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**FORT PECK TRIBAL COURT OF APPEALS  
FORT PECK INDIAN RESERVATION  
WOLF POINT, MONTANA**

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NATIONAL COLLECTION SERVICES,  
INCORPORATED,  
Plaintiff/Appellee,

vs.

**Appeal No. 145**

VIRGINIA M. ADAMS,  
Defendant/Appellant.

**THIS APPEAL** is from an order of the Tribal Court granting a deficiency judgment to National Collection Services, Inc., the Honorable A.T. Stafne presiding.

**APPEARING FOR APPELLANT VIRGINIA M. ADAMS:** Rene A. Martell, Montana Legal Services, 204 First Avenue South, Wolf Point, Montana 59201.

**APPEARING FOR APPELLEE NATIONAL COLLECTION SERVICES, INC.:** David L. Irving, Attorney at Law, Drawer B, Glasgow, Montana 59230.

CIVIL

**Argued:** April 24, 1992

**Decided:** June 10, 1992

**OPINION BY** Associate Justice Gary James Melbourne and Associate Justice Debra A. Johnson. Chief Justice Gerard M. Schuster dissented and filed a separate Opinion.

**HELD: A NOTICE OF RESALE UPON REPOSSESSION MUST CONFORM TO THE NOTICE REQUIREMENT OF THE COMMERCIAL CODE; A DEFECTIVE NOTICE IS A BAR TO RECOVERY OF A DEFICIENCY JUDGMENT.**

FACTS

The facts in this case are generally undisputed. The issue before this Court was one of law. The basic facts as gleaned from the record are:

Appellant Adams and her husband entered into a contract to purchase a new vehicle in July of 1987. The vehicle, a new GMC 4x4 truck, was security for the contract in the amount of \$16,405.20.

The Appellant ceased making payments on the contract in December, 1988. Defendant's equity in the vehicle was \$2,727.55. At the time of repossession in January of 1991, the vehicle had approximately 86,000 miles on it; and it was in need of repair.

In June, 1989, the Plaintiff/Appellee purchased the installment contract and other loans from a credit union; and in July, 1989, give Defendant/Appellant notice that she had defaulted in making her payments, and that the unpaid balance of her loan(s) was immediately due and payable.

There was a long history of attempts by Appellant Adams to refinance or settle various debt obligations, including the truck note. Their attempts were unsuccessful, although Appellant remained in possession of the vehicle throughout the proceedings.

Finally, in early 1991, Plaintiff/Appellee obtained a Court Order of repossession; the vehicle was repossessed and a judgment was entered in favor of Appellee for \$16,411.20. There were various post-judgment objections and issues between the parties.

The issue here involves the February 21, 1991, notice sent by Plaintiff/Appellee to Defendant/Appellant stating that the vehicle would be sold at private sale after March 5, 1991. The vehicle was in fact sold at public auction on April 17, 1991.

Plaintiff/Appellee was granted a deficiency judgment after sale in the amount of \$17,575.19 and this appeal followed.

## **ISSUE 1: WHETHER THE NOTICE OF SALE SENT BY PLAINTIFF/APPELLEE MET THE REQUIREMENTS OF THE COMMERCIAL CODE.**

### **DISCUSSION**

The basic question here is one of commercial law. **Title 30, Chapter 9** of the Montana Commercial Code, (Title 30, Chapter 9, MCA) (UCC) regulates secured transactions and applies in this case, since it is not in conflict with the Tribal Code. The contract between the parties was made under Montana law. See **Title XIX CCOJ Section 108(b)**, which provides:

"If the right to repossession of the property is regulated by contract, the

Court shall apply and be governed by the terms of the contract unless they are unconscionable, contrary to law, or inconsistent with this chapter."

In considering what is a commercially reasonable sale after repossession, Section 30-9-504(3) MCA provides in part:

"Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, **reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor** if he has not signed after default a statement renouncing or modifying his right to notification of sale." (emphasis made)

It is clear from the facts here that Appellant did not receive notice of the time and place of public sale. The owner should have an opportunity to bid at the sale if in fact a public sale is made. As noted in Wippert vs. Blackfeet Tribes 695 P.2d 461 (MT 1985) at 464, the Montana Supreme Court states:

"Although the UCC is silent regarding what constitutes reasonable notice, the official comment to Section 30-9-504 provides some guidance: "[A]t a minimum [notice] must be sent in such time that persons entitled to receive it will have sufficient time to take appropriate steps to protect their interest by taking part in the sale or other disposition if they so desire."

Having concluded that the sale notice was not given as required by the UCC here, the issue of the deficiency judgment award must be considered.

The Courts are split on this issue. The conflicting positions are well summarized in the case of Atlas Thrift Co. vs. Horan 59 ALR 3d 389 at 396: One view is:

"Where reasonable notice of sale has not been given, the spirit of commercial reasonableness requires that the secured party not be arbitrarily deprived of his deficiency but that the burden of proof be shifted to him to prove that the sale resulted in the fair and reasonable value of the security being credited to the debtor's account."

The other is:

"... that failure of a creditor to comply with . . . (notice requirements) ... is a defense in a deficiency action. These case are based primarily on the

reasoning that personal notice is mandatory and is a condition precedent to the secured party's recovery of a deficiency judgment..." Atlas, supra at 396.

We adopt the review that failure to comply with the notice requirement is a bar to recovery of deficiency. As stated in Atlas

"...the right to a deficiency judgment depends on compliance with the statutory requirements concerning dispositions and notice." Atlas p. 398.

The judgment of the Tribal Court awarding deficiency judgment is **REVERSED**.

**DATED** this 10 day of June, 1992.

**BY THE COURT OF APPEALS:**

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GARY JAMES MELBOURNE, ASSOCIATE JUSTICE

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DEBRA A. JOHNSON, ASSOCIATE JUSTICE

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