

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

BOULEVARD BANK,

Respondent,

v.

HERB MALOTT,

Appellant.

DOCKET NUMBER WD74917

Date: January 29, 2013

Appeal from:
Cooper County Circuit Court
The Honorable Keith Bail, Judge

Appellate Judges:
Division Three: Alok Ahuja, P.J., Victor C. Howard and Cynthia L. Martin, JJ.

Attorneys:
Matt Wilson, Columbia, MO, for appellant.
Howard A. Wittner, David VonGontard, St. Louis, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

BOULEVARD BANK

Respondent,

v.

HERB MALOTT,

Appellant.

WD74917

Cooper County

Boulevard Bank loaned Herb Malott money to purchase a car. The car served as collateral for the loan. The Bank later claimed that Malott defaulted on the loan. It repossessed and sold Malott's car, and then sued Malott, claiming that the proceeds from the sale of the car were not sufficient to satisfy Malott's debt to the Bank. Malott's Answer denied that the loan was in default, and that any deficiency was due. Malott's Answer also asserted a counterclaim against the Bank, alleging that its notice of its intended sale of Malott's car failed to comply with the requirements of §§ 400.9-613 and .9-614, RSMo, and that he was accordingly entitled to statutory damages under § 400.9-625(c)(2).

The circuit court granted the Bank's motion to dismiss Malott's counterclaim, on the basis that the Bank's pre-sale notice complied with all statutory requirements. Malott appeals.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

Division Three holds:

Lenders are required to strictly comply with the notice requirements contained in §§ 400.9-613 and .9-614, RSMo. Under § 400.9-613(1)(C), a lender's pre-sale notice must "[s]tate [] the method of intended disposition" of the collateral securing a loan. In this case, the Bank's notice to Malott stated that "[t]he collateral will be sold at a public/private sale if the Total Amount Due is not received by April 9, 2009."

The Bank's notice was deficient, since it told Malott only that the Bank intended to sell his car by *either* public or private sale. Because a "public" sale, or a "private" sale, are the only two authorized types of sale transactions, the Bank's notice essentially told Malott only that it intended to "sell" his vehicle. By failing to notify Malott of the specific method by which it intended to sell his car, the Bank violated § 400.9-613(1)(C); in this consumer transaction, the Bank's notice was deficient as a matter of law. This result is consistent with prior Missouri

decisions, and also by decisions from other states which have adopted the same Uniform Commercial Code provisions. Under § 400.9-625(c)(2), RSMo, Malott is entitled to statutory damages for this deficient pre-sale notice, whether or not he challenges the commercial reasonableness of the sale, or otherwise alleges that he was actually damaged.

Before: Division Three: Alok Ahuja, P.J., Victor C. Howard and Cynthia L. Martin, JJ.

Opinion by: Alok Ahuja, Judge

January 29, 2013

**THIS SUMMARY IS UNOFFICIAL AND
SHOULD NOT BE QUOTED OR CITED.**