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GMAC v. Bach Appellant's Brief Dckt. 38647

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IN THE SUPREME COURT OF THE STATE OF IDAHO

GMAC,

Plaintiff-Respondent,

Docket No. 38647-2011

Teton County Case No. 2009-172

v.

CINDY LEE BACH (DECEASED) an
individual and JOHN NICHOLAS BACH,
an individual,

Defendants-Appellants.

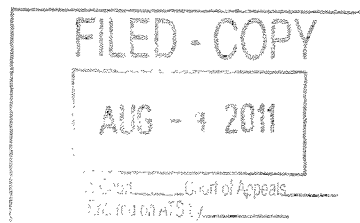
APPEAL FROM THE JUDGMENT AND ORDERS, OF
THE HONORABLE GREGORY W. MOELLER, Dist. Judge

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1.
A. NATURE OF THE CASE	1.
B. COURSE OF PROCEEDINGS	3
C. GRANTING OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND WRIT OF POSSESSION	16.
D. FINAL JUDGMENT ENTERED AND NOTICE OF APPEAL	24
<u>I S S U E S</u>	25 & 26.
ARGUMENTS ON IN SUPPORT OF ALL ISSUES	30
CERTIFICATE OF SERVICE	
<u>APPENDIX ONE</u> Certified Copy of AFFIDAVIT OF JOHN N. BACH, (CT 56-60)	

TABLE OF AUTHORITIES

A. CASES:

STATEMENT OF THE CASE'

A. NATURE OF THE CASE

GMAC file April 24, 2009 a four (4) page complaint,(CT 1-7) each of the first four pages, numbered "Page 4", to which were attached two (2) unmarked exhibits, the first a one sheet document with the top printed "POP ELECTRONIC TITLE DOCUMENTS;" and the second (CT 6-7) a reduced in size copy of a purported elongated printed form entitled: RETAIL INSTALMENT SALE CONTRACT, GMAC FLEXIBLE FINANCE PLAN, for buyer CINDY LEE BACH, 10 North 27TH ST, BILLINGS YELLOWSTON, MT 59103 from Dealer, RESSLER MOTOR COMPANY, L&#% W. MAIN BOSEMAND, MT. 59713-0400, Hand written in the upper right corner was "021 /9/0434159."

At the bottom, inside an elongated rectangular outline, there was/were no indications to what/which of the four printed names of finance companies, the purported contract, if any, was to be or was in fact assigned. (CT: 6) But in the lower right portion of the outlined portion in the boxed section Assigned without recourse or with limited recourse, were the typed words:

"RESSLER MOTOR COMPANY, (followed by a difficult to read signature) and the ONLY written word, "Finance."

The Plaintiff's complaint was: 1) labelled only as: "COMPLAINT FOR CLAIM AND DELIVERY (I.. 8-301)(CT. 1); 2) purportedly in Arizona, Marcipa Countery, "20 day of April, 2009", by a Kathleen Fitzgerald, whose named was first handprintd, the handwritten number "20" appears twice in the verification, (CT \$) re the date of April, 2009; and the complaint itself is purportly singed tw0 (2)days earlier on "22 day of April 2009

by Laura E. Burri, Attorney for Plaintiff, (Ct: 3)

The foregoing verification by Kathleen Fitzgerald, in Maricopa County, Arizona reads in the only two paragraphs thereof:

"That I am an employee of Semperian, Inc., agent for General Motors Acceptance Corporation and am actively engaged in the operations of said corporation and has personal knowledge of the facts contained herein.

That I have read the within and foregoing complaint, knows the contents thereof and believes the facts therein stated to be true and correct and makes this verification this date: behalf of the corporation." (CT 4)(Emphasis added)

(Then follows the date: "Dated this 20 day of April, 2009.")

On May 27, 2009, Defendant JOHN N. BACH, filed a NOTICE OF MOTION & MOTION . . . SPECIALLY APPEARING TO STRIKE, VOID ANY PURPORTED SERVICE OF PROCESS, HIS PERSON AND OVER PURPORTED SUBJECT MATTERS JURISDICTION, ETC. (IRCP, Rules 4(i)(2), 12(4) & (5); Rule 4(b),(d)(2)" (CT 8-10

From this date, on and continuing through the FINAL JUDGMENT AGAINST JOHN BACH, filed February 1, 2010 (CT 158-159), assigned judge, the Honorable Gregory W. Moeller, denied all motions, affirmative defenses and counterclaims, many time unilaterally not addressed not supported by any of plaintiff's counsel's filings or supported arguments. District Judge Gregory Moeller, became biasedly and impartially an advocate and third attorney for Plaintiffs, to such a degree that his presiding over the hearings violated defendant and counterclaimant's JOHN BACH's procedural and substantive rights of due process and equal protection.

B. COURSE OF PROCEEDINGS

Appellant's specially appearing motion of may 27, 2009 to strike, void any service over his person and purported subject matters jurisdiction, stated very pertinently:

" . . .he offered complaint is in fact unverified and the purported attached RETAIL INSTALMENT SALE CONTRACT, is per public policies considerations void, if not invalid in the State of Idaho, is by its very terms, paragraph 7, subject to: "Federal law and Montana law apply to the contract"; that facially/patently, defendant JOHN N. BACH specially appearing was never a signator, no cobuyer, nor anyguaranto, nor agent for deceased defendant CINDY LEE BACH, nor has any purported estate or personal representative been named herein of CINDY LEE BACH, deceased, if such representative does exist; that the purported "VERIFICATION" is by a wholly unknown and unqualified, nor authenticated person in the State of Idaho, of a properly licensed or formed corporation or as any purported agent for General Motors Acceptance Corporation, which purported statements of Kathleen Fitzgerald are utterly specious, hearsay, hearsay upon speculations and other hearsay, without foundation or proper authentication and are completely void and/or invalidate said offered specious complaint; and that by its very terms of said form, does not disclose that either GMAC, if registered or licenses in Idaho, was intended as any loan creditor, nor that venue, place of State of formation, performance and jurisdiction was ever intended nor agreed to be in Teton County, Idaho. Lastly, based upon the forestated lack of person and subject matter jurisdiction there is no action for Claim and Delivery I.C. section 8-301 nor that of foreclosure on any purported true sales agreement, or security agreement in sales transaction or lease in fact; which do not continue nor exist beyond the death of CINDY LEE BACH, now deceased. See Stockman Bank of Montana v. Monkota, Inc., (Mont 2008) 342Mont 116, 2008 MT 34, 180 P.3d 1125; Dillroe v. Devoe 223 Mont 47, 724 P.2d 171; and also McGill v. Lester, 108 Idaho 561, 700 P.2d 964 1269, 111 Idaho 841.

Were the personal, subject matter and law of Idaho applying issues resolved, to keep any jurisdictions in Teton County, Idaho, such being extremely doubtful, the purported plaintiff and all its claimed, unsworn agents, etc., have failed to allege, of Idaho's U.C.C, section 9-103(1)(d) and the holdings of: Rockwell Inter. Credit Cor. v. Valley Bank (Idaho App 1985) 109 Idaho 406, 707 P.2d 517." (CT 9-10)

Despite defendant's request for the presence and use of a court reporter at all hearings before the Court, the district court denied such due to funds and the illness of its regular reporter. The Court's minutes of July 7, 2009 @ 2:12 p.m. (CT 14-17) and the Association of Counsel, filed after the hearing had concluded at 2:37 a.m, (CT 18-19) reveal the admission that only plaintiff's filed a "claim and delivery action to get possession of (the) vehicle." (CT 15)

Appellant argued that: "Car was registered in Bozeman MT; was there for year and a half." ; "Concern is misuse of contractual agreement that does not exist in point of time."; "No where in agreement is there a provision where there is a foreign application of laws."; and "-until care was registered and relisted as secured collateral-there is not vehicle This is the wrong court, wrong clause, wrong claim." (Ct 16)

On July 21, 2009 the district court judge denied Appellant's motions to strike/quash service and to dismiss. (CT 20-24) Under DISCUSSION, Part 1. the heading, "The Court has jurisdiction over Mr. Bach and the vehicle, the district court, crptically stated: ". . . The court would further note that Mr. Bach, has not hesitated in the past to avail himself of the Idaho Courts when seeking redress for alleged legal wrongs against him! According to the Idaho's 'Long Ann Statute,' Mr. Bach has submitted himself to the jurisdiction of the State of Idaho by owning real property in Idaho and transaction business here. Code Sec5-514(a) and (c)."(CT 21)

(NOTE:The district court's unwarrant personal jab and criticism as aforesaid for exercising his rights and objections, and other misstatements and criticisms of Appellant throughout memo's Decision and discussions, (CT 22-24, will be addressed, infra, but ignored

district court's objective responsibilities and duties as stated in the Idaho Supreme Court's recent holdings found in West's Pac. Repr, 3rd Series, July 8, 2011, 252 P. 3d No. 3, pages 1255-81, to wit: State of Idaho v. Lute, 252 P.3d 1255, 1257-59 (Opn by Burdic, Justice (Lack of jurisdiction found after illegal void 13 year served criminal sentence); Stafford v. Kootenai County et al 252 P.3d 1259, 1265 (Lack of jurisdiction and standing or capacity to proceed, etc); and Fuller v. Dave Callister, et al, 252 P.3d 1266, 1271-73 and 1274).)

August 8, 2009, Appellant filed his ANSWER BY DEFENDANT PRO PER JOHN N. BACH, WITH AFFIRMATIVE DEFENSES, and DEFENDANT and COUNTERCLAIMANT REQUESTS A 12 PERSON JURY TRIAL WILL NOT STIPULATE TO ANY LESS. (CT 25-30.) John Bach denied in all capacities and conjunctively, disjunctively, jointly and alternatively "all allegations of paragraphs (1), (2), (3), (4), (5), (7), (8), (9), (10) and (11), or the validity, effectiveness or completeness, certainty or claimed agreements, provisions and insertions of that attached purported retail installment contract, purportedly executed by CINDY LEE BACH, now deceased, 10 North 27St., Billings, Yellowstone MT 59103." (CT 20)

Appellant's ANSWER then per his paragraphs 2 and 3, denied further, Par. 2, that he "owes, is indebted to/for or has any obligation or responsibility to pay any sum or sums of either \$24,047, \$2,490.00, \$17,059.18, \$13,175.00 nor \$3,00, nor any other lesser sums or at all as claimed. ."; (and) per Par. 3, denies "that said complaint is one at all 'For Claim and Delivery, (I.C. Sec 8-301) and further so denies on the aforesaid basis/grounds and averments all and each paragraphs (a) through (f) of plaintiff's prayer, and expressly, specifically denies that plaintiff has any rights to recovery of possession of said 2007 Chevrolet Equinox, nor for any recovery of \$17,059.18 nor for any prejudgment interest of \$4.16 per day from any commencement date nor

at all; denies further, that plaintiff has any claim, right or abilities to have such vehicles sold at either public or private sale in any manner nor in accordance with Article 9, Chapter of the Idaho Uniform Commercial Code, and further denies on all aforesaid basis, that plaintiff is entitled to recovery nor can it recover all costs and attorneys fee incurred, in case of default or otherwise whatsoever of the sum of \$3,000.00 or any sum." (CT 26-27)

Under and in Appellant's INDIVIDUAL AFFIRMATIVE DEFENSES, he averred specific legal and factual barred as well as illegalities and public offenses/ violations of public policies, per paragraphs 4 through 8. (CT 27-28) Affirmative defenses paragraph 9, set forth an additional and further issues, per subparagraphs a) through e). (CT 28) These five additional separate torts were:

- a) An unsafe, dangerous and defective vehicle, to operate in high alpine country, roads and highway arteries . . . (as) exist in Teton Counties, Idaho and Wyoming over and via Teton Pass and other highways through Yellowstone and/or Dubose, Wyoming, etc.
- b) A lemon vehicle under Montana laws-statutes.
- c) Breaches of express & implied warranties of fitness for particular purposes, of merchantability, etc under Idaho and Montana statutes- Mont CPA, MCA 61-4-502/3.
- d) Deceptive and unfair commercial practice of sales-financing under Idaho & Montana statutes, MCA 30-14-224(1) and 30-14-133(1).
- e) Violations of Federal RICO Act, per interstate commerce transgression with 2 prior overt acts of a jointly run enterprise, conspiracy and organization in fact, criminally; plus violation of the Idaho Racketeering Statute, by the current and other unlawful, unfair and corrupt collection practices, which may require this counterclaim to be amended to initiate a class action for moneys so laundered. (CT 28)

Appellant's COUNTERCLAIMS, "in conjunction, collusion. joint venture and civil conspiracy, etc., with General Motors and Reseller Motor Company of Bozeman, Montana, along with other unknown counterclaim defendants . . . designated for now as DOES 1 through 20, per his paragraph 11, he incorporated his previous paragraphs 1

through 9, as separate counterclaims.

Appellant's counterclaim's last three paragraphs, numbered 11 through 13, Paragraph 11, averred that GMAC, "and those entities, persons, etc., acting with it have slandered, both the title and ownership, possession, use and value of said Chevrolet Equinox vehicle, and further, have crafted without any mutual agreement having been entered, to falsely now assert, claim and pursue an illegal, void and criminal act of seeking to collect moneys where there is no contract in existence to do so; such efforts being against counterclaimant JOHN N. BACH, who neither a signator, guarantor nor surety on the illegal contract, no longer existing." (CT 29)

Paragraph 13 stated:

"By design, manufacture and national and states' marketing efforts of counterclaim defendant and said entities/persons acting in conjunction or with joint tortious relationships, built and sold a dangerous, defective and unsafe product which was sold to JOHN N. BACH's wife, to use over said high mountain roads and highways. Counterclaim defendant and its cofeasors failed to disclose that the automatic breaking system, the transmission and four wheel drive features, would not and did not operate safely via road and seasons' conditions thereon, normally encountered in Idaho, Montana, Wyoming and other near states." (CT 29-30)

Paragraph 14's language averred generally that the "proximate result. . . did violate the rights of counterclaimant, and his wife when alive as to those claims set forth, in paragraph 9, subparagraphs b), c), d) and e), of page 4, supra." (CT 30)

GMAC's RESPONSE TO COUNTERCLAIM was filed Aug. 21, 2009 (CT 31-33)

On Dec. 9, 2009, Respondent's MOTION FOR SUMMARY JUDGMENT was filed. (CT 34-35) GMAC's MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT. "The basis and grounds for this Motion (was) set forth in the (Respondent's) Memorandum in Support . . . and is supported by the record and pleadings on file with the Court." (Ct 34)

Respondent's Memorandum, contended Appellant per the Decree of Summary Administration re In the Matter of the Estate of Cindy L. Bach, Teton case number 08-420 was awarded the 2007 Equinox (misspelled as Equimax) and the Decree provide that John Bach "shall assume and be responsible for all indebtedness which might be a claim against the estate." An affidavit of Laura E. Burri in Support of Plaintiff's Motion for Summary Judgment had a copy of the DECREE OF SUMMARY ADMINISTRATION (&15-3-1205(b)I.C.) attached thereto. (CT 35, 42-44)

GMAC's memorandum claimed it was entitled to possession of the vehicle and in the last sentence before its CONCLUSION stated: "Lastly, the counterclaim filed by Defendant JOHN BACH fails to state a claim upon which relief can be granted and should be dismissed." (CT 40) No where in said memorandum nor in any document did GMAC's counsel address, set forth nor cite any arguments, case or legal authorities of said statement, which appeared as a personal, biased and prejudicial extra judicial involvement of the district court judge violating Appellant's substantive due process rights. (CT 40) Respondent's counsel filed no further affidavit and relief completely on the purported (invalid / inadmissible) verification of Kathleen Fitzgerald, an employee of Semperian, Inc., who stated she "believes the facts therein stated to be true and correct." (Ct 4)

December 11, 2009 Appellant filed a Motion for Immediate Court's order Continuing Summary Judgment, Jan. 5, 2010; and for Further Immediate Order Striking Plaintiff's said Filings and it's Unverified/Unsigned Complaint, IRCP, Rules 11(a) Verification; 56(c) & (g); & 12(f). (CT 48-50) The basis of such requested continuance was due to Appellant's personal and family plans to celebrate Montenegrin Orthodox Church Christmas Festivities per the Gregorian calendar, Jan 4-8, 2010 in Southern Calif. (CT 48-49)

In Appellant's such request and motions stated:

". . .Earlier, this Court in its Memorandum DEcision denying Defendant's Motion to Quash Service of Process and Motion for Dismissal, dated Oct. 21, 2009, page 2, paragraph 2, thereof, 'incorrectly' reached the conclusion that defendant had not raised any authorities for his oral argument that the plaintiff's complaint was unverified by an out of Idaho state, corporate (purported) agent, not registered nor licensed in and by Idaho law to so sign or purportedly verify said plaintiff's complaint. The statements by the court therein were never refuted by Plaintiff's counsel, and during oral argument, JOHN N. BACH, was both physically and mentally affected by a most recent "stroke, trobotic complete" which required his use of a cane and other prosthetici devises to appear at such oral hearing; defendant was on said date still in throws of rehabilitative physical and speech therapy for such strokeeffects." (CT 49)

Appellant then, "after further reveiw and research" was submitting that Rule 11(a), Rule 11(c) and 56(c)(d) and (e) of the purported verification of plaintiff's complaint "must be stricken as a matter of law and the entire motion for summary judgment is without jurisdiction, legal nor factual basis. citing among four cases, that of Evans v. Twin Falls Co., 118 Idaho 210, 796 P.2d 87 (1990), cert.den. 498 U.S. 1086, 111 S.Ct. 960, 112 L.Ed 2d 1048(1991)(must show oath as required per I.C. 51-109); and Tri-State Land Co. v. Roberts, 131 Idaho 835, 965 P.2d 195 (Ct. App. 1998) citing also to Rule 56(e) re form of affidavit.

January 19, 2010 Appellant filed further his OPPOSITION, REFUTATIONS & MOTION TO STRIKE, VACATE & DENY WITH PREJUDICE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT. (CT 51-50) He further filed therewith his personal AFFIDAVIT OF JOHN N. BACH, consisting of five pages (CT 56-59) attached to which was his deceased wife's copy copy of a much different and incompleated, restricted terms and verbal conditions of effectiveness, The Clerk's Transcript has an incomplete photocopy as CT 60).

Appellant has obtained an verified copy of the complete document which Cindy L. Bach signed, without any agreement, commitment or any addendum whatsoever, that GMAC was the financing credit entity. Such certified copy is made a part hereof, as APPENDIX ONE, to this APPELLANT'S OPENING BRIEF, on the right inside last cover page hereof. Said APPENDIX ONE is a corrected and replaced page CT 60 of the Clerk's Transcript herein,

Within APPELLANT'S said OPPOSITION, REFUTATIONS & MOTION to Strike Plaintiff's Summary Judgment were three (3) complete pages (CT 54-56): "many unproven and supposedly required not just averred fact, to wit:

- "1. Does GMAC have standing, as it is now a matter of common knowledge and elgal fact that GMAC IS IN BANKRUPTCY?
2. Did Cindy Bach ever sign a completed contract of agreement with RESLLER MOTOR CO. of Bozeman for the purchase of what she specified she wanted in a vehicle she sought to purchase?
3. What written authority did Cindy Bach execute with and for GMAC, withfull knowledge of what GAMAC was financing?
4. When, how and per what recording, registering or filing in both the States of Montana and Idaho did Cindy Bach ever consent in writing to a security interest or right to be held by GMAC in the vehicle she did purchase?

5. Under what showing of both specified personal knowledge and qualifications did supposedly an employee (Kathleen Fitzgerald) of Semperian Inc, possess and utilize, to purportedly sign the verification of the complaint? (The District Court both in error and haste in its conclusions assert forth in its Memorandum Decision upon which Plaintiff reliefs. See Mobley and Sons, Inc. v. Weaver (Mont. 2009) 218 P.3d 472 specifically at PAGE 472 Iattorney's affidavit flawed and functionally defective, as his being, "familiar with the facts herein," was clearly testifying to information provided by his client, the veracity of which he had no personal knowledge."); also: State Farm Fire and Cas. v. Forced Aire (Utah App. 2009) 202 P.3d 299, 303-304 (Contractor's affidavit in opposition to summary judgment based on his own person knowledge and created material genuine issues of fact which more than precluded granting of any summary judgment; credibility and weight of evidence is for a jury to decide.
6. Did the form agreement, a true copy of which is attached to JOHN BACH's Affidavit hereto, meet the public policies of Montana or was it such of unsonscionabilities, coercion, fraudulent practices, etc?
7. If GMAC does not have either standing, capacity to sue or even an security interests in said vehicle WHAT IRREFUTABLE FACTS AND IDAHO LAWS OR STATUTES ALLOW IT NOW TO SEEK REPOSSESSION AND RESALE WITHOUT ANY STATED ACCEPTABLE CURRENT COMMERCIBLE REASONABLE PRACTICES?" (CT 54-56)

The AFFIDAVIT OF JOHN N. BACH, offered Jan 10, 2010 in opposition to Respondent's summary judgment motion (CT 56-57, par. 1 and 2, set forth his legal attorney and law practices qualifications of over 28 years of practice in commercial code repossessions of vehicles, tractors, mobile homes, motor bike, snowmobile, etc., for the testimony -he gave via said affidavit.

In his paragraph 3 (CT 57-58) he testified:

"I personally accompanied, driving Cindy L. Bach, my wife, to Ressler Motor Co., of Bozeman, Montana and was present personally during the discussions and negotiations conducted and had on or about January 6, 1997, as I recall a Saturday, No representatives nor officers of GMAC were present nor took part in such discussions. Most auspiciously, the officials of Ressler Motors were agreed that it as the selling dealership would finance personally the vehicle to be sold Cindy, as one of the owners of Jackson Hole Aviation, where Cindy was the chief

accountant and human resources director, was a personal friend of the owner of Ressler, and would guarantee any payments. At no time was GMAC to be a lender nor financier of the vehicle to be purchased by Cindy, and for this reason GMAC was never identified nor state nor "XX"ed in any box or blanks as financing the vehicle. For such reasons, the vehicle was to be registered and licensed in Montana, Bozeman, using both Ressler's and Jackson Hole Aviation's local Bozeman address or post office box."

"4. Attached hereto is a complete, accurate and unaltered copy of the document signed by Cindy Bach which reveals the numerous blanks which were neither completed nor referenced in any manner for financing through GMAC." (CT 57-58)

The attached copy received by Cindy Bach, did not have the handwritten numbers, as was contained on the copy attached to the Complaint such missing numbers of "02 /9/0434159". (See Page 1, supra last sentence of first full paragraph.)

In Appellant's CLOSING BRIEF RE SUPPORT OF HIS MOTION TO STRIKE, DENY & VACATE WITH PREJUDICE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, filed Feb. 1, 2010 (CT 63-75) he stated and argue that: "The contract form which CINDY L. BACH signed has been more than falsely altered, misrepresented and even per the inadequate verification of the complete for purposes of consideration supporting any plaintiff's motion for summary judgment, has established a deceit, fraud and abuse of legal process by plaintiff and its attorney upon this court and defendant JOHN N. BACH,."

Most significantly the choice of law clause which plaintiff seeks to apply was never stated in its forged/fraudulent copy of the supposed written agreement. In Milanovich v. Schnibben, 2007 MT 128, 337 Mont. 334, 160 P.3d 562, it was held, . . . that under Montana Law forum selection clauses are 'prima facie valid', So, if the Plaintiff's copy of the forged and falsified written agreement was admissible and relevant. . . , then the Montana forum selection clause for the action to be tried in Montana is valid and this action should have been filed in Montana.. But Milanovich, supra, has more cogent application because it also held that if the resisting party can show that the clause is unreasonable under the circumstances, to wit: that 'the agreement is not 'deliberately and understandingly made,' and if the contract language does not 'clearly, unequivocally and unambiguously express a waiver' of personal jurisdiction',

thus becoming/ being a contract of adhesion, especially

"when a party possessing superior bargaining power presents a standardized form of agreement to a party whose choice remains either to accept or reject the contract without the opportunity to negotiate its terms." Zigrang v. U.S. Bancorp Piper Jaffray, Inc. 2005 MT 282, 329 Mont, 239, 123 P.3d 237."

(CT 64-65)

Appellant further pointed out Plaintiff had to expressly stated under penalty of perjury with specific factual details it it had complied within four (4) months after the vehicle was kept and required to be licensed in Idaho, citing I.C. 28-9-801, 28-9-708 and also 28-9-304 & 307. Plaintiff had not pled and could not plead it had any security interest perfected by Idaho laws. I.C. 28-9-302(c), subparts, (d)(e)(f) and (g)(2) and 28-28-9-316(a) (CT 66) Section 28-9-316(a) provided:

"A security interest perfected pursuant to the law of the jurisdiction designated in section 28-9-301(1) or 28-9-305(c) remains perfected until the earliest of:
. . . (2) The expiration of four (4) months after a change of debtor's location in another jurisdiction; or (3) The expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction. . .(b) . . .If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it become unperfected and is deemed never to have been perfect. . ."

(CT 66-67)

Attached to Defendant's Closing Brief were a confirming Feb. 10, 2010 Letter request from Appellant to the IDAHO SECRETARY OF STATE WITH COPIES OF FILED /RECORDED DOCUMENTS THAT:

1. SEMPERIAN, INC. , File Number C 161651, had file A CERTIFICATE OF WITHDRAWAL from doing business in Idaho.
2. The Application for Withdrawal of SEMPERAIN, INC., WAS GRANTED AND IT CEASED DOING BUSINESS AS A CORPORATION IN IDAHO, Septeber 26, 2008. (it had surrendered its authority to transact business in Idaho, Sept. 26, 2008,)

(CT 68-75)

A SECOND AFFIDAVIT OF JOHN N. BACH, Pro Se, was filed February 19, 2010, which attached as EXHIBIT "2" the foregoing letter and Idaho State Secretary of State CERTIFICATE OF WITHDRAWAL, per I.C. sec. 30-101520 of SEMPERIAN, INC., (CT 79-81)

Appellant's FURTHER EMORANDUM BRIEF RE: To Strike, Vacate, Etc., With Prejudice Plaintiff's Summary Judgment Motion was filed February 19, 2010. (CT 82 - 89) Appellant sought sanctions against Respondent's counsel per IRCP, Rules 11(a)(1) and Rule 56(g) on the basis that such attorneys knew that the verification by Kathleen Fitzgerald was a sham. stating expressly:

"WE do not know what was the exact employee position of Kathleen Fitzgerald with Semperian, Inc., if she was so employed. But she dated and signed her one parge verification, two whole days before Laura E. Burri prepared the complaint and signed it herself. To conclude that neither knew that Semperian, Inc., was disfranchised of its own accord from doing or conducting any business in Idaho is ludicrous, especially since Ms. Burri practices in Boise, Idaho and could have ascertain upon reasonable inquiry that Semperian, Inc., had no standing, capacity or authority to do business in Idaho. Ms. Fitzgerald, if she was a key and relevantly mangerial employee would have known that as well. But for this Court to make such inquiries of both said women requires their prewence before this court with the rights of due process and equal protection assured defendant to personally cross examine them on the record. Ms. Burri, aavoids any appearances before this court other than the associate counsel, who appears further progrmed to mislead and deceive this court." (CT 84-85)

Appellant further in said FURTHER MEMORANDUM BRIEF, pointed out that IRCP, Rule 11(c) expressly requires/states who must verify the pleadings when a corporation is a party, to wit "by an officer thereof" and especiallu when a purported verified pleading is to be used as a basis for an affidavit to support a summar- judgment motion the "a verification upon personal know- leged is required." (CT 85)

Appellant in his FURTHER MEMORANDUM BRIEF, cited POSEY v. FORD MOTOR CREDIT CO, 141 Idaho 477, 11 P.3d 162 (Ct. App. 2005) where "it was held that although a witness' affidavit for the corporation offered to support a summary judgment motion was conclusory absent any foundational showing his participation in the transaction or his indeed personal knowledge of the facts which he oversaw and attested, insofar as any documents offered to show the truth of assertions contained within them, the documents were hearsay for which no exception was established." (CT 86

Besides raising and citing the failure of compliance with Idaho's Statute of Frauds, I.C. 28-2-201(1), 28-2-209(2)(3) and I.C. 9-505(2) as Cindy had not signed for financing with GMAC per her incomplete document (CT 60 and APPENDIX ONE hereto, the Complaint fails to state a cause of action and can be dismissed with prejudice "upon the included basis that defendant's said motions, opposition memos and requests, are also a motion for judgment on the pleadings, per I.R.C.P, Rule 12(c) in his favor and against plaintiff." (CT 88)

Appellant's said FURTHER MEMORANDUM BRIEF, in its last two (2) pages, starting with the last full paragraph on CT 88 highlights and sets forth four (4) more controlling cases, three of the Idaho Supreme Court and one, Tomer v. Gates, from the 9th Cir., CA 1987) 811 F.d 1240, 1243, holding that party's failure even as late as oral argument, to withdraw his motion for summary judgment which was frivolous was not only unbecoming, but not to be taken lightly by the Ninth Circuit court as to its ruling and award of sanctions. (CT 88-89)

C. GRANTING OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND WRIT OF POSSESSION.

May 3, 2010, the district court filed its MEMORANDUM DECISION, CONSISTING OF 9 PAGES. (CT 90-98) The DISCUSSION therein states per "1", "GMAC's summary judgment motion is granted." At the bottom of said page (CT 93) is stated:

"At issue in this case is whether Mrs. Bach's demise affects GMAC's ability to enforce the contract. As we discussed in the Court's July 21, 2009 Memorandum Decision, Mrs. Bach's death did not leave GMAC without remedy to enforce the financing agreement. The Court previously held: (1) the Court has in personam jurisdiction over Mr. Bach and in rem jurisdiction over the car; (2) GMAC's complaint was properly verified; (3) Mr. Bach was properly served and is a proper party to the suit; (4) Mr. Bach assumed Mrs. Bach's financing agreement when he assumed indebtedness and claims against Mrs. Bach's estate. ¹⁰ . . . 10 Memorandum Decision of July 21, 2009 Denying Dft's Motions to Quash Serv. of Process & for Dismissal." (CT 93)

The district court judge then reviewed (more than selectively and biasedly, Appellant's issues raised by his counterclaims, but claimed "These are conclusory allegations", when Respondent had made no formal summary judgment motion on the Counterclaims, affirmative answers and issues raised. (CT 94-95)

Repeating itself, "the Court rules as a matter of law that Mr. Bach received possession of the car and assumed the obligation of the agreement on December 1, 2008, when Judge Luke signed the Decree of Summary Administration."

The district court then, without further analysis or citation to case authorities "dismissed (Bach's counterclaim in its entirety. But there were numerous counterclaims which it did not address.

Although there was no summary judgment motion made re the counterclaims, and no requests for any tried with finality judgment, the district court took "judicial notice that it is dangerous to drive in many places in Idaho during winter, including Teton County, This is true whether one is driving in an Equinox or a Snowcare. Mr. Bach's mere assertion that there are braking and four-wheel-drive problems with his vehicle in Teton County is insufficient to allow GMAC to form an answer or put them on notice as to complaint. Such claims do not meet even the liberal pleading requirements of Rule 8(a)(1) and 9(f) of the Idaho Rules of Civil Procedure.²⁰" (CT 96)

(NOTE: At this point and per the district court's giving of his asserted credible evidence, expertise at that without any foundation being presented, he lost all standing as an impartial jurist and was required to immediately recuse and disqualify himself, but not without first vacating and striking all his memo decisions and rulings against Appellant.)
(CT 96-97).

May 17, 2010 DEFENDANT & COUNTERCLAIMANT JOHN N. BACH, filed Four POST MEMORANDUM DECISION MOTIONS. (CT 99-107) Appellant also filed therewith a FURTHER AFFIDAVIT OF JOHN N. BACH, re lack of standing and capacity of GMAC due to the undisputed existence of GMAC's bankruptcy and the lack of GMAC to "show standing and capacity to pursue their sole claim and delivery action." (CT 108-09)

Appellant filed a FURTHER MEMORANDUM IN SUPPORT OF HIS MOTIONS FILED May 17, 2010. (Ct 110-0114) As this Idaho Supreme Court reviews de novo this appeal from the granting by the district court, without following or being bound in any manner by the district court's Memorandum Decisions or rendered Judgment, Appellant's entire FURTHER MEMORANDUM IN SUPPORT OF HIS MOTIONS FILED May 17, 2010 are attached hereto following renumbered as pages 18, 19, 20, 21, and 22 hereafter.

JOHN N. BACH
Post Office Box 101/4000N, 1530E
Driggs, ID 83422
Tel: (208) 354-8303
Defendant and Counterclaimant
Pro Se

July 6
11:28 *AB*

SEVENTH JUDICIAL DISTRICT, IDAHO, TETON COUNTY

GMAC,

Action NO: CV 09- 172

Plaintiff &
Counterclaim
Defendant,

DEFENDANT/COUNTERCLAIMANT
JOHN N. BACH'S FURTHER
MEMORANDUM IN SUPPORT OF
HIS MOTIONS FILED May 17, 2010.

v.

JOHN N. BACH,

DATE: Jul. 6, 2010 TIME: 2p.m.
PLACE: Teton County Courthouse

Defendant &
Counterclaimant.

This FURTHER MEMORANDUM IN SUPPORT OF ALL THE MOTIONS filed by JOHN N. BACH, Pro Se, on May 17, 2010 is presented in view of the absolute lack and avoidance of any response by plaintiff GMAC and its counsel. JOHN N. BACH's motions should be all granted as without opposition or refutations, oer môtion for reconsideration and Rule 60(b), all cited subsections.

I. THE ENTIRE MEMORANDUM DECISION OF May 4, 2010 SHOULD BE SET ASIDE, VACATED AND ANNULLED.

The Memorandum Decision of May 4, 2010 is neither final either as a judgment nor final order with jurisdiction of subject matter, nor with any personal jurisdiction and most certainly, is without any statement or averment of any viable claim or cuase of action; most certainly it is does not state any claim whatsoever for claim and delivery per I.C. 8-301.(De- spite the Court's predisposed mindset that "it is uncontested" that Cindy Bach "financed" said vehicle with GMAC, such has always been contested, refuted and disproven by the affidavits and motions of JOHN N. BACH, who is neither a cosignor, nor guarantor, nor indeminiifier nor hold harmless promisor to GMAC who in two states, wilfully & intentionally failed, refused to perfect any security int- of the vehicle in Montana and Idaho!)

A. BASIC RULES, PRINCIPLES WHICH APPLIED BUT WERE NOT FOLLOWED BY THE JUDGE HEARING PLAINTIFF'S SUMMARY JUDGMENT MOTION.

1. A Pro Se litigant is entitled to the same application of the rules of civil procedure and controlling statutes, in the same manner as apply to a licensed Idaho attorney. The judge did not do so herein. Shelton v. Shelton (Idaho 2009) 225 P.2d 693, 698-99 (Judge herein created unique procedural hurdles, dealing with summary judgment and motion to dismiss re failure to state claim) Plt's counsel's failure to show any perfection of security interest per his offered copied 8 pages of Montana's statute 61-3-103, (1)(d), compiler comments parts (5) & (6), required the granting of defendant summary judgment!

2. The subject matter jurisdiction issue may be raised at any time, sua sponte or otherwise. T.J.T., Inc v. Mori (Idaho April 10, 2010) 230 P.3d 435, 436-437 (S/J motion separate judgment per Rule 58(a).) The district court's ignoral of further refusal/failure by plaintiff to prove any security perfection per Idaho statutes in the Idaho registered vehicle in question, further doomed any right/basis per Rule 56(a) through (e) to grant summary judgment to plaintiff & further showed no viable claim of claim and delivery sought by plaintiff.

3. Due process, both procedurally and substantively requires a fair and impartial judge who cannot become either an advocate for plaintiff GMAC, nor an expert or percipient witness either disclosed nor sua sponte, nor give and apply his expert testimony without filing of notices per such intent, his expert qualifications, foundational basis, etc., all of which must be heard, determined and ruled upon by another qualified trial judge on all evidentiary qualifications basis, with fixed/focused application of exclusion re hearsay, unfounded opinions, speculations, inadmissible and nonrelevant statements, etc. Owlsey v. I.A.C. (2005) 141 Idaho 125; Caperton v. A.T. Massey Coal, Jun. 8, 2009, U.S. Supreme Court Dkt 08-22, 556 U.S. _____; Litkey v. U.S. (1994) 510 U.S. 551.

SPECIAL NOTE: Under I.R.E., Rule 602, 603, 703, 704 and 705, the qualifications of any expert must be evidentiary and foundationally established for any expert opinion or testimony to be given, as is stated by the district judge when he "takes judicial notice that it is dangerous to drive in many places in Idaho during the winter, including Teton County. This is true whether one is driving in an Equinox or a Snowcat." (Memo Decision, P. 7) What is the judge's qualification to make such speculative, hearsay and irrelevant/inadmissible sua sponte proof/evidence in aiding plaintiff and dismissing all counterclaim causes of action in one Alice in Snowland swoob? Most egregiously, where/when was such judicial noted facts determined in litigation & when did John Bach be given a hearing to refute such, per IRE, 201, e

4. Where issue of what are the terms of a contract, preliminary showing by plaintiff must/is required that any enforceable contract must be sufficiently definite, certain and its terms and requirements so ascertainable of acts to be performed and when performance is required, completed or not by the plaintiff; not only must any uncertainties or ambiguities of a contract be identified but the court must imply the covenant of good faith and fair dealing into the contract to be performed by the plaintiff seeking to enforce it. Spokane Structures, Inc. v. Equitable Investment (Idaho 2010) 226 P.3d 1263, 1266-68);

Potlach Educ. v. Potlatch School Dist. (Idaho Feb. 3, 2010) 226 P.3d 1277, 1280 (interpreting ambiguous term is issue of fact). and 11281 (court must imply covenant of good faith and fair dealings in all contracts which raises and is also a question of fact).

III. IF THE DISTRICT COURT WRONGFULLY DISMISSED ALL COUNTERCLAIMS, WHEN NO RULE 12(b)(6) MOTION WAS PROPERLY MADE NOR SUPPORTED BY ANY REQUIRED MEMORANDUM OF AUTHORITIES BY PLAINTIFF, SUCH DISMISSAL MUST BE WITHOUT PREJUDICE TO COUNTERCLAIMANT TO FILE AN AMENDED COUNTERCLAIM.

Counterclaimant's causes of action despite the wording and unsupported conclusions of the district judge, pages 5-8 are more than inaccurate; they reveal the prejudicial mindset of the district judge, who should no longer preside over this action. At page 5, the district judge, without any basis of case authority states: "Perfection and recording issues would affect GMAC's rights as to other creditors, but would have no effect on Mr. Bach's obligation to pay under the contracts."

Such conclusion is more than specious and a red herring non sequitor. GMAC filed solely a claim and delivery action per I.C. 8-301, It has not stated any other cause of action and must show it has not only standing as a party agreed to by Cindy Bach, but that it timely, as required further adequately perfected its security interest under both Montana and Idaho laws; which it admitted did not.

The further unfounded conclusions at page 8, top paragraph of said Memorandum Decision, particular sentence thereof, that:

"There is nothing in the record to suggest GMAC has been fraudulent or devious in its efforts to receive payment under the financing agreement."; (are wholly inaccurate!)

Indeed the facts and evidence presented by JOHN BACH have shown exactly that; moreover, the attempt by GMAC's counsel to mislead this Court per the copy of Montana statute 61-3-103(1)(d), comments (5) & (6), that somehow it is excused from perfecting its claimed security is beyond not just the provisions and rules of application

Rule 56, particularly, Rules 56(a) through 56(e).

Further, the other statements, top page 8, are beyond the issues of said Rule 56, as the district court judge is not hearing evidence in/after a trial and ruling, he is restricted to what plaintiff has either been able to show or cannot show at this stage, of a limited summary judgment request. No where in GMAC's complaint does it allege, the vehicle was/is pledged to it and it has always had and still has actual possession of it to enforce that pledge. Thusly, the very absence of any security perfection dooms any viable cause of action by GMAC for claim and delivery. Here, the district court's very own words show/establish that GMAC did not and cannot show it had all elements of claim and delivery which is strictly a statutory remedy based solely upon a timely and legally perfected security interest! Aardema v. U.S. Dairy Systems, Inc., 2009) 215 P3d 505, 513; Thomas, Idaho, 126 Idaho at 531, 887 P.2d at 1038.

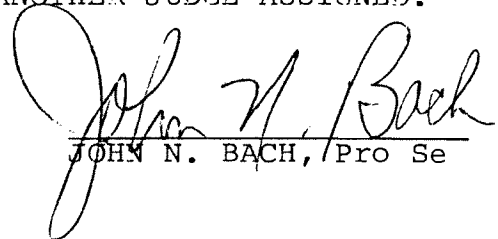
When now the district court assumes an attorney's advocacy role for GMAC as to facts and arguments which are beyond what the record shows and is required for summary judgment rules' application, in short, legally covering GMAC's misuse and abuse of process per no basis whatsoever for claim and delivery, then, how can said same district judge preside over a jury trial, which is the entitlement right of JOHN N. BACH?? Nor does, the repeated, but inaccurate conclusion, that by "Mr. Bach assumed both the benefits and obligations of his deceased wife's estate" eliminate with clarity, exactness and unambiguity, that he guaranteed all her debts, even those unenforceable and not legally binding? It isn't CINDY who now refuses BOHICA posturing- - it's her surviving husband who asserts all rights that she had and those which he has against such wilful JNBACH's Fur Memo re His Mtrg Filed May 17, 2010 P. 4. A.0B. P. 21

deceptively abuse of process and extortion by GMAC, who has shown no rights nor basis to be granted any summary judgment.

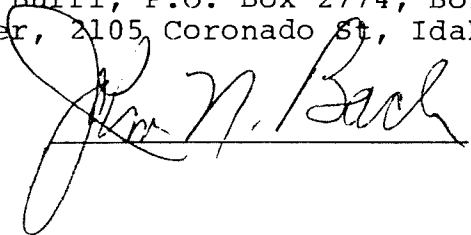
If the district court is any where close to accurate that somehow "Mr. Bach's counterclaim is dismissed in its entirety", such should be without prejudice to filing an amended counterclaim, which may include deceptive and illegal business practices by GMAC and even its counsel of record herein. The terms of the contract signed by Cindy Bach with the Equinox dealer, retained her right to sue it and any assignee, GMAC, under Montana and U.S. federal laws and statutes. Lastly, as no security perfection has been established, GMAC is not entitled to any form of attorney fees. If it is to take back said vehicle it must be in full satisfaction!

III. ALL THREE MOTIONS MADE BY JOHN N. BACH SHOULD BE GRANTED AND THE DISTRICT COURT JUDGE DECLINE TO HEAR ANYTHING FURTHER IN THIS MATTER AND HAVE ANOTHER JUDGE ASSIGNED.

DATED: July 2, 2010


JOHN N. BACH, Pro Se

CERTIFICATE OF MAILING: I the undersigned hereby certify that on July 2, 2010 I did mail copies of this document via U.S. First Class Mail to: Judge Gregory Moeller, C/O Madison County Courthouse, Rexburg, ID 83440; Laura E. Burri, P.O. Box 2774, Boise, ID 83701-2773; and Lance J. Schuster, 2105 Coronado St, Idaho Falls, ID 83404-7495.



A.O.B. P. 22

July 19, 2010 Plaintiff's filed a RESPONSE TO DEFENDANT JOHN BACH's POST SUMMARY JUDGMENT MOTIONS. (CT 120-124), and an unnotarized/unverified AFFIDAVIT IN SUPPORT OF PLAINTIFF'S RESPONSE TO DEFENDANT JOHN BACH's POST SUMMARY JUDGMENT MOTIONS. (CT 126-128) Plaintiff's counsel also filed an AFFIDAVIT OF COTS AND PRE-JUDGMENT INTEREST, ON July 26, 2010. (CT 129-;30)

August 2, 2010, DEFENDANT-COUNTERCLAIMANT'S CLOSING BRIEF RE OBJECTIONS, WITH MOTIONS TO STRIKE GMAC's LATEST FILINGS, PURPORTED AFFIDAVIT, ETC. -OF LAURA BURRI, Et Al. (CT 131- Appellant objected to the consideration or receipt of Laura Burri's unnotarized/unverified affidavit (CT 120-124) as not only inadmissible but untimely, must be stricken and denied usage. Moreover, appellant objected the said affidavit was false and an attempt to dilatorily amend the plaintiff's summary judgment motion and offered in respons to Appellant's said post aummary judgm-ent motions without obtaining a formal order after motion being made to permit such further unnotarize/unverified affidavit. (CT 134-137)

On August 5, 2010, an AMENDED AFFIDAVIT IN SUPPORT OF PLAINTIFF'S RESPONSE TO DEFENDANT JOHN BACH'S POST SUMMARU JUDGMENT MOTIONS was filed without leave of court, nor any order filed, argued and granted to do so. (CT 138-;40) This umaithorized, late and inadmissilbe affidavit had a purported ITD sheet of "7/19/2010" of CINDY's Equinox, with 44,000 odo-meter miles on 2/29/2008 was listed, but no information when, whether orif, within four (4) months of registered with an Idaho license, an claimed security interest/lien on it was prefected-- the information was more than useless, irrelevant and specula-tive hearsay, conjecture and entirely inadmissible. (CT 140)

September 3, 2010 the district court filed an AMENDED ~~MEMORANDUM~~ DECISION, (CT 141-155) which more than repeated the Court's prior decisions, except it now denied Appellant had been denied a fair and impartial judge (CT 149-151) and denied his Motion Strike Lauri Burri's two untimely affidavits. (Ct 152-155)

D. FINAL JUDGMENT ENTERED AND NOTICE OF APPEAL FILED

A FINAL JUDGMENT AGAINST JOHN BACH, was filed February 1, 2011, ordering money damages totalling \$19,976.94 with interest at 5.375% per annum, a WRIT of Possession shall be issued for the recovery of possession of said vehicle." (CT 158-159)

The WRIT OF POSSESSION has issued and the vehicle has been repossessed in March 2011 but no notices of any sales, auctions or biddings for resale of said vehicle or if any price or moneys have been received nor if applied against the total moneys due per the Final Judgment.

On March 15, 2011 Appellant filed his NOTICE OF APPEAL & APPEAL OF APPELLANTS/DEFENDANTS CINDY LEE BACH, (deceased), and JOHN NICHOLAS BACH, an individual (widower). (CT 160-164)

Despite Appellant not having received timely and proper NOTIFICATION of when his opening brief was due, he received less than eight days ago that his OPENING BRIEF IS DUE PER FIRST CLASS OVERNIGHT MAILING, before midnight August 2, 2011.

I S S U E S

APPELLANT'S NOTICE OF APPEAL AND APPEAL OF CINDY L. BACH (deceased) and JOHN NICHOLAS BACH, an individual (Widower), sets forth seven (7) general issues, at CT 16 2-163. All said seven (7) issues are revised, but included within the following issues on Appeal:

ISSUE NO. 1. WAS THERE ANY CONTRACT OR AGREEMENT FORUM CLAUSE THAT REQUIRED JURISDICTION AND VENUE TO BE IN MONTANA?

ISSUE NO. 2: WAS PLAINTIFF'S COMPLAINT FOR CLAIM AND DELIVERY PROPERLY VERIFIED TO BE USED FOR PURPOSES OF SUMMARY JUDGMENT?

ISSUE NO. 3: WAS THE DISTRICT COURT JUDGE AUTHORIZED BY SUMMARY JUDGMENT RULES TO PERSONALLY AND WITHOUT NOTICE AND A PROPERLY HELD DUE PROCESS HEARING, TO GIVE HIS HEARSAY EXPERT TESTIMONY WHICH HE USED AND APPLIED IN GRANTING SUMMARY JUDGMENT?

ISSUE NO.4: DID GMAC, mislead, abuse the processes of the DISTRICT COURT AND FAIL TO STATE A CAUSE OF ACTION REQUIRING THE DISTRICT COURT TO GRANT APPELLANT A FAVORABLE JUDGMENT ON THE PLEADINGS?

Before argument on these four (4) issues and the many subissues raised by the original seven (7) issues included therein from Appellant's said NOTICE OF APPEAL, APPELLANT, A PRO SE LITIGANT & entitled to the same application of the statutes, rules and authorities cited and controlling, in the same manner as apply to a licensed Idaho attorney. Shelton v. Shelton

(Idaho 2009) 225 P.3d 693, 698-699. The trial court judge herein herein created unique proceedings and misinterpretations of statues and civil rules of procedure in dealing with GMAC's unverified motion for summary judgment and ignoring refusing to rule on Appellant's motion to dismiss complaint with or grant him a motion for judgment on the pleadings re failure of GMAC to state a cause of action to perfect in Idaho, timely and or properly any perfection of its unsupport perfection of a securirty interest I.C. 28-9-312(c), (d)(e)(f) & (g)(2); 28-9-316(a) CT pages 10 through 22 are incorporated herein.

Throughout the district court's rulings and memo decisions, he cited and used the Decree of Summary Administration, Dec. 1, 2008 as a matter of law that appellant thereby had received possession of the ⁹Euinox and assumed the obligation of the agreement that CINDYLEE BACH had entered into when she purchased the car. But the district court never ruled nor addressed the conflicting evidence of what agreement signed or nonintegrated Cindy Bach reached with RESSLER MOTOR CO and GMAC. Ct pages 14-17 are especially incorporated herein

Two (2) recent Idaho Supreme Court cases were violated by the district court's more than deliberate oversights, to wit:

1. Fuller v. Dave Callister (Idaho, 2011) 252 P.3d 1266, 1269 ("The party against whom the (summary) judgment will be entered must be given adequate notice and an opportunity to demonstrate why summary judgment should not be entered. It is also true that a district court may not decide an issue not raised in the moving party's motion for summary judgment.") The foregoing last sentence of Fuller. requires the reversal of the district court's granting of GMAC's unmade, unargued and wholly unsupported motion to dismiss with prejudice all of Appellant's affirmative defenses and numerous counter-claims against GMAC.)

Fuller also involved an assignment of the purchase agreement. (Here, GMAC never per its motion for summary judgment, unverified, ever proved conclusively or otherwise. that the Decree of Summary Distribution, ever expressly or otherwise, constituted a waiver of and intentional relinquishment of all known rights of Appellant to resist, oppose and have the GMAC's unverified complaint dismissed with prejudice. Fuller, 252 P.3d 1266, 1273 (A novation differs from an assignment because it requires the assent of all parties. . .An assignment is not a debt; & is full payment for something now, even though receipt of part of the value may occur in the future. An assignment is a formal transfer of property or property rights from one to another, while a waiver is the intentional relinquishment of a known right.")

Appellant never sought nor has he waived any of his known rights of opposing, defendant and defeating the limited and unlimited claims of GMAC.

2. Spokane Structures, Inc. v. Equitable Investment (Idaho 2010) 226 P.3d 1263, 1266-68)

(Not only must any uncertainties or ambiguities of a contract be identified, and determined which terms and conditions apply, but especially, the court must imply the covenant of good faith and fair dealings into the contract to be performed by the plaintiff seeking to enforce. All of the foregoing issues are of fact to be decided by a jury where required by either party. (Appellant required per his answer, affirmative defenses and multiple counterclaims, a jury trial of 12 persons. (CT 25)

Most relevantly, I.C. 15-3-1205 (c)'s wording does not extinguish, nor relinquish, waive nor destroy Appellant's constitutional rights to refute, oppose and defeat GMAC's current complaint.

Any such interpretation by the district court that it does is more than erroneous; it is constitutional "VOID" Fidelity State Bank v. North Fork Hwy Dist. 35 Idaho 797, 209 P. 449, 31 A.L.R. 781 (1922)

It is further applicable that the Appellant's jury trial rights are guaranteed by the Idaho Constitution's

Article I, Clause 7. Moreover, any waiver of jury trial, as that of waiver/relinquishment of a claim, prosecution or defense thereof, cannot be made or enforced except in the manner provided by statute; such cannot and will not be implied in doubtful or contested cases. Neal v. Drainage Dist. No. 2, 42 Idaho 624, 248 P. 22 (1926)

Through all hearings, the district court judge more than confusingly but deliberately accepted the purported verification of MAC's complaint by Kathleen Fitzgerald, which oath was not as required by I.C. 51-109; was not as a proven officer/director of Semperian, Inc., per Rule 11(c); and was 3) as an unspecified agent or employee of Semperian, Inc, then disenfranchised and withdrawn from being an Idaho corporation and doing via such corporation any business in Idaho. (CT 66-75, 79-81)

The following two (2) cases apply throughout all issues raised infra, as do all arguments and authorities, pages 18-29 supra, which by such reference are incorporated herein, infra as applicably supporting all issues' resolution in Appellant's favor:

1. Posey v. Ford Motor Credit Co, 141 Idaho 477, 11 P3d 162
1 Ct. app. 2005(A witnesses affidavit for corporation offered in support of summary judgment motion was conclusory and without any foundational showing of his precise participation in the transaction or of his acquiring or participating to acquire personal knowledge of the facts, etc., such was inadmissible hearsay in violation of Rule 56(b) through (e).
2. Mobley and Sons, Inc. v. Weaver (Mont 2009) 218 P.3d 472, 475 (attorney's affidavit flawed as hearsay, defective, he was clearly testifying to hearsay evidence provided by his client.)

ARGUMENTS ON IN SUPPORT OF
ALL ISSUES

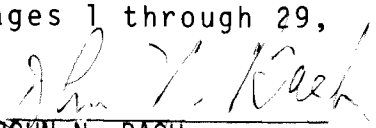
ARGUMENT ON ISSUES NO. 1: THERE WAS A COUNTERACT/AGREEMENT FORUM
CLAUSE , THAT REQUIRED GMAC'S
COMPLAINT FOR CLAIM AND DELIVERY
JURISDICTION AND VENUE, TO BE IN
MONTANA.

It was undisputed that CINDY L. BACH went to Bozeman, Montana Saturday, driven there by her husband, Appellant JOHN N. BACH. She purchased an Equinox that day and reached a totally unintegrated agreement Per GMAC's paginated/recopied version of the Retail Installment Sale Contract, paragraph 7 provided : "Federal law and Montana law apply to this contract. (CT 7)

Any contract between Ressler Motors and Cindy was reached in Bozeman, Montana, where such purchased car was registered for at least a year and a half or more. If GMAC was the financier it knew that CINDY'S address was:

10 North 27th St. BILLINGS YELLOWSTONE MT 59103. CT 6)

NOTE: Because of the unexpected breakdown of Appellant's IBM Selectric II. Typewriter Appellant requests an additional hour () week to finish this Opening Brief and Replace it with a full complete OPENING BRIEF OTHERWISE, Appellant SUBMITS ALL HIS ARGUMENTS AND AUTHORITIES, PAGES Pages 1 through 29, in support of all his issues stated herein

DATED: August 2, 2011 at approximately 11:31AM  JOHN N. BACH

CERTIFICATE OF SERVICE

I, the undersigned, certify, that on August 2, 2011, I did place in separate first class mail envelopes copies of this APPELLANTS' OPENING BRIEF to: (1) Seven (7) bound and one unbound copy, via overnight mail delivery to; CLERK, IDAHO SUPREME COURT, Post Office Box 83720, Boise, Idaho 83720-0101; and Two (2) copies to Laura Burri, RINGERT LAW CHARTERED, P.O. Box 2772, Boise, ID 83701-2773.

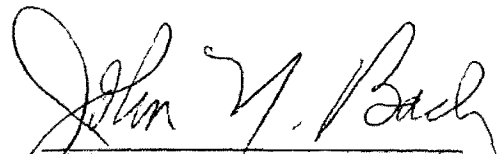
APPENDIX ONE

Certified Copy
of
AFFIDAVIT OF
JOHN N. BACH
(CT 56-60 etc)

WHAT IRREFUTABLE FACTS AND IDAHO LAWS OR
STATUTES ALLOWS IT NOW TO SEEK REPOSSESSION
AND RESALE WITHOUT ANY STATED ACCEPTABLE CUR-
RENT COMMERCIBLE REASONABLE PRACTICES?

Defendant and counterclaimant, recently had priorities of getting prepared for two (2) oral appeal arguments before the Idaho Supreme Court, which have impacted him adversely from further delineations of his opposition and refutations herein. He will be filing supplemental memoranda and affidavits before the hearing date and time set now by the Teton County Seventh Judicial District Court.

Respectfully Submitted, this January 16, 2010.



JOHN N. BACH, Pro Se/Pro

per.

AFFIDAVIT OF JOHN N. BACH

I, JOHN N. BACH, also known as JOHN NICHOLAS BACH, Hereby being placed under oath to testify as stated herein, do so:

1. I give the testimony herein of my own personal knowledge, involvements of attendance and presence at the times stated or events identified, my own personal participation as a former trial attorney and advocate of over 28 years in California, and other neighboring states of Nevada, Oregon and

Washington, and in administrative law tribunals before California Administrative Law Review Tribunals and various Federal Departments and Agencies in California and personally in Washington, D. C. venues.

2. I have taught advanced business law courses at California State University, Chico, Calif., upper division, for both business and accounting majors, with emphasis on the earlier Uniform Sales Act, and the Uniform Commercial Codes of Calif., and adjoining states, the latter U.C.C. act which is now in place and applying in Idaho. Additionally over some 28 years of practice, as a trial advocate and in related administrative trials, I represented new vehicles dealerships, tractor and farm implement dealerships, mobile home manufacturers and retail mobile home and trailer sales dealerships, especially repossessions and the holding of commercially reasonable resales for purposes of securing payments to my dealerships clients. I have handled both appeals, arbitrations and mediations hearings regarding such repossessions and resales as required under the commercial codes, including but not limited to the basic requirements of filing Form 1, signed statements, security interests in vehicles, tractors, mobile homes, trailer, motor bikes, snowmobiles, etc. Although never licensed in Idaho to practice law, I have attempted to and have kept current with recent decisions and statutes in Idaho, Montana, California and other states in the field of financed goods purchased.

3. I personally accompanied, driving Cindy L. Bach, my wife, to Ressler Motor Co., of Bozeman, Montana and was present

personally during the discussions and negotiations conducted and had on or about January 6, 2007, as I recall a Saturday. No representatives nor officers of GMAC were present nor took part in such discussions. Most auspiciously, the officials of Ressler Motors were agreed that it as the selling dealership would finance personally the vehicle to be sold to Cindy, as one of the owners of Jackson Hole Aviation, where Cindy was the chief accountant and human resources director, was a personal friend of owner of Ressler, and would guarantee any payments. At no time was GMAC to be a lender nor financier of the vehicle to be purchased by Cindy, and for this reason GMAC was never identified nor stated nor "XX"ed in any box or blanks as financing the vehicle. For such reasons, the vehicles was to be registered and licensed in Montana, Bozeman, using both Ressler's and Jacon Hole Aviation's local Bozeman address or that of their mutual Bozeman's attorney's address or post office box.

4. Attached hereto is a complete, accurate and unaltered copy of the document signed by Cindy Bach which reveals the numerous blanks which were neither completed nor referenced in any manner for financing through GMAC

5. There are many other parts and subjects of the discussions which I not only overheard but participated re such vehicles, but at this juncture, such are not appropriate nor to be informally injected. DATED: January 16, 2010.

STATE OF IDAHO)
COUNTY OF Teton)

) SS

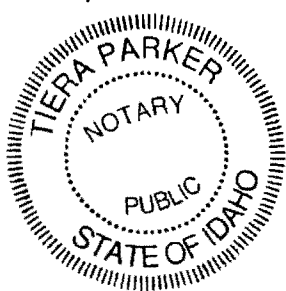
) *Declarant under penalty of perjury, the foregoing is true and correct.*
John N. Paul

John N. Paul

DATED: January 19, 2010

John N. Bach
JOHN N. BACH

I, the undersigned NOTARY PUBLIC
of the State of Idaho, County of Teton ,
do hereby affirm, acknowledge, attest, verify
and state, that on Saturday, Jan. 1, 2010, in
Teton County, Idaho, JOHN N. BACH did appear,
was made personally known to me, was placed by
me under oath, and after being administered the
oath, he did give his personal testimony as set
forth in his AFFIDAVIT, SIGNING THE SAME IN MY
PRESENCE AND WITNESS THEREOF, this January 19
2010. SO SWORN TO AND SIGNED BY ME THIS JAN.
19, 2010.



(NOTARY SEAL)

Tiera Parker
NOTARY'S NAME & SIGNATURE

Letonia ID
Notary's address

6-8-2013
COMMISSION EXPIRES

CERTIFICATE OF SERVICE BY MAIL: I the undersigned
hereby certify that on January 19, 2010, I did place
a true and correct copy of the foregoing document with
exhibits attached thereto, in an envelope with first
class postage affixed thereto, addressed to plaintiff's
counsel, Laua E. Burri, Ringert Law Chartered, P.O. Box
2772, Boise, ID 83701-277.

John N. Bach

**RETAIL INSTALMENT SALE CONTRACT
GMAC FLEXIBLE FINANCE PLAN**

Dealer Number

Contract Number

Buyer (and Co-Buyer) - Name and address (include county and zip code)	Creditor (Seller name and address)
LINDY LEE BACH 209 NORTH 27TH ST GARDNER YELLOWSTONE MT 59103	RESSLER MOTOR COMPANY 1735 W MAIN BOZEMAN MT 59715-0400

You, the Buyer (and Co-Buyer, if any), may buy the vehicle described below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay us, the Creditor, the Amount Financed and Finance Charge according to the payment schedule shown below. We will figure the Finance Charge on a daily basis.

New or Used	Year	Make and Model	Vehicle Identification No.	Primary Use for Which Purchased
EW	2007	CHEVROLET EQUINOX	2CNDL23F576064987	<input type="checkbox"/> personal, family, or household <input type="checkbox"/> agricultural <input type="checkbox"/> business <input type="checkbox"/>

Your trade-in is a: Year Make Model

FEDERAL 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 after you have made all payments as scheduled.	Total Sale Price. The total cost of your purchase on credit, including your downpayment of \$ <u>3000.00</u> is
8.99	5822.00	24047.00	20000.00	20000.00

Insurance. You may buy the physical damage insurance this contract requires (see back) from anyone you choose who is acceptable to us. You are not required to buy any other insurance to obtain credit. Your decision to buy or not buy other insurance will not be a factor in the credit approval process.

If any insurance is checked below, policies

**RETAIL INSTALMENT SALE CONTRACT
GMAC FLEXIBLE FINANCE PLAN**

Dealer Number _____ Contract Number _____

Buyer (and Co-Buyer) - Name and address (include county and zip code) BOB LEE BAIN 100 W 27TH ST YELLOWSTONE MT 59103	Creditor (Seller name and address) RETAIL MOTOR COMPANY 100 W MAIN BOZEMAN MT 59717-0000
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle described below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay us, the Creditor, the Amount Financed and Finance Charge according to the payment schedule shown below. We will figure the Finance Charge on a daily basis.

New or Used	Year	Make and Model	Vehicle Identification No.	Primary Use for Which Purchased
Used	2007	CHEVROLET EQUINOX	20NGL24F576043957	<input type="checkbox"/> personal, family, or household <input type="checkbox"/> agricultural <input type="checkbox"/> business <input type="checkbox"/>

Your trade-in is a: Year _____ Make _____ Model _____

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your downpayment of \$ 0.00. It is \$ 1200.00.
8.99%	\$5837.00	\$24047.00	\$24820.00	\$1200.00

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due	Or as Follows
60	\$498.00	Monthly beginning 2/06/2007	

Prepayment. If you pay off all your debt early, you will not have to pay a penalty.
Security Interest. You are giving a security interest in the vehicle being purchased.
Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date, and security interest.

ITEMIZATION OF AMOUNT FINANCED

1 Cash price (including any accessories, services, and taxes)	\$ 114,000 (1)
2 Total downpayment = (If negative enter "0" and see line 4H below)	
Gross trade-in \$ N/A - payoff by seller \$ N/A	
= net trade-in \$ N/A + cash \$ 40,000 (1)	
+ other (describe) _____ \$ N/A	\$ 40,000 (2)
3 Unpaid balance of cash price (1 minus 2)	\$ 74,000 (3)
4 Other charges including amounts paid to others on your behalf (Seller may keep part of these amounts.)	
A Cost of optional credit insurance paid to the insurance company or companies	
Life \$ N/A	
Disability \$ N/A	\$ N/A
B Other insurance paid to the insurance company	\$ N/A
C Official fees paid to government agencies	\$ N/A
D Government taxes not included in cash price	\$ N/A
E Government license and/or registration fees	\$ N/A
F Government certificate of title fees (includes \$ _____ security interest recording fee)	\$ N/A
G Other charges (Seller must identify who is paid and describe purpose.)	
for _____ for _____ \$ 100.00	
for _____ for _____ \$ N/A	
for _____ for _____ \$ 100.00	
for _____ for _____ \$ N/A	
for _____ for _____ \$ N/A	
for _____ for _____ \$ N/A	
H Net trade-in payoff for _____ \$ N/A	
Total other charges and amounts paid to others on your behalf	\$ 100.00 (4)
5 Amount financed (3 + 4)	\$ 74,100 (5)

insurance. You may buy the physical damage insurance this contract requires (see back) from anyone you choose who is acceptable to us. You are not required to buy any other insurance to obtain credit. Your decision to buy or not buy other insurance will not be a factor in the credit approval process.

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance.

Credit Life: Buyer Co-Buyer Both
 Credit Disability (Buyer Only)

Premium:
 Credit Life \$ _____
 Credit Disability \$ _____

 (Insurance Company)

 (Home Office Address)

Credit life insurance and credit disability insurance are not required to obtain credit. Your decision to buy or not buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. Credit life insurance pays only the amount you would owe if you paid all your payments on time. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

Other Insurance.

_____ \$ _____
 Type of Insurance _____ Term _____
 Premium \$ _____

 (Insurance Company)

 (Home Office Address)

I want the insurance checked above.

X
 Buyer Signature _____ Date _____

X
 Co-Buyer Signature _____ Date _____

ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS.

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to the contract must be in writing and we must sign it. No oral changes are binding.

Buyer Signs X _____ Date _____ Co-Buyer Signs X _____ Date _____

If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.

See back for other important agreements.

1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.
2. You are entitled to an exact copy of the contract you sign.
3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X _____ Date _____ Co-Buyer Signs X _____ Date _____

Co-Buyers and Other Owners - A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X _____ Date _____ Address _____

Creditor Signs _____ Date _____ By X _____ Title _____

Seller assigns its interest in this contract to _____ GMAC Nuvel National Auto Finance GMACAB Nuvel Credit Company under the terms of Seller's agreement(s) with assignee.

Assigned with recourse _____ Assigned without recourse or with limited recourse _____

Seller _____ By _____ Title _____ Seller _____ By _____ Title _____

OTHER IMPORTANT AGREEMENTS

1. FINANCE CHARGE AND PAYMENTS

- a. **How we will figure Finance Charge.** The Finance Charge is figured on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- b. **How we will apply payments.** We will apply each payment first to the earned and unpaid part of the Finance Charge, and then to the unpaid part of the Amount Financed.
- c. **How late payments or early payments change what you must pay.** We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.

2. YOUR OTHER PROMISES TO US

- a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. **Security interest.** You give us a security interest in:
 1. The vehicle and all parts or goods installed in it;
 2. All money or goods received (proceeds) for the vehicle;
 3. All insurance, maintenance, service, or other contracts we finance for you; and
 4. All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle.
- d. **Insurance you must have on the vehicle.** You agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we decide, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium for the insurance and a finance charge at the highest rate the law permits.

If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.

- e. **What happens to returned insurance, maintenance, service, or other contract charges.** If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. YOU MAY PREPAY

You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.

- b. **You may have to pay all you owe at once.** If you break your promises (default), we may demand that you pay all you owe on this contract at once. Default means:

1. You do not pay any payment on time;
2. You start a proceeding in bankruptcy or one is started against you or your property; or
3. You break any agreements in this contract.

The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge and any amounts due because you defaulted.

- c. **You may have to pay collection costs.** If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's reasonable fee and court costs the law permits. The maximum attorney's fee you will pay will be 15% of the amount you owe.

- d. **We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them to you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.

- e. **How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.

- f. **We will sell the vehicle if you do not get it back.** If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle.

We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at the highest lawful rate until you pay.

- g. **What we may do about optional insurance, maintenance, service or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

5. WARRANTIES SELLER DISCLAIMS

Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose.

This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

6. **Used Car Buyers Guide.** 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.

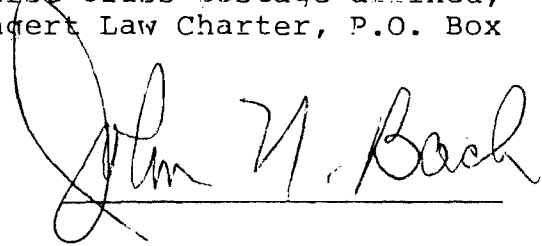
Spanish Translation:

Guía para compradores de vehículos usados. La información que ve

SUPPLEMENTAL CERTIFICATE OF
SERVICE BY MAIL

I, the undersigned hereby supplement and further certify service upon opposing counsel, this January 19, 2010, necessitated because of the absence of a Notary Public on Saturday, Jan. 16, 2010 in the business area of Rexburg, Main Street, due to the Martin Luther King extended holiday, and the obtaining of a Notary Public's signature and Seal, this Date, Tuesday, January 19, 2010 in Teton County, from which Drigg's Main Post Office I did mail a complete copy of the foregoing document of now 10 pages in a separate envelope with attachments thereto, with first class postage affixed, addressed to: Laua E. Burri, Ringert Law Charter, P.O. Box 2772, Boise, Idaho 83701-2772.

DATED: January 19, 2010



John M. Bach

STATE OF IDAHO }
County of Teton } ss.

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of the original thereof, on file in my office.

Dated Aug 1 2011

Darren Simpson
Magistrate Dist.

By Susan Hill
Deputy Clerk

