

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1821

FIRST BANK AND TRUST

VERSUS

CHARLIE THOMAS

*DATE OF JUDGMENT:* MAY 06 2011

Handwritten signature and initials, possibly 'MAH' and 'J20', with a large flourish above.

ON APPEAL FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT  
NUMBER 2009-0002309, DIV. E, PARISH OF TANGIPAOHA  
STATE OF LOUISIANA

HONORABLE BRENDA BEDSOLE RICKS, JUDGE

\*\*\*\*\*

Robert J. Carter  
Greensburg, Louisiana

Counsel for Plaintiff-Appellee  
First Bank and Trust

Thomas A. Gennusa, II  
Joseph S. Piacun  
Reid S. Uzee  
Metairie, Louisiana

Counsel for Defendant-Appellant  
Charlie Thomas

\*\*\*\*\*

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

**Disposition: AFFIRMED.**

KUHN, J.

Defendant-appellant, Charles Thomas (Thomas), appeals a summary judgment granted in favor of plaintiffs-appellees, First Bank and Trust (Bank), that ordered Thomas to pay sums allegedly due under the terms of a promissory note. We affirm.

Since 2002, Thomas has made multiple promissory notes secured by collateral, which are held by the Bank.<sup>1</sup> The promissory note, in the amount of \$59,916.84, originated on September 6, 2007, and was secured by a pledge of a collateral mortgage on immovable property owned by Thomas as well as security interests in a 2003 Ford F-250 and a 1999 TAK3 Flatbed trailer he owned. In early 2008, Thomas was unable to maintain payments to the Bank and defaulted on the note. As a result, Thomas executed a voluntary surrender form attempting to surrender the 2003 F-350 to the Bank to reduce his debt by \$20,000.00 that he acknowledges is the fair value of the vehicle. However, the Bank did not sign the surrender form in acceptance.

On July 2, 2009, the Bank filed a petition seeking to enforce the security agreement, and on March 8, 2010 filed a motion for summary judgment urging entitlement to the full balance of the note, i.e., \$63,397.89; interest of 8.75% per annum from June 4, 2009; attorney fees of 25% of principal and interest; and all costs. After a hearing, the trial court granted summary judgment. Thomas appeals.

---

<sup>1</sup> Although Thomas executed the promissory notes in favor of People's Bank of Louisiana, after a merger, it is undisputed that First Bank and Trust is the rightful successor to the notes.

Thomas' only contention on appeal is that an outstanding issue of material fact exists as to whether he voluntarily surrendered the F-350 to the Bank in consideration of \$20,000.00 to be applied towards his outstanding debt.

The Bank submitted an affidavit from its executive vice president, Russell Conger, stating that the Bank never accepted Thomas' offer of voluntary surrender. A purported or apparent acceptance of movable collateral is ineffective unless the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor. La. R.S. 10:9-620(b); *see also* U.C.C. § 9-620 comment 5.<sup>2</sup> Thus, with Conger's affidavit, the Bank showed entitlement to judgment, and the onus was on Thomas to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. *See* La. C.C.P. art. 966(C).

In support of his argument, Thomas entered into evidence the surrender form on which he listed the F-350 that had been pledged as security for the note. However, the surrender form is not signed by the bank. Thomas did not offer any evidence that the Bank consented to accept the F-350 in an authenticated record or that the Bank sent a proposal letter as required by La. R.S. 10:9-620(b). Thomas' submission of the surrender form to the Bank without its acceptance is a unilateral action and does not raise the implication that the Bank accepted the movable

---

<sup>2</sup> U.C.C. § 9-620 comment 5 states in pertinent part:

To ensure that the debtor cannot unilaterally cause an acceptance of collateral, [La. R.S. 10:9-620](b) provides that compliance with these conditions is necessary but not sufficient to cause an acceptance of collateral. Rather, under [La. R.S. 10:9-620](b), acceptance does not occur unless, in addition, the secured party consents to the acceptance in an authenticated record or sends to the debtor a proposal. ... A debtor's voluntary surrender of collateral to a secured party and the secured party's acceptance of possession of the collateral does not, of itself, necessarily raise an implication that the secured party intends or is proposing to accept the collateral in satisfaction of the secured obligation under this section.

collateral in partial satisfaction of Thomas' debt. *See* U.C.C. § 9-620 comment 5. Therefore, the trial court correctly granted summary judgment in favor of the Bank.

For these reasons, the trial court's May 26, 2010 judgment is affirmed. Appeal costs are assessed against Thomas.

**AFFIRMED.**