

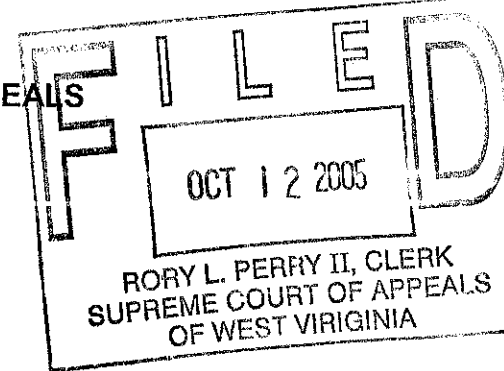
IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

GLORIA BANKS, individually, and on
behalf of all others similarly situated,

Plaintiff Below/Appellant,

vs.

No. 32725



PAUL WHITE CHEVROLET, INC., a West
Virginia corporation,

Defendant Below/Appellee.

APPELLANT'S REPLY BRIEF

John W. Barrett (State Bar # 7289)
Bailey & Glasser, LLP
227 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555
Facsimile: (304) 342-1110

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I. ARGUMENT

- A. **Paul White cannot disguise the \$600 in fees its agent charged Ms. Banks as "repossession fees" when the agent did not repossess, but instead simply collected Ms. Banks' payment and gave it to the bank.**

In its brief, Appellee Paul White Chevrolet, Inc. is right about one thing: this is a straightforward case. The central question is whether its agent collected a debt from Appellant Gloria Banks. If he did, then his charging \$600 in fees to Ms. Banks for his services violated the West Virginia Consumer Credit and Protection Act ("CCPA"). Very simply, a debt collector under the CCPA is one who engages in "any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due to a creditor by a consumer." *W. Va. Code* § 46A-2-122(b). Paul White's agent showed up at Ms. Banks' workplace and threatened to repossess her car (when in fact, as discussed below, he had no right to repossess and Paul White essentially admits this fact) unless she gave him a monthly car payment and a \$300 fee. To avoid repossession, Ms. Banks complied with his demands. She gave him her monthly payment, which he in turn gave to the lending bank. She also gave him \$300, which he put in his pocket. The scam worked so well the agent did it again. Twice Paul White's agent collected a debt, and charged Ms. Banks a very steep fee for his services. Through its agent's actions, Paul White violated several provisions of the CCPA, including *West Virginia Code* §§ 46A-2-128(c), (d), 46A-2-127(g), and 46A-2-115(a).¹

Paul White asserts that because it claims its agent went to Ms. Banks' workplace to repossess the vehicle, he is not in fact a debt collector. This completely misses the point. The critical issue is not why Paul White says it sent its agent there, or the fact that Paul

¹ Please see the attached Appendix of Statutes for the full text of these laws.

White thinks of him as a "repo man." The critical issue is what the agent actually *did*. What he did – and Paul White does not dispute the point – is take Ms. Banks' payment and give it to the bank. This is debt collection.

This Court's decision in *Thomas v. Firestone Tire & Rubber, Inc.*, 164 W. Va. 763, 769, 266 S.E.2d 905, 909 (1980), made clear that the CCPA's definition of "debt collector" does not simply extend to people who think of themselves as professional debt collectors.

This statute [*W. Va. Code* § 46A-2-122(b)] is clear on its face. "Debt collection" is defined as "any action, conduct, or practice . . . in the collection of claims owed or due to a creditor by a consumer." A "debt collector" is defined as "any person or organization engaging directly or indirectly in debt collection." Nowhere is there any indication that the provisions of the act were intended to relate solely to the practices of professional debt collectors, as was contended by the defendant.

Id., 164 W. Va. at 768, 266 S.E.2d at 908. The Court then proceeded to the key question, which it described, tongue planted firmly in cheek, as

the stuff of which legal argument is made, and upon which judicial reputation is forged. The Court must determine the meaning of the word "any" in the context of this statute. . . . We are impressed that the word "any" represents a fundamental and irreducible concept. It is a statute wrought from the letter A, N and Y; a monument to an idea; an artistic rendering designed to signify a meaningful unit of English language. The Court is led to the unavoidable conclusion that the word "any," when used in a statute, should be construed to mean, in a word, any.

Id.

"Any person" as used in Section 46A-2-122(b) carries the same rather obvious meaning today that it carried in 1980. Regardless of why Paul White says it sent its agent to see Ms. Banks, and regardless of what Paul White chooses to call him, Paul White's agent squarely fits the statutory definition of a debt collector. By collecting a debt and charging a fee, Paul White's agent violated the CCPA, and the Circuit Court was wrong to conclude otherwise.

- B. At the time Paul White's agent demanded repossession, the agent had no right to repossess, and therefore cannot seriously claim the \$300 fees were chargeable under *West Virginia Code* § 46-2-710 as "repossession fees."

Paul White's chief argument is that it "had the right to repossess the Appellant's vehicle," Appellee's Brief at 4, and that *West Virginia Code* § 46-2-710 authorizes an aggrieved seller to collect commercially reasonable charges, expenses or commissions resulting from the buyer's breach. One obvious flaw in this argument is its threshold declaration that Paul White had the right to repossess the vehicle. Paul White may *eventually* have established the right to repossess the vehicle, but at the time it demanded repossession, it had no right by statute or contract to repossess the vehicle before the cure period mandated by *West Virginia Code* § 46A-2-106 had expired.² Paul White cannot, and indeed does not, dispute this. See Appellee's Brief at 7 ("Paul White Chevrolet may have unwittingly violated § 46A-2-106 by failing to wait the required 10-day period before attempting to repossess the Appellant's car . . ."). By the clear terms of that statute, Paul White had no right to "commence any action or demand or take possession of collateral on account of default until ten days after notice has been given to the consumer of his or her right to cure default." *W. Va. Code* § 46A-2-106. The Retail Installment Contract and Security Agreement ("the Contract") executed by Ms. Banks to purchase the car specifically refers to and affirms this important statutory right.

We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then toward your obligations. **This right of ours is subject to your limited right to**

² Paul White emphasizes that "[t]he Appellant did not plead a violation of 46A-2-106 . . ." Ms. Banks would have no reason to do so, since Paul White's agent has not repossessed Ms. Banks' car. She has continued to make her monthly payments and still owns the car.

cure some defaults and get notice of this right to cure, as provided in W. Va. Code § 46A-2-106.

See Retail Installment Contract and Security Agreement, attached as Exhibit A (emphasis added). The lending bank also recognized Ms. Banks' right to cure. See Notice of Right to Cure Default from City National Bank to Gloria J. Banks, attached as Exhibit B. The only entity that failed to recognize her right to cure is Paul White Chevrolet.³

Paul White tries to avoid the application of *West Virginia Code* § 46A-2-128(c), which prohibits a debt collector from "collect[ing] or . . . attempt[ing] to collect from the consumer all or any part of the debt collector's fee or charge for services rendered," by claiming that somehow that the statute does not apply at all. Why it does not apply, Paul White does not clearly say, but in any event, Paul White claims *West Virginia Code* § 46A-2-128(d) applies to the exclusion of Section 128(c). But Section 128(d) offers Paul White no safe harbor, either. The statute provides:

No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

.....

(d) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is **expressly authorized by the agreement creating the obligation and by statute.**

W. Va. Code § 46A-2-128(d)(emphasis added).

Even if Paul White were correct that the *statute* (*W. Va. Code* § 46-2-710) authorizes the collection of the fees from Ms. Banks as costs that are incidental to the

³ The agent's demand for repossession when Paul White had no right to repossess violates the CCPA, which provides, "No debt collector shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion or attempt to coerce. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section: . . . (f) The threat to taker any action prohibited by this chapter or other law regulating the debt collector's conduct." *W. Va. Code* § 46A-2-124(f).

principal obligation (and it does not, as evidenced by § 46A-2-128(c)), the "agreement creating the obligation," i.e., the Contract, must also authorize the collection of such fees. As stated above, the Contract does not authorize Paul White or anyone else to repossess until *after* the statutory cure period has expired. Because it cannot repossess until the cure period expires, it certainly cannot charge fees for repossession until the cure period expires. Nowhere in its brief does Paul White deny that at the time its agent tried to repossess, the statutory cure period had expired. Nowhere in its brief does Paul White address the statutory requirement that the charging of fees incidental to the principal obligation must be authorized *both* by statute *and* by contract. And nowhere does Paul White cite a single provision of the contract that authorizes it to collect these fees before it attains the right to repossess.⁴

Very simply, Paul White cannot seriously characterize the \$600 in collection fees as "repossession fees," or fees incurred "in realizing on a security interest," when at the time its agent demanded the \$600, it neither repossessed the secured good nor had the right to do so. If it actually had the right to repossess, and if it in fact repossessed and incurred expenses in the repossession, it may have had the right to recover the expenses

⁴ Paul White cites a single case, *Freyermuth v. Credit Bureau Services, Inc.*, 248 F.3d 767 (8th Cir. 2001), in support of its arguments. *Freyermuth* is inapposite. In *Freyermuth*, the Eighth Circuit considered whether the defendant check authorization service violated provisions of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692(f)(1) that, similar to *West Virginia Code* § 46A-2-128(d), prohibit a debt collector from imposing a service charge unless (i) the agreement creating the debt expressly authorizes the charge, or (ii) the charge is permitted by law. 248 F.3d at 770. In resolving the issue, the Court "look[ed] to applicable state law," and observed that *Nebraska Revised Statute* U.C.C. § 2-710 authorized the check authorization service to recover incidental damages incurred as a result of the buyer's breach. *Id.* Apparently because Nebraska's U.C.C. § 2-710 was the only applicable statute, the Court concluded the check authorization service did not violate the FDCPA. If Nebraska has a statute similar to *West Virginia Code* § 46A-2-128, which prohibits debt collectors from collecting their fee from consumers, the Court did not refer to it. In any event, West Virginia law, and not Nebraska law, is at issue on this appeal. Were *Freyermuth* decided based on West Virginia law, it is safe to say the Eighth Circuit would have reached a different conclusion.

authorized by *West Virginia Code* § 46-2-710 expenses. But that is not the issue in this case. Paul White did not repossess. Why then should Ms. Banks, as Paul White contends, have an obligation to pay Paul White's agent for something he did not do and did not even have the legal right to do in the first place? Paul White's agent's threat to repossess if Ms. Banks did not make a payment is not much different from an old-fashioned protection racket, where a neighborhood thug agrees not to bust out the shopkeeper's windows if the storeowner pays the thug. Fortunately, in the context of this case, the CCPA protects consumers and prohibits debt collectors from threatening conduct they have no right to engage in, see *W. Va. Code* § 46A-2-124(f), and prohibits debt collectors from charging consumer for their fees. The Circuit Court was wrong to grant summary judgment in favor of Paul White, and should be reversed.

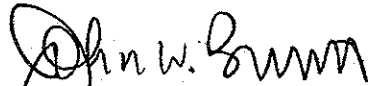
C. The Circuit Court erred in dismissing the entire action when Paul White only presented arguments for summary judgment on Count I.

With respect to this final assertion of error, Ms. Banks rests on the arguments raised in her initial brief.

II. CONCLUSION

For the reasons stated herein and in the opening brief, Appellant Gloria Banks urges the Court to reverse the decision of the Circuit Court granting summary judgment in favor of Appellee Paul White Chevrolet, Inc., and to direct the Circuit Court to enter summary judgment on Count I in Ms. Banks' favor.

Respectfully Submitted.



John W. Barrett (State Bar # 7289)
Bailey & Glasser, LLP
227 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555
Facsimile: (304) 342-1110

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT
 No. 31301435
 Date Mar 27, 2000

Seller Paul White, Volvolet, Inc.
 P. O. Box 128
 Cabin Creek, WV 25035

Buyer GLORIA J BANKS
 P O BOX 475
 MONTGOMERY, WV 25136

"We" and "us" mean the Seller above, its successors and assigns.
 "You" and "your" mean each Buyer above, and guarantor, jointly and individually.

SALE: You agree to purchase from us, on a time basis, subject to the terms and conditions of this contract and security agreement (Contract), the Motor Vehicle (Vehicle) and services described below. The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Year 1999 Make FORD Model ESCORT VIN 1FAPP10P2XN192058 Lic. No./Year Other: New Used Rebuilt Demonstrator

Description of Trade-In

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ 8414.75 plus sales finance charges accruing on the unpaid balance at the rate of 16.00% per year from today's date until paid in full. Sales finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS:
 AN INSTALLMENT OF \$ N.A. WILL BE DUE ON N.A.
 LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS: N.A.

MINIMUM SALES FINANCE CHARGE: You agree to pay a minimum sales finance charge of \$ 7.50 if you pay this Contract in full before we have earned that much in sales finance charges.

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and not trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE: The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of
16.26 %	\$ 2712.87	\$ 8379.75	\$ 11092.62	\$ 1000.00 \$ 12092.62

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
42	264.11	Monthly, beginning May 6, 2000, until paid in full.

Security: You are giving a security interest in the Motor Vehicle purchased. 10 days after a payment is made, you will be charged 5% of the unpaid portion of any regularly scheduled payment, but not less than \$1.00 and more than \$5.00.

Prepayment: If you pay off this Contract early, you may will not have to pay a Minimum Sales Finance Charge.
 Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

Credit Life: Insured N.A. Term N.A.
 Single Joint Prem. \$ N.A.
 Credit Disability: Insured N.A. Term N.A.
 Single Joint Prem. \$ N.A.

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ 100. If you get insurance from, or through us you will pay \$ N.A. for 12 months of coverage.

This premium is calculated as follows:
 \$ N.A. Deductible, Collision Coverage \$ N.A.
 \$ N.A. Deductible, Comprehensive Cov. \$ N.A.
 Fire-Theft and Combined Additional Coverage \$ N.A.

Liability insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

SINGLE-INTEREST INSURANCE: You must purchase single-interest insurance as part of this sale transaction. You may purchase the coverage from a company of your choice, reasonably acceptable to us. If you buy the coverage through us, you will pay \$ 32 for 12 months of coverage.

SERVICE CONTRACT: With your purchase of this vehicle, you agree to purchase a separate service contract agreement. This Service Contract will be in effect for 3 years.

ASSIGNMENT: This Contract and Security Agreement is assigned to 304-442-2475. This assignment is made under the terms of a separate agreement under the terms of the ASSIGNMENT BY SELLER on page 2 of this assignment is made with recourse.
 Seller: By Paul White Date 03-27-00

ITEMIZATION OF AMOUNT FINANCED

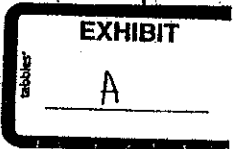
Vehicle Price (incl. sales tax of \$ 62.25)	\$ 8262.25
Service Contract, Paid to:	\$ 1000.00
Cash Price	\$ 9262.25
Manufacturer's Rebate	\$ N.A.
Cash Down Payment	\$ 1000.00
Deferred Down Payment	\$ N.A.
a. Total Cash/Rebate Down	\$ 1000.00
b. Trade-In Allowance	\$ N.A.
c. Less: Amount owing	\$ N.A.
Paid to (includes f.):	
d. Not Trade-In (b. minus c.)	\$ N.A.
e. Not Cash/Trade-In (a. plus d.)	\$ 1000.00
f. Amount to Finance line e. (if e. is negative)	\$ 8262.25
Down Payment (e.; disclose as \$0 if negative)	\$
Unpaid Balance of Cash Price	\$ N.A.
Paid to Public Officials - Filing Fees	\$ N.A.
Insurance Processing Fee	\$ 35.00
To: V-S-I Insurance	\$ 80.00
To: Doc Fee	\$ 37.50
To:	\$
To:	\$ 152.50
Total Other Charges/Amounts Pd. to Others	\$ 35.00
Less: Prepaid Finance Charges	\$ 8379.75
Amount Financed	\$

*We may retain or receive a portion of this amount.

NOTICE TO BUYER
 (1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Buyer: Gloria J Banks
 Signature _____ Date _____
 Signature _____ Date _____
 Seller: By Paul White



ADDITIONAL TERMS OF CONTRACT AND SECURITY AGREEMENT

GENERAL TERMS: You have been given the opportunity to purchase the Vehicle and described services for the Cash Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any services if you buy them over time. You agreed to purchase the items over time. The Total Sale Price shown in the TRUTH IN LENDING DISCLOSURES assumes that all payments will be made as scheduled. The actual amount you will pay may be more or less depending on your payment record.

We do not intend to charge or collect, and you do not agree to pay, any sales finance charge or fee, that is more than the maximum amount permitted for this sale by state or federal law. If you pay a sales finance charge or fee that is contrary to this provision, we will, instead, apply it first to reduce the principal balance, and when the principal has been paid in full, refund it to you.

You understand and agree that some payments to third parties as a part of this Contract may involve money retained by us or paid back to us as commissions or other remuneration.

You agree that this Contract is subject to the provisions of the West Virginia Consumer Credit and Protection Act.

If any section or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

BALLOON PAYMENT: If the initial total amount payable is less than \$1500.00, this loan is not primarily for an agricultural purpose, and any payment is more than twice as large as the average of all other regularly scheduled payments, you may refinance that payment when due. You may do so without penalty. This right does not apply if your payment schedule is adjusted for seasonal or irregular income.

PREPAYMENT: You may prepay this Contract in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until you pay in full.

A refund of any prepaid, unearned insurance premiums may be obtained from us or from the insurance company named in your policy or certificate of insurance.

ADDITIONAL SECURITY: You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

OWNERSHIP AND DUTIES TOWARD PROPERTY: By giving us a security interest in the Property, you represent and agree to the following:

- A. You will defend our interests in the Property against claims made by anyone else. You will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else.
B. The security interest you are giving us in the Property comes ahead of the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.
C. You will keep the Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at your address listed on page 1 of this Contract.
D. You will not attempt to sell the Property (unless it is properly identified inventory) or otherwise transfer any rights in the Property to anyone else, without our prior written consent.
E. You will pay all taxes and assessments on the Property as they become due.
F. You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully and without breaching the peace.

DEFAULT: You agree that the following are additional terms and conditions of this Contract and that if one or more of the following occur you will be in default.

- A. You fail to make a payment in full when it is due.
B. You fail to perform any obligation that you have undertaken in this Contract (which includes doing something you have agreed not to do).
C. You make any written statement or provide any financial information that is untrue or misleading at the time it is given.
D. You become a debtor in any bankruptcy proceeding, or otherwise take legal action to collect money or repossess property from you.
If you default, you agree to pay the reasonable expenses, including costs and fees authorized by statute, that we incur to realize on any security interest.

If any of you are in default on this or any agreement securing this Contract, we may exercise our remedies against any or all of you.

REMEDIES: If you are in default on this Contract, we have all of the remedies provided by law and this Contract. Before using a remedy, we will send you any notice and wait for any cure period that the law may require for that remedy. Our remedies include the following:

- A. We may require you to immediately pay us, subject to any refund required by law, the remaining unpaid balance of the amount financed, sales finance charges and all other agreed charges. This right of ours is subject to your limited right to cure some defaults and to get notice of this right to cure, as provided in W. Va. Code § 46A-2-106.
B. We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn sales finance charges from the date paid at the post-maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.
C. We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.
D. We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then toward your obligations. This

right of ours is subject to your limited right to cure some defaults and to get notice of this right to cure, as provided in W. Va. Code § 46A-2-106.

E. Except when prohibited by law, we may sue you for additional amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not waive our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above.

INSURANCE: You agree to buy property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the PROPERTY INSURANCE section, or as we will otherwise require. You will name us as loss payee on any such policy. In the event of loss or damage to the Property, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Property. You agree that if the insurance proceeds do not cover the amounts you still owe us, you will pay the difference. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in full force and effect until this Contract is paid in full.

If you fail to obtain or maintain this insurance, or name us as a loss payee, we may obtain insurance to protect our interest in the Property. This insurance may be written by a company other than one you would choose. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately. This amount will earn sales finance charges from the date paid at the rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.

COLLATERAL PROTECTION INSURANCE: Unless you provide us with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

OBLIGATIONS INDEPENDENT: Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

- A. You must pay this Contract even if someone else has also signed it.
B. We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.
C. We may release any security and you will still be obligated to pay this Contract.
D. If we give up any of our rights, it will not affect your duty to pay this Contract.
E. If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

WARRANTY: Warranty information is provided to you separately.

THIRD PARTY AGREEMENT
By signing below you agree to give us a security interest in the Property described in the SALE section. You also agree to the terms of this Contract, except that you will not be liable for the payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend, change this Contract, or release any party or property without releasing you from this Contract. We may take these steps without notice or demand upon you.
You acknowledge receipt of a completed copy of this Contract.
Signature _____ Date _____

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

IF YOU ARE BUYING A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

ASSIGNMENT BY SELLER

Seller sells and assigns this Retail Installment Contract and Security Agreement, (Contract), to the Assignee, its successors and assigns, including all its rights, title and interest in this Contract, and any guarantee executed in connection with this Contract. Seller gives Assignee full power, either in its own name or in Seller's name, to take all legal or other actions which Seller could have taken under this Contract. (SEPARATE AGREEMENT: If this Assignment is made "under the terms of a separate agreement" as indicated on page 1, the terms of this assignment are described in a separate writing(s) and not as provided below.)

- A. This Contract represents a sale by Seller to Buyer on a time price basis and not on a cash basis.
B. The statements contained in this Contract are true and correct.
C. The down payment was made by the Buyer in the manner stated on page 1 of this Contract and, except for the application of any manufacturer's rebate, no part of the down payment was loaned or paid to the Buyer by Seller or Seller's representatives.
D. This sale was completed in accordance with all applicable federal and state laws and regulations.
E. This Contract is valid and enforceable in accordance with its terms.
F. The names and signatures on this Contract are not forged, fictitious or assumed, and are true and correct.
G. This Contract is vested in the Seller free of all liens, is not subject to any claims or defenses of the Buyer, and may be sold or assigned by the Seller.
H. A completely filled in copy of this Contract was delivered to the Buyer at the time of execution.
I. The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
J. Seller has or will perfect a security interest in the Property in favor of the Assignee.
K. If any of these warranties is breached or untrue, Seller will, upon Assignee's demand, purchase this Contract from Assignee. The purchase shall be in cash in the amount of the unpaid balance (including sales finance charges) plus the costs and expenses of Assignee, including attorneys' fees.
L. Seller will indemnify Assignee for any loss sustained by it because of judicial set-off or as the result of a recovery made against Assignee as a result of a claim or defense Buyer has against Seller.

Seller waives notice of the acceptance of this Assignment, notice of non-payment or non-performance and notice of any other remedies available to Assignee. Assignee may, without notice to Seller, and without affecting the liability of Seller under this Assignment, compound or release any rights against, and grant extensions of time for payment to, Buyer and any other person obligated under this Contract.

UNLESS OTHERWISE INDICATED ON PAGE 1, THIS ASSIGNMENT IS WITHOUT RECOURSE.

WITH RECOURSE: If this Assignment is made "with recourse" as indicated on page 1, Assignee takes this Assignment with certain rights of recourse against Seller. Seller agrees that if the Buyer defaults on any obligation of payment or performance under this Contract, Seller will, upon demand, repurchase this Contract for the amount of the unpaid balance, including sales finance charges, due at that time.

City
NATIONAL BANK
of West Virginia

Collections Department

NOTICE OF RIGHT TO CURE DEFAULT

GLORIA J BANKS
PO BOX 475
MONTGOMERY WV

25136

Description of Transaction

Lender: *City National Bank*

Loan Account: # 31301435

Date of Note or Contract: 03-27-00

Amount of Note of Contract: 8,414.75

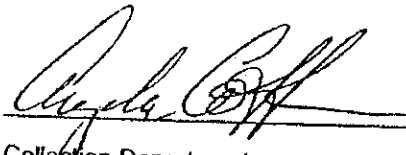
YOU HAVE THE RIGHT TO CURE THE FOLLOWING

AMOUNT OF PAYMENT IN DEFAULT: \$567.07

Other requirements to cure default:

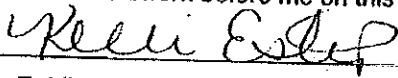
Unless you cure the default in the manner aforesaid by May 22nd, 2003 the above creditor all have the right to exercise all of its rights and remedies with the respect to accelerated maturity of the unpaid balance thereof and the right to take possession of all collateral securing such transaction.

The Collection Department of the City National Bank, certify that the notice of the consumers right to cure default on which this certification appears on this 12th day of May 2003 mailed to the person(s) whose name(s) appear herein at the address set forth. This is an attempt to collect a debt, and any information obtained will be used for that purpose.

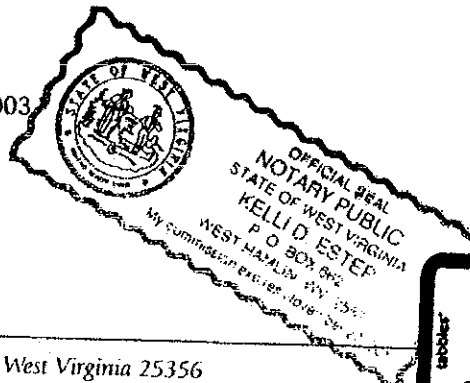


Collection Department
1-800-598-2489

"Subscribed and sworn before me on this 12th day of May 2003.



Notary Public of West Virginia



EXHIBIT

B

APPENDIX OF STATUTES

	<u>Page</u>
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W. Va. Code § 46-2-707. Person in the position of a seller.

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.

W. Va. Code § 46-2-710. Seller's incidental damages.

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this article withhold or stop delivery (section 2-705) and resell (section 2-706) and recover incidental damages (section 2-710).

W. Va. Code § 46A-2-115. Limitation on default charges.

Except for reasonable expenses including costs and fees authorized by statute incurred in realizing on a security interest, the agreement with respect to a consumer credit sale or a consumer loan may not provide for charges as a result of default by the consumer other than those authorized by this chapter.

W. Va. Code § 46A-2-122. Definitions.

For the purposes of this section and sections one hundred twenty-three, one hundred twenty-four, one hundred twenty-five, one hundred twenty-six, one hundred twenty-seven, one hundred twenty-eight, one hundred twenty-nine, and one hundred twenty-nine-a of this article, the following terms shall have the following meanings:

- (a) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.
- (b) "Claim" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or service which is the subject of the transaction is primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.
- (c) "Debt collection" means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due by a consumer.
- (d) "Debt collector" means any person or organization engaging directly or indirectly in debt collection. The term includes any person or organization who sells or offers to sell forms which are, or are represented to be, a collection system, device or scheme, and are intended or calculated to be used to collect claims.

W. Va. Code § 46A-2-127. Fraudulent, deceptive or misleading representations.

No debt collector shall use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

- (a) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the debt collector's business, company or organization;
- (b) Any false representation that the debt collector has in his possession information or something of value for the consumer that is made to solicit or discover information about the consumer;
- (c) The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;
- (d) Any false representation or implication of the character, extent or amount of a claim against a consumer, or of its status in any legal proceeding;
- (e) Any false representation or false implication that any debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent or official of this state or any agency of the federal, state or local government;
- (f) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval;
- (g) Any representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and
- (h) Any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.

W. Va. Code § 46A-2-128. Unfair or unconscionable means.

No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

- (a) The seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessities of life where the original obligation was not in fact incurred for such necessities;
- (b) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt, without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;
- (c) The collection or the attempt to collect from the consumer all or any part of the debt collector's fee or charge for services rendered: Provided, That attorney's fees, court costs and other reasonable collection costs and charges necessary for the collection of any amount due upon delinquent educational loans made by any institution of higher education within this state may be recovered when the terms of the obligation so provide. Recovery of attorney's fees and collection costs may not exceed thirty-three and one-third percent of the amount due and owing to any such institution: Provided, however, That nothing contained in this subsection shall be construed to limit or prohibit any institution of higher education from paying additional attorney fees and collection costs as long as such additional attorney fees and collection costs do not exceed an amount equal to five percent of the amount of the debt actually recovered and such additional attorney fees and collection costs are deducted or paid from the amount of the debt recovered for the institution or paid from other funds available to the institution;
- (d) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and by statute; and
- (e) Any communication with a consumer whenever it appears that the consumer is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question or unless the attorney consents to direct communication.

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

GLORIA BANKS, individually, and on
behalf of all others similarly situated

Plaintiff Below/Appellant,

vs.

No. 32725

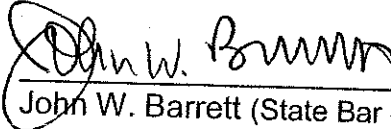
CITY NATIONAL BANK OF WEST VIRGINIA,
and PAUL WHITE CHEVROLET, INC., a West
Virginia corporation,

Defendant Below/Appellee.

CERTIFICATE OF SERVICE

I, John W. Barrett, Counsel for Appellant, do hereby certify that service of the attached ***Appellant's Reply Brief*** has been made upon the parties by mailing a true and exact copy thereof by depositing the same in the United States Mail, postage prepaid, this the 12th day of October, 2005, to:

Albert C. Dunn, Jr., Esquire
MacCorkle, Lavender, Casey & Sweeney, PLLC
Post Office Box 3283
Charleston, West Virginia 25332
Counsel for Appellee Paul White Chevrolet, Inc.



John W. Barrett (State Bar # 7289)