Plaintiff's Amended Complaint is wholly lacking any allegations that set Plaintiff's alleged damages resulting from the Defendant's alleged fraud apart from damages the Plaintiff is seeking secondary to Plaintiff's breach of contract claim set forth in Count I of the Amended Complaint. Accordingly, because Plaintiff has not alleged damages related to alleged fraud that are distinct from damages related to breach of contract, such omission is fatal to Plaintiff's fraud claim and as such Count III of Plaintiff's Amended Complaint should be dismissed.

B. Count III of Plaintiff's Amended Complaint fails to properly allege the essential elements of fraud

Florida Rule of Civil Procedure 1.120(b) requires that, when pleading special matters, such as fraud or mistake, the circumstances constituting the fraud or mistake shall be stated with such particularity as the circumstances may permit. As such, "fraud must not be fling into a case willy-nilly by stating legal conclusions." Hembd v. Dauria, 859 So. 2d. 1238, 1240 (Fla. 4th DCA 2003). Rather, the factual basis for a claim of fraud must be pled with particularity and must specifically identify misrepresentations or omissions of fact, as well as time, place or manner in which they were made. See Ceaders Healthcare Group, Ltd. Et al. vs. Mehta, 16 So.3d. 914, 917 (Fla. 3rd DCA 2009); Robertson v. PHF Life Ins. Co. 702 So. 2d. 555, 556.) Thus, failure to allege a specific element of fraud in a complaint is fatal when challenged by a motion to dismiss. See, *e.g.*, Strack v. Fred Rawn Const., Inc., 908 So. 2d 563, 565 (Fla. 4th DCA 2005).

In light of the foregoing, the essential elements of a fraud claim are (1) Defendant made a false statement regarding a material fact; (2) Defendant knew or should have known the representation was false; (3) Defendant intended that the representation induce plaintiff to act on it;

and (4) Plaintiff suffered damages in justifiable reliance on the representation. See Johnson v. Davis, 480 So. 2d 625, 627 (Fla. 1985).

1. Plaintiff has failed to allege "material" misstatements of fact

Here, not only has Plaintiff failed to explicitly allege that the Defendants' alleged misstatements were "material," the Plaintiff's Amended Complaint is wholly bereft of facts to support an inference that the Defendants made a material misstatement of fact. "Material fact" has been defined as "something which a buyer or seller of ordinary intelligence and prudence would think to be of importance in determining whether to buy or sell." See Vance v. Indian Hamock Hunt & Riding Club, LTD, 403 So.2d. 1367, 1371 (Fla. 4th DCA 1981). Thus, Vance articulates the proposition that determining whether a fact is material or not material relies upon the objective perception of "a buyer or seller of ordinary intelligence and prudence" rather than the Plaintiff's subjective reasoning.

Plaintiff, in a feeble attempt to substantiate Plaintiff's fraud claim, states "after [Plaintiff] had tendered the Purchase Funds, [Plaintiff] learned that the Vehicle was located and titled in Canada. Resultantly, delivery of title and possession of the vehicle to [Plaintiff] pursuant to the Agreement would be appreciably more expensive and time consuming." [Emphasis added.] (Amended Complaint, pg. 3-4. ¶ 17.) However, the non-defective version of the April 27, 2009 e-mail attached to Plaintiff's Amended Complaint as Exhibit "F" thereto demonstrates that the additional cost associated with the Vehicle being titled and located in Canada as opposed to someplace in the continental Untied States was $295.00 representing approximately .0035% of the principle $84,000.00 purchase price of the Vehicle. Moreover, the non-defective version of said April 27, 2009 e-mail likewise evidences that Defendant GARY PRONMAN, consistent with his right to cure under non-conforming performance and/or delivery pursuant to §672.508 of the UCC, offered to pay for said additional costs.

Moreover, in Paragraph 20 of the Plaintiff's Amended Complaint, Plaintiff alleges that "MSMC was not the record title owner of the Vehicle at the time of the Transaction, and had thus misrepresented its authority to enter into the transaction." (Amended Complaint, pg. 4. ¶ 20.) There is nothing in Plaintiff's Amended Complaint, however, to substantiate that Defendants did not ultimately have the authority to contract with Plaintiff for the sale of the subject Vehicle and could not cure any non-conforming delivery pursuant to §672.508 of the UCC by purchasing the Vehicle and conveying same to Plaintiff. That said, in Paragraph 21 of the Amended Complaint, Plaintiff substantially concedes that Defendants in fact "purchased the Vehicle from Legendary Motorcars." (A copy of §672.508 of the UCC is attached hereto as part of Composite Exhibit "D.") (Amended Complaint, pg. 4, ¶ 21.)

That said, there are no allegations in Plaintiff's Amended Complaint to substantiate that Plaintiff bargained for restrictions regarding whom may sell Plaintiff the Vehicle, the manner in which the seller was to convey title to the vehicle, or the manner and time the seller was to tender vehicle, alleged misstatements regarding such terms cannot be construed as "material misstatements" sufficient to sustain an allegation of fraud. In fact, §672.308 of the UCC titled "Absence of specified place of delivery" contemplates such a common scenario and indicates under the facts presented that the place for delivery was in Canada where the Vehicle was situated at the time of the parties' transaction.

2. Plaintiff has failed allege with particularity Plaintiff's damages; how Plaintiff was damaged; or the time, place, and manner the Defendants' allegedly made fraudulent statements upon which the Plaintiff reasonably relied

In Plaintiff's Amended Complaint Plaintiff fails to state with particularity the damages the Defendants' alleged fraud has caused Plaintiff, except that Plaintiff "has been forced to incur attorney's fees and cost to litigate the present action." (Amended Complaint, pg. 8. ¶ 49.) As set forth above, however, although Plaintiff claims that Defendants' alleged fraud caused Plaintiff to wrongfully believe that the Defendant MSMC was the title holder to the Vehicle at the time Plaintiff

tendered the purchase price of the Vehicle to Defendant MSMC, Plaintiff likewise concedes that Defendant MSMC ultimately purchased the Vehicle from Legendary Motorcars. As such, it is clear that Plaintiff did not suffer any damages from the title status of the Vehicle at the time Plaintiff purchased same as Plaintiff does not allege that Defendant MSMC, or non-party Legendary Motorcars has ever contested that Plaintiff owns the Vehicle.

Moreover, Plaintiff likewise vaguely alleges that because the Vehicle was in Canada at the time of the parties' transaction, the Defendants' alleged misrepresentations regarding the location of the vehicle made "delivery of title and possession of the Vehicle . . . appreciably more expensive and time consuming." Plaintiff fails to allege with particularity, however, how the alleged fraud would make such delivery "appreciably" more expensive and time consuming, or the particular quantity of lost time or cost lost incurred by the Plaintiff as a result of the alleged fraud. That said, the improperly redacted portion of Plaintiff's Exhibit "F" makes clear that the amount of additional expense Plaintiff incurred was *de minimus* or non-existent as Defendant GARY PRONMAN offered to pay the brokerage fees associated with changing the Vehicle's Canadian title to a United States title and likewise underscores that such expense is less than transporting the Vehicle from various destinations in the United States including Texas and California. Still, Plaintiff's failure to allege the time, place, and manner the Defendants made the allegedly fraudulent statements is fatal to Plaintiff's fraud claim. See Ceaders, 16 So.3d. at 917.

C. Plaintiff's course of conduct as set forth in the Amended Complaint clearly constitutes both express and implied waivers of the fraud claim

Waiver of fraud may be express, or implied by conduct. See Am. Somax Ventures v. Touma, 547 So. 2d 1266, 1268 (Fla. 4th DCA 1989). Thus, conduct leading one to believe that a right has been waived may imply such a waiver. See Arbogast v. Bryan, 393 So. 2d 606, 608 (Fla. 4th DCA 1981)(quoting 22 Fla. Jur. 2d, Estoppel & Waiver § 89)(parties' failure to timely speak out and enforce a claim to commissions due from a transaction constituted waiver).

With respect to the Plaintiff's actions immediately following Plaintiff's remittance of the subject $84,000.00, §672.602(1) of the UCC titled "Manner and effect of rightful rejection" states "Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller." Notwithstanding the foregoing, Exhibit "F" of Plaintiff's Amended Complaint, which is an April 28, 2009 e-mail correspondence from Plaintiff to Defendant GARY PRONMAN, clearly shows that as of April 28, 2009, **the day immediately following the day Plaintiff remitted the subject $84,000.00**, Plaintiff knew that the subject Vehicle was in Canada and carried a Canadian title requiring the payment of a $295.00 broker fee to title same in the United States. Yet, as Composite Exhibit "C" attached hereto clearly shows, Plaintiff expressly waived any claim to fraud stating "It was the lack of disclosure about the car and deal. That said, you covering the brokerage goes a long way in my book toward making it better."

Moreover, Plaintiff impliedly waived any claim to fraud as Plaintiff did not reject the Vehicle, nor did Plaintiff attempt to mitigate any alleged fraud within a commercially reasonable period. Rather, as evidenced by paragraph 23 and Exhibit "F" of Plaintiff's Amended Complaint, Plaintiff was still making affirmative attempts to procure possession of the Vehicle pursuant to the parties' Agreement as late as June 22, 2009, a full eight (8) weeks after the Plaintiff, on April 27, 2009, paid $84,000.00 for the Vehicle, learned of the Defendants' ownership status regarding the Vehicle, and discovered that the Vehicle was titled and located in Canada. (Amended Complaint, pg. 4. ¶ 23.) Indeed, only when the Defendants asserted their statutory rights to withhold delivery of the subject vehicle pending payment of the Defendants' incidental damages and ancillary accounts receivable did Plaintiff avail himself of a convenient, albeit clearly frivolous and vexatious, fraud claim. Accordingly, Count III of the Amended Complaint should be dismissed with prejudice.

CONCLUSION

For all of the foregoing reasons, Plaintiff's Amended Complaint should be dismissed with prejudice, Counts II and III of the Amended Complaint should be stricken; and pursuant to Florida

Statutes §57.105 and §772.11 a judgment against the Plaintiff should be awarded to the Defendants for attorneys' fees and costs associated with defending this frivolous action and in particular Plaintiff's civil theft and fraud claims.

WHEREFORE, Defendants GARY PRONMAN, DAN PRONMAN, and MOVIE STAR MUSCLE CARS, INC. ask this Honorable Court to: (a) Enter an Order dismissing Plaintiff's Amended Complaint in its entirety; or, in the alternative, (b) Strike Counts II and III of Plaintiff's Amended Complaint; and, (c) Enter and Order against the Plaintiff awarding Defendants attorneys' fees and costs pursuant to Florida Statutes §57.105 and/or §772.11; and, (d) Grant any other relief this Court deems just and proper.

Respectfully submitted this 3rd day of June, 2010,

KAISER ROMANELLO, P.A.
Florida Bar No. 0568491
1560 Sawgrass Corporate Parkway, Fourth Floor
Sunrise, Florida 33323
Tel. 954.331.8020
Fax 954.827.0472
Attorney for the Defendants

By: ______________________
Lorne Adam Kaiser, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 2010, a true and correct copy of the foregoing was furnished via hand-delivery and/or facsimile to, Edward J. O'Sheehan, Esq., Shutts & Bowen, LLP, 200 East Broward Boulevard, Suite 2100, Fort Lauderdale, FL 33301.

By: ______________________
Lorne Adam Kaiser, Esq.

Exhibit “A”

Select Year: 2009 Go

The 2009 Florida Statutes

Title VI
CIVIL PRACTICE AND PROCEDURE

Chapter 57
COURT COSTS

View Entire Chapter

57.105 Attorney's fee; sanctions for raising unsupported claims or defenses; service of motions; damages for delay of litigation.--

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

However, the losing party's attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client as to the existence of those material facts. If the court awards attorney's fees to a claimant pursuant to this subsection, the court shall also award prejudgment interest.

(2) Paragraph (1)(b) does not apply if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success.

(3) At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay.

(4) A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or

appropriately corrected.

(5) In administrative proceedings under chapter 120, an administrative law judge shall award a reasonable attorney's fee and damages to be paid to the prevailing party in equal amounts by the losing party and a losing party's attorney or qualified representative in the same manner and upon the same basis as provided in subsections (1)-(4). Such award shall be a final order subject to judicial review pursuant to s. 120.68. If the losing party is an agency as defined in s. 120.52(1), the award to the prevailing party shall be against and paid by the agency. A voluntary dismissal by a nonprevailing party does not divest the administrative law judge of jurisdiction to make the award described in this subsection.

(6) The provisions of this section are supplemental to other sanctions or remedies available under law or under court rules.

(7) If a contract contains a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract, the court may also allow reasonable attorney's fees to the other party when that party prevails in any action, whether as plaintiff or defendant, with respect to the contract. This subsection applies to any contract entered into on or after October 1, 1988.

History.--s. 1, ch. 78-275; s. 61, ch. 86-160; ss. 1, 2, ch. 88-160; s. 1, ch. 90-300; s. 316, ch. 95-147; s. 4, ch. 99-225; s. 1, ch. 2002-77; s. 9, ch. 2003-94.

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Exhibit “B”

Select Year: 2009 Go

The 2009 Florida Statutes

Title XLV	Chapter 772	View Entire Chapter
TORTS	CIVIL REMEDIES FOR CRIMINAL PRACTICES	

772.11 Civil remedy for theft or exploitation.--

(1) Any person who proves by clear and convincing evidence that he or she has been injured in any fashion by reason of any violation of ss. 812.012-812.037 or s. 825.103(1) has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of $200, and reasonable attorney's fees and court costs in the trial and appellate courts. Before filing an action for damages under this section, the person claiming injury must make a written demand for $200 or the treble damage amount of the person liable for damages under this section. If the person to whom a written demand is made complies with such demand within 30 days after receipt of the demand, that person shall be given a written release from further civil liability for the specific act of theft or exploitation by the person making the written demand. Any person who has a cause of action under this section may recover the damages allowed under this section from the parents or legal guardian of any unemancipated minor who lives with his or her parents or legal guardian and who is liable for damages under this section. Punitive damages may not be awarded under this section. The defendant is entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim that was without substantial fact or legal support. In awarding attorney's fees and costs under this section, the court may not consider the ability of the opposing party to pay such fees and costs. This section does not limit any right to recover attorney's fees or costs provided under any other law.

(2) For purposes of a cause of action arising under this section, the term "property" does not include the rights of a patient or a resident or a claim for a violation of such rights.

(3) This section does not impose civil liability regarding the provision of health care, residential care, long-term care, or custodial care at a licensed facility or care provided by appropriately licensed personnel in any setting in which such personnel are authorized to practice.

(4) The death of an elderly or disabled person does not cause the court to lose jurisdiction of any claim for relief for theft or exploitation when the victim of the theft or exploitation is an elderly or disabled person.

(5) In a civil action under this section in which an elderly or disabled person is a party, the elderly or disabled person may move the court to advance the trial on the docket. The presiding judge, after consideration of the age and health of the party, may advance the trial

on the docket. The motion may be filed and served with the civil complaint or at any time thereafter.

History.--s. 3, ch. 86-277; s. 47, ch. 88-381; s. 5, ch. 89-303; s. 1181, ch. 97-102; s. 2, ch. 2002-195.

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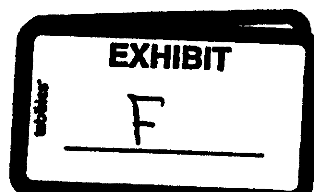
Composite Exhibit “C”

From: GPMUSCLECARS@aol.com [mailto:GPMUSCLECARS@aol.com]
Sent: Tuesday, April 28, 2009 15:47
To: brian@stylesfamily.com
Subject: Re: Fw: wire transfer

I sell cars from Canada to many of my clients and it is never been an issue. If the car is no difference from a Canadian title to a U.S. title. We transfer them all the time with in Hollywood Fl , for a few bucks more He will even come to your house and do it for that upsets you,To make you happy I will gladly cover it.The transport from Canada is destinations and much less than California , Texas ect

In a message dated 4/28/2009 2:15:14 P.M. Eastern Daylight Time, brian@stylesfam

> No decision on the black TA -- I'm still working on the bee.
>
> Regarding the Orange Bee, let me tell you two things that upset me about this dea
>
> 1) Our arrangement was for you to be my buying agent and find me cars for a fee. you've done here, but I'm confused by paying your company directly rather than t company involved?
>
> 2) You did not inform me the car was in Canada with non-US title. This would have negatively, buy buying decision and the price negotiated.
>
> Ultimately my concerns are about disclosure. You did not fully disclose the details Communication is the key to a successful transaction, and in my opinion, we failed
>
> Obviously if you get the car into the US at your expense, my concern over #2 is a r
>
> -Brian
>
> **From:** GPMUSCLECARS@aol.com [mailto:GPMUSCLECARS@aol.com]
> **Sent:** Tuesday, April 28, 2009 07:32
> **To:** styles247@gmail.com
> **Subject:** Re: Fw: wire transfer
>
> Of Course you can sleep well at night , Any decision on the Blk T/A
>
> In a message dated 4/27/2009 10:12:21 P.M. Eastern Daylight Time, styles247@g
>
> > Car is safe with your brother in the mean time, right?



Subj: **Re: Fw: wire transfer**
Date: 4/29/2009 7:54:57 A.M. Eastern Daylight Time
From: styles247@gmail.com
To: gpmusclecars@aol.com

It was the lack of disclosure about the car and deal. That said, you covering the brokerage does go a long way in my book toward making this better.
-brian

From: GPMUSCLECARS@aol.com
Date: Tue. 28 Apr 2009 15:47:16 EDT
To: <brian@stylesfamily.com>
Subject: Re: Fw: wire transfer

I sell cars from Canada to many of my clients and it is never been an issue. If the car is brokered in the correct way there is no difference from a Canadian title to a U.S. title. We transfer them all the time without any problem, in fact I have a guy in Hollywood Fl , for a few bucks more He will even come to your house and do it for you. If it is $295.00 Brokerage fee that upsets you,To make you happy I will gladly cover it The transport from Canada is no more expensive than most U.S. destinations and much less than California , Texas ect

In a message dated 4/28/2009 2:15:14 P.M. Eastern Daylight Time, brian@stylesfamily.com writes:

> No decision on the black TA -- I'm still working on the bee.
>
> Regarding the Orange Bee, let me tell you two things that upset me about this deal:
>
> 1) Our arrangement was for you to be my buying agent and find me cars for a fee. Perhaps there is what's you've done here, but I'm confused by paying your company directly rather than the seller directly. Why is your company involved?
>
> 2) You did not inform me the car was in Canada with non-US title. This would have influenced, perhaps negatively, buy buying decision and the price negotiated.
>
> Ultimately my concerns are about disclosure. You did not fully disclose the details of this transaction with me. Communication is the key to a successful transaction, and in my opinion, we failed on this one.
>
> Obviously if you get the car into the US at your expense, my concern over #2 is a mute point.

-Brian

From: GPMUSCLECARS@aol.com [mailto:GPMUSCLECARS@aol.com]
Sent: Tuesday, April 28, 2009 07:32
To: styles247@gmail.com
Subject: Re: Fw: wire transfer

Of Course you can sleep well at night , Any decision on the Blk T/A

In a message dated 4/27/2009 10:12:21 P.M. Eastern Daylight Time, styles247@gmail.com writes:

Car is safe with your brother in the mean time, right?

From: GPMUSCLECARS@aol.com
Date: Mon, 27 Apr 2009 21:57:45 EDT
To: <styles247@gmail.com>
Subject: Re: Fw: wire transfer

Let me know what you decide

In a message dated 4/27/2009 8:25:29 P.M. Eastern Daylight Time, styles247@gmail.com writes:

Ok, let me make a call and see if there are any advantages to my approach.
-brian

From: GPMUSCLECARS@aol.com
Date: Mon, 27 Apr 2009 19:48:42 EDT
To: <styles247@gmail.com>
Subject: Re: Fw: wire transfer

Twenty minutes from Toronto

In a message dated 4/27/2009 7:39:24 P.M. Eastern Daylight Time, styles247@gmail.com writes:

Where is car? Near toronto or farther away?

From: GPMUSCLECARS@aol.com
Date: Mon, 27 Apr 2009 19:28:12 EDT
To: <styles247@gmail.com>
Subject: Re: Fw: wire transfer

Are you sure you can do it like this, because for us we always broker the cars back and forth as to avoid any unforeseen issues with customs

In a message dated 4/27/2009 7:13:09 P.M. Eastern Daylight Time, styles247@gmail.com writes:

I could flip the title first. Then it would be a usa title.

Also, before I get gary harte to ship the cuda, maybe I could get a double trailer to bring them both across at same time.

Thoughts...
-brian

From: GPMUSCLECARS@aol.com
Date: Mon, 27 Apr 2009 19:09:33 EDT
To: <styles247@gmail.com>
Subject: Re: Fw: wire transfer

I think it can be arranged to buffalo . Has to brokered in the U.S. it has a Canadian title Delivery to Buffalo including Brokerage is approx $ 500.00 Give me an address with Zip code and it can be delivered for you

In a message dated 4/27/2009 7:02:42 P.M. Eastern Daylight Time, styles247@gmail.com writes:

How about buffalo?
Is it closer to michigan?
Is it usa titled?

From: GPMUSCLECARS@aol.com
Date: Mon, 27 Apr 2009 18:46:00 EDT
To: <styles247@gmail.com>
Subject: Re: Fw: wire transfer

The car is in Canada I can arrange the car to be dropped off at Reliable in Michigan

In a message dated 4/27/2009 3:46:13 P.M. Eastern Daylight Time, styles247@gmail.com writes:

I leave first thing wed am.
Where is car at? Will need an address for pickup later in the month.
-brian

From: GPMUSCLECARS@aol.com
Date: Mon, 27 Apr 2009 13:27:30 EDT
To: <styles247@gmail.com>
Subject: Re: Fw: wire transfer

Thanks Will do, when are you leaving, what day?
GARY

In a message dated 4/27/2009 12:11:43 P.M. Eastern Daylight Time, styles247@gmail.com writes:

-----Original Message-----
From: "Correa-Morales.Julie" <Julie.Correa-morales@SunTrust.com>

Date: Mon, 27 Apr 2009 12:10:42
To: Brian Styles \(E-mail\) <styles247@gmail.com>
Subject: wire transfer

Hello Brian:

The wire transfer to Canada is done. If we come across any issue I will let you know ASAP.

Have a great day.

Julie Correa
Financial Service Representative,
SUNTRUST BANK

Mail Code FL-BocaRaton-0400
4899 N Federal HWY
Boca Raton, Fl 33431
Tel: 561-416-5673
Fax: 561-391-0532
Julie.correa-morales@suntrust.com

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A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

An Excellent Credit Score is 750. See Yours in Just 2 Easy Steps!

n Excellent Credit Score is 750. See Yours in Just 2 Easy Steps!

Subj: **email trail**
Date: 01/06/2010 4:06:41 P.M. Eastern Daylight Time
From: GPMUSCLECARS@aol.com
To: dansmopar@aol.com

> From: styles247@gmail.com
> To: gpmusclecars@aol.com
> Sent: 4/27/2009 7:38:15 P.M. Eastern Daylight Time
> Subj: Re: Fw: wire transfer
>
> Yeah, why not?
>
> **From**: GPMUSCLECARS@aol.com
> **Date**: Mon, 27 Apr 2009 19:16:58 EDT
> **To**: <styles247@gmail.com>
> **Subject**: Re: Fw: wire transfer
>
> I don;t understand what you are trying to do? Explain your thinking. are you trying to save the $ 295 for brokerage
>
> In a message dated 4/27/2009 7:13:09 P.M. Eastern Daylight Time, styles247@gmail.com writes:
>
>> I could flip the title first. Then it would be a usa title.
>>
>> Also, before I get gary harte to ship the cuda, maybe I could get a double trailer to bring them both across at same time.
>>
>> Thoughts...
>> -brian
>>
>> **From**: GPMUSCLECARS@aol.com
>> **Date**: Mon, 27 Apr 2009 19:09:33 EDT
>> **To**: <styles247@gmail.com>
>> **Subject**: Re: Fw: wire transfer
>>
>> I think it can be arranged to buffalo . Has to brokered in the U.S. it has a Canadian title Delivery to Buffalo including Brokerage is approx $ 500.00 Give me an address with Zip code and it can be delivered for you
>>
>> In a message dated 4/27/2009 7:02:42 P.M. Eastern Daylight Time, styles247@gmail.com writes:
>>
>>> How about buffalo?
>>> Is it closer to michigan?
>>> Is it usa titled?
>>>
>>> **From**: GPMUSCLECARS@aol.com
>>> **Date**: Mon, 27 Apr 2009 18:46:00 EDT
>>> **To**: <styles247@gmail.com>
>>> **Subject**: Re: Fw: wire transfer

The car is in Canada I can arrange the car to be dropped off at Reliable in Michigan

In a message dated 4/27/2009 3:46:13 P.M. Eastern Daylight Time, styles247@gmail.com writes:

I leave first thing wed am.
Where is car at? Will need an address for pickup later in the month.
-brian

From: GPMUSCLECARS@aol.com
Date: Mon, 27 Apr 2009 13:27:30 EDT
To: <styles247@gmail.com>
Subject: Re: Fw: wire transfer

Thanks Will do, when are you leaving, what day? GARY

In a message dated 4/27/2009 12:11:43 P.M. Eastern Daylight Time, styles247@gmail.com writes:

-----Original Message-----
From: "Correa-Morales.Julie" <Julie.Correa-morales@SunTrust.com>

Date: Mon, 27 Apr 2009 12:10:42
To: Brian Styles \(E-mail\)<styles247@gmail.com>
Subject: wire transfer

Hello Brian:

The wire transfer to Canada is done. If we come across any issue I will let you know ASAP.

Have a great day.

Julie Correa
Financial Service Representative, SUNTRUST BANK

Mail Code FL-BocaRaton-0400
4899 N Federal HWY
Boca Raton, Fl 33431
Tel: 561-416-5673
Fax: 561-391-0532
Julie.correa-morales@suntrust.com

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Title XXXIX
COMMERCIAL RELATIONS

Chapter 672
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672.308 Absence of specified place for delivery.--Unless otherwise agreed:

(1) The place for delivery of goods is the seller's place of business or if the seller has none his or her residence; but

(2) In a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(3) Documents of title may be delivered through customary banking channels.

History.--s. 1, ch. 65-254; s. 561, ch. 97-102.

Note.--s. 2-308, U.C.C.

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672.503 Manner of seller's tender of delivery.--

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him or her to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular:

(a) Tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he or she comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) Tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) He or she must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (s. 672.323(2)); and

(b) Tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

History.--s. 1, ch. 65-254; s. 579, ch. 97-102.

Note.--s. 2-503, U.C.C.

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672.710 Seller's incidental damages.--Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

History.--s. 1, ch. 65-254.

Note.--s. 2-710, U.C.C.

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672.703 Seller's remedies in general.--Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (s. 672.612), then also with respect to the whole undelivered balance, the aggrieved seller may:

(1) Withhold delivery of such goods;

(2) Stop delivery by any bailee as hereafter provided (s. 672.705);

(3) Proceed under the next section respecting goods still unidentified to the contract;

(4) Resell and recover damages as hereafter provided (s. 672.706);

(5) Recover damages for nonacceptance (s. 672.708) or in a proper case the price (s. 672.709);

(6) Cancel.

History.--s. 1, ch. 65-254.

Note.--s. 2-703, U.C.C.

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672.311 Options and cooperation respecting performance.--

(1) An agreement for sale which is otherwise sufficiently definite (s. 672.204(3)) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in s. 672.319(1)(c) and (3) specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) Is excused for any resulting delay in his or her own performance; and

(b) May also either proceed to perform in any reasonable manner or after the time for a material part of his or her own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

History.--s. 1, ch. 65-254; s. 563, ch. 97-102.

Note.--s. 2-311, U.C.C.

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671.106 Remedies to be liberally administered.--

(1) The remedies provided by this code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special nor penal damages may be had except as specifically provided in this code or by other rule of law.

(2) Any right or obligation declared by this code is enforceable by action unless the provision declaring it specifies a different and limited effect.

History.--s. 1, ch. 65-254; s. 6, ch. 2007-134.

Note.--s. 1-106, U.C.C.

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672.508 Cure by seller of improper tender or delivery; replacement.--

(1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his or her intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he or she seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

History.--s. 1, ch. 65-254; s. 583, ch. 97-102.

Note.--s. 2-508, U.C.C.

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