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2014 IL App (3d) 130375-U

Order filed January 9, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

ROUTE 50 AUTO SALES, d/b/a	)	Appeal from the Circuit Court
KANKAKEE AUTO MART,	)	of the 21st Judicial Circuit,
	)	Kankakee County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal No. 3-13-0375
v.	)	Circuit No. 12-SC-2157
	)	
CHARLESTINE LEWIS and	)	
KAMIKA WILLIAMS,	)	Honorable
	)	Kenneth A. Leshen,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices Holdridge and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not err when it found that defendant was not liable as a buyer or a guarantor for an automobile retail installment contract.

¶ 2 Plaintiff, Kankakee Auto Mart, filed a collection action against defendants, Charlestine Lewis and Kamika Williams, following their default on a retail installment contract. The trial court entered a default judgment against Lewis, but found in favor of Williams. Plaintiff appeals from the judgment in favor of Williams, arguing that the trial court erred when it determined that



in the contract.

¶ 8 On April 5, 2013, plaintiff filed a motion to reconsider, arguing that Williams should be considered a buyer under the contract. At the hearing on the motion, plaintiff also argued that Williams likely took possession or used the vehicle because she listed the same home address as Lewis on the purchase agreement. The trial court denied the motion, finding there was no evidence presented that Williams used the vehicle. Plaintiff appeals.

¶ 9 ANALYSIS

¶ 10 Plaintiff argues that the trial court erred when it determined that Williams was not a buyer or a guarantor under section 18 of the Act.

¶ 11 Initially, we note that defendant has not filed an appellee's brief. However, we may reach the merits of the case because the record is simple and the case is not complex. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

¶ 12 When a challenge is made to a trial court's ruling following a bench trial, the proper standard of review is whether the trial court's judgment is against the manifest weight of the evidence. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871. A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228 (2002).

¶ 13 Section 18 of the Act provides:

"Each person, other than a seller or holder, who signs a retail installment contract may be held liable *only to the extent that he actually receives the motor vehicle* \*\*\*, except that a parent or spouse or any other person listed as an owner of the motor vehicle on the

Certificate of Title issued for the motor vehicle who co-signs such retail installment contract may be held liable to the full extent of the deferred payment price notwithstanding such parent or spouse or any other person listed as an owner has not actually received the motor vehicle \*\*\* except to the extent such person other than a seller or holder, signs in the capacity of a guarantor of collection.

The obligation of such guarantor is secondary, and not primary. \*\*\*

*No provisions in a retail installment contract obligating such guarantor are valid unless:*

(1) there appears below the signature space provided for such guarantor the following:

'I hereby guarantee the collection of the above described amount upon failure of the Seller named herein to collect said amount from the buyer named herein.'; and

(2) the guarantor, in addition to signing the retail installment contract, signs a separate instrument." (Emphasis added.) 815 ILCS 375/18 (West 2010).

This separate instrument must explain the guarantor's obligation.

¶ 14 Plaintiff first argues that Williams should be considered a buyer under the contract because she shared the same address with Lewis; therefore, it can be inferred that she used the vehicle.

¶ 15 Pursuant to section 18 of the Act, a person who signs a motor vehicle installment may not be held primarily liable unless the person actually received the vehicle. 815 ILCS 375/18 (West 2010); *Lee v. Nationwide Cassel, L.P.*, 174 Ill. 2d 540 (1996). Although defendants listed the

same address on the date they signed the purchase agreement, there was no evidence presented that Williams took physical possession of or used the vehicle. Thus, we cannot say that the trial court's determination that Williams did not actually receive the vehicle, in order to consider her primarily liable, was against the manifest weight of the evidence.

¶ 16 Plaintiff next argues that Williams should be considered a guarantor under the contract. Specifically, plaintiff points out that Williams signed the purchase agreement as a cosigner and her only defense at trial was that she was told she would not be responsible for the debt. We disagree.

¶ 17 Although Williams admitted signing the purchase agreement and installment contract, neither document sufficiently conforms to the requirements under section 18 of the Act in order to hold her secondarily liable as a guarantor. Section 18 required the retail installment contract to include a statement that Williams guaranteed the collection of the described amount if plaintiff failed to collect from Lewis. See 815 ILCS 375/18 (West 2010). Additionally, Williams was required to sign a separate instrument explaining her obligation as a guarantor. See 815 ILCS 375/18 (West 2010); *Lee*, 174 Ill. 2d 540. Neither the installment contract nor the purchase agreement included the statutorily mandated language. As a result, the trial court properly determined that Williams could not be held liable as a guarantor. Thus, we affirm the trial court's judgment in favor of Williams.

¶ 18 **CONCLUSION**

¶ 19 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 20 Affirmed.