

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT

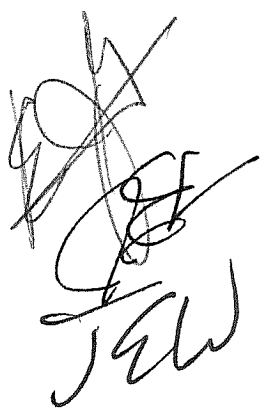
NUMBER 2006 CA 0850

MERCEDES-BENZ CREDIT CORPORATION

VERSUS

MICHAEL W. SCIACCHETANO

Judgment Rendered: February 9, 2007



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Appealed from the  
19th Judicial District Court  
in and for the Parish of East Baton Rouge  
State of Louisiana  
Suit Number 494,360  
The Honorable Timothy E. Kelley, Judge

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Corporation

Michael W. Sciacchetano  
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Defendant/Appellee  
In Proper Person

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

**GAIDRY, J.**

This appeal challenges a trial court's determination that a purchaser did not default on a retail installment contract, along with its finding that the evidence supported an award for wrongful seizure of a vehicle. We issue this memorandum opinion in accordance with Uniform Rules-Courts of Appeal Rule 2-16.1.B, and affirm.

On December 5, 2000, Michael Sciacchetano entered into a Retail Installment Contract with Centennial Imports, a Florida dealership, for the purchase of a 1997 Mercedes-Benz. The amount of the installment contract was \$44,369.40, payable in 60 monthly installments of \$739.49 at an annual percentage rate of 14.85%. By virtue of an assignment clause contained in the contract, the financing agreement was assigned to Mercedes-Benz Credit Corporation (MBCC).

To facilitate payments on the contract, Mr. Sciacchetano agreed to have the monthly payments drafted from his business checking account. Documentation of the payment history on the contract reflects that the sum of \$739.49 was drafted by MBCC pursuant to the automatic payment option for the months of February, March, May, August, September and October of 2001. However, on two occasions, in April and July of 2001, MBCC drafted multiple payments from Mr. Sciacchetano's checking account to compensate for past missed payments.

It is undisputed that no monthly payments were made on the account after October 4, 2001. In October, Mr. Sciacchetano closed the checking account from which the previous drafts had been made, and moved his business checking account to a Pensacola bank. Mr. Sciacchetano sent MBCC a letter on October 22, 2001, apprising it of the transfer, as well as his new account number at the Pensacola bank. On December 15, 2001, Mr.

Sciacchetano sent MBCC an Auto Pay form listing People's First of Pensacola as the institution from which to draft payments on the note.

By letter dated January 29, 2002, Mr. Sciacchetano wrote to MBCC, explaining that after speaking with an account representative, he was permitting MBCC to draft the past due payments from his account for the months of November, December and January in the amount of \$2,243.47. The letter also stated that all late fees were being waived because MBCC did not process the draft paperwork in a timely manner. A second draft authorization form to debit the account for the \$739.48 monthly payment was furnished by Mr. Sciacchetano.

On February 1, 2002, Mr. Sciacchetano received a letter from MBCC notifying him that he was in default of the installment contract for failing to make the November, December and January payments on the note. He was apprised that he could cure the default by paying MBCC the sum of \$2,243.47. On February 19, 2002, MBCC sent another letter notifying Mr. Sciacchetano that he was in default of the contract by failing to make payments since November of 2001, and demanding that he pay the remaining amount due on the contract, \$29,167.25. By letter dated March 4, 2002, Mr. Sciacchetano informed MBCC of his discussions with one of its representatives, and that he was authorizing a draft for the past due payments from the account in the amount of \$3,732.45. The letter stated that late fees would be waived because MBCC did not process the draft paperwork in a timely manner. In connection therewith, Mr. Sciacchetano submitted a third draft authorization form to debit his account for the monthly payment.

MBCC seized the vehicle through a writ of sequestration filed on April 15, 2002. In this lawsuit, MBCC sought to recover the \$29,167.25 balance owed on the contract, along with interest and attorney's fees.

Thereafter, Mr. Sciacchetano filed a reconventional demand against MBCC, asserting that MBCC was at fault in failing to follow the correct procedures to have the monthly payments drafted from his bank account, despite the fact that he furnished them with the proper information on numerous occasions. Mr. Sciacchetano sought damages for embarrassment and for inconvenience in having to secure alternate transportation.

At trial, exhibits detailing the account history, including Mr. Sciacchetano's correspondence with MBCC representatives, were introduced. MBCC offered the testimony of Kent Bradford, a dealer relations manager who was hired by MBCC in April of 2002, after most of the events forming the basis for this lawsuit transpired. He identified the pertinent financial documents and described MBCC's automatic payment option, which he stated typically takes about fifteen days to set up and ten days to cancel. Mr. Bradford maintained that only the payment that is due will be drafted from a customer's account, and that the plan does not debit any past due payments. He attested that if a customer fell behind on his payments, MBCC would require the customer to bring the account current by another payment method before the automatic payment system would be restarted.

MBCC's only other witness was Mr. Sciacchetano, who also was questioned at length by the trial court. Mr. Sciacchetano testified that he never withheld payments from MBCC; rather, he maintained, it was MBCC that failed to debit the payments he authorized it to make. He attested that on two prior occasions, when the monthly payment had not been successfully made due to a problem with the automatic payment system, MBCC representatives instructed him to draft a letter allowing it to take past due payments from the account to cure the problem. Mr. Sciacchetano

explained that because of MBCC's past practices in accepting draft authorization letters to bring his account up to date, he had no reason to believe the letters instructing MBCC to draft the payments for November and December of 2001 and January of 2002 would not be sufficient to correct the delinquency. Mr. Sciacchetano also testified regarding the embarrassment and inconvenience he suffered as a result of the seizure of his vehicle.

Following the presentation of the evidence, the trial court concluded that Mr. Sciacchetano proved he did not default on the contract and that the vehicle had been wrongfully seized by MBCC. The court found that MBCC ultimately was at fault for failing to properly debit Mr. Sciacchetano's account for the past due payments as authorized by Mr. Sciacchetano and in accordance with its past practices of allowing a default to be cured by debiting the account for multiple payments. MBCC's claim for the balance due on the note was denied, and Mr. Sciacchetano was awarded \$5,000.00 for embarrassment. Additionally, in lieu of a monetary award for inconvenience resulting from having to secure additional transportation, the trial court ruled that Mr. Sciacchetano would not be liable for any amount over a \$5,000.00 deficiency balance that MBCC may obtain.

In this appeal, MBCC contends that Mr. Sciacchetano did not demonstrate that he did not default on the contract and did not prove that MBCC wrongfully seized the vehicle. The trial court's ultimate determination that MBCC's seizure of the vehicle was wrongful because Mr. Sciacchetano did not default on the contract is a factual one, governed by the manifest error standard of review. Employing that review standard, we find that the ruling is reasonably supported by the record and may not be disturbed by this court. Accordingly, the judgment appealed from is

affirmed, and all costs of this appeal are assessed to appellant, Mercedes-Benz Credit Corporation.

**AFFIRMED.**