

**IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI**

U Drive Acceptance Corporation, Inc.,

Plaintiff / Counterclaim-Defendant,

v.

Debra Sue Hammons,

Defendant / Counterclaimant.

Case No. 19BA-CV03413-01

Judge Jeff Harris

Judgment and Order

This matter is before the Court after a sanctions hearing on September 25, 2023. Defendant/Counterclaimant Debra Sue Hammons (“Hammons”) appeared by counsel. Plaintiff/Counterclaim-Defendant U Drive Acceptance Corporation, Inc. (“UDAC”) did not appear. This Court granted Hammons’s Second Motion for Sanctions and set a hearing for October 23, 2023, for the specific relief and possible damages associated with a potential striking of UDAC’s pleadings. The Court, upon review of Hammons’s two motions for sanctions, and having considered the arguments of counsel, hereby enters the following Order and Judgment:

Procedural History

UDAC filed a deficiency action against Hammons on August 18, 2019 after it repossessed and sold her vehicle. Hammons answered and counterclaimed on May 26, 2020, alleging UDAC violated the Uniform Commercial Code (“UCC”) by sending pre-sale notices and post-sale notices that were not compliant with § 9-601 to 9-629 of the UCC as adopted by each state. On September 18, 2020, Hammons amended her counterclaim to add class allegations for UDAC’s purported UCC violations. This Court granted class certification on August 15, 2021.

On November 13, 2020, Hammons served discovery on UDAC in the form of interrogatories (“ROGs”) and requests for production (“RFPs”). UDAC responded to the discovery on January 15, 2021, but failed to produce relevant documents to Hammons’s RFPs, specifically UDAC’s insurance policies and coverage letters and any related correspondence from UDAC’s insurers. Additionally, UDAC claimed to produce documents responsive to ROGs 2–7; 9; 10; 12; 27; 28; 31–40, which requested information necessary to calculate statutory damages and ascertain class members, but did not.

Hammons filed her First Motion to Compel on May 18, 2021. On June 1, 2021, UDAC was ordered to produce the relevant insurance policies and correspondence under a protective order. On April 2, 2022, this Court granted Hammons’s motion to approve and direct class notice, ordering UDAC to furnish Hammons with information held by UDAC necessary to ascertain class members within 45 days of the Order.

UDAC failed to comply with this April 2022 Order, so on July 21, 2022, Hammons filed a Motion to Enforce Court Order. The parties resolved this dispute on October 25, 2022, and UDAC produced a list containing 835 accounts that fit the certified class definition. This Court affirmed the class list consisted of 835 accounts and on July 21, 2022, ordered Hammons to proceed with delivering class notice.

In purported compliance with this Court’s June 1, 2021 Order, UDAC produced over 800 pages of scrambled documents but only twenty-three related to class members’ accounts where damages could be ascertained. Because UDAC had failed to provide Hammons with the documents responsive to her Interrogatories necessary to determine class membership and statutory damages, Hammons served UDAC with her first Notice to Take Deposition of Corporate Representative on May 5, 2023, to be held on May 18, 2023. UDAC failed to attend this deposition.

Accordingly, Hammons filed her Second Motion to Compel on June 27, 2023, as well as a Second Notice to Take Deposition, to be held July 13, 2023.

UDAC again failed to attend the second deposition or provide complete discovery responses to Hammons's Interrogatories. Hammons filed her first Motion for Sanctions on July 28, 2023, outlining UDAC's consistent willful disregard of the discovery rules and this Court's Orders. Hammons requested this Court to strike UDAC's pleadings and enter interlocutory default in favor of the Class. A hearing on Hammons's Second Motion to Compel and first Motion for Sanctions was held on August 8, 2023.

At the August 8, 2023 hearing, this Court ordered UDAC to "produce all responsive documents and respond to all outstanding discovery within 30 days of [August 8, 2023], and [] produce the documents in an organized manner and not as a 'document dump.' . . .". The deadline for UDAC to tender its production and discovery responses was September 7, 2023, and UDAC again failed to meet this deadline. Accordingly, on September 18, 2023, Hammons filed her Second Motion for Sanctions, again outlining UDAC's persistent pattern of repeated disregard of the obligation to comply with the rules of discovery and orders of this Court, again requesting this Court to strike UDAC's pleadings and enter interlocutory default in favor of the Class.

A hearing on Hammons's Second Motion for Sanctions was held on September 25, 2023. Hammons appeared through counsel, and UDAC failed to appear. After review of the Motion and discussion with class counsel, this Court granted Hammons's Second Motion for Sanctions. This Court set a hearing on October 23, 2023, to determine the specific relief for the Second Motion for Sanctions and for hearing on possible damages associated with a potential striking of UDAC's pleadings.

Legal Standard

“A trial court has broad discretion in administering the rules of discovery and in determining the proper remedy—including sanctions—for a party’s non-compliance with the rules of discovery.” *Frontenac Bank v. GB Invs., LLC*, 528 S.W.3d 381 (Mo. App. 2017). “Rule 61.01 gives a trial court significant discretion to impose sanctions that are ‘just’ when a party fails to answer interrogatories, gives an evasive or incomplete answer to interrogatories, fails to produce documents, or fails to attend depositions.” *Id.* “The rule expressly contemplates that a trial court may, in its discretion, sanction a party for such misconduct by striking pleadings, limiting the party’s ability to present evidence or otherwise participate at trial, entering a default judgment against the disobedient party, and requiring the disobedient party to pay the reasonable expenses incurred by the other party in pursuing discovery.” *Holms v. Wells Fargo Home Mortg., Inc.*, 514 S.W.3d 590, 596–97. (Mo. banc 2017).

“Circuit courts have broad discretion in controlling discovery, including the choice of sanctions for non-disclosure of discovery.” *City of Columbia v. Spectra Commc’ns Group LLC*, 652 S.W.3d 356, 366 (Mo. App. E.D. 2022). A trial court does not abuse its discretion by striking a party’s pleadings when “(1) the party engaged in a pattern of repeated disregard of the obligation to comply with discovery rules, ‘i.e., the party has demonstrated a contumacious and deliberate disregard for authority of the trial court;’ and (2) the other party was prejudiced.” *Id.*

If both parties are aware of the consequences of failure to comply with the court’s order calling for responses to unanswered discovery, it is within the trial court’s discretion to strike the non-compliant party’s pleadings and enter judgment against the disobedient party. *Hoodenpyle v. Schneider Bailey, Inc.*, 748 S.W.2d 683, 685–86 (Mo. App. W.D. 1988) (entering default judgment against the defendant after defendant consistently disobeyed court orders regarding discovery

responses after notice of potential sanctions); *see also Dobbs v. Dobbs Tire & Auto Centers, Inc.*, 969 S.W.2d 894, 896; 898–99 (Mo. App. E.D. 1998) (affirming the trial court’s entry of default judgment in contempt against the corporation and striking of the corporation’s pleadings and counterclaim after corporation failed to appear for depositions and repeatedly disregarded the rules of discovery); *City of Columbia*, S652 S.W.3d at 366–67 (affirming the trial court’s sanction in striking party’s pleadings related to damages and prohibiting party from presenting evidence at damages hearing after party’s consistent disregard of discovery rules and trial court’s order).

Sanctions

UDAC has consistently disregarded both the rules of discovery and this Court’s orders, resulting in the granting of Hammons’s Second Motion for Sanctions. UDAC was aware of the potential for sanctions and continued to fail to produce the requested documents necessary for Hammons to ascertain class membership and calculate statutory damages for the Class. UDAC’s ~~continuation~~ **CONTINUED** delay in discovery production has stymied the progress of this litigation and caused immense injustice to Class Members who suffered directly because of UDAC’s inactions. This Court hereby strikes UDAC’s pleadings and enters judgment against UDAC. As such, all allegations in Hammons’s counterclaim are deemed admitted by UDAC. *See* Rule 55.09.

The amount of UCC damages for each class member can be determined by taking figures from the class members’ loan agreements and inserting them into the statutory formula provided by § 400.9-625(c)(2): the “finance charge” plus 10% of the amount financed yields each class member’s statutory damages. For example, the TILA box in Hammons’s RISC shows:

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 DOWN PAYMENT OF
22.00 %	\$ 3,288.00	\$ 6,560.00	\$ 9,828.00	\$ 500.00 15
YOUR PAYMENT SCHEDULE WILL BE:				

So, Hammons's statutory damages under § 400.9-625(c)(2) would equal: \$3,924.00:

- The finance charge of \$3,268.00; plus
- 10% of the amount financed (\$6,560.00) = \$656.00.

Because UDAC has failed to produce the documents it possesses containing the TILA boxes from class members' secured transaction with UDAC—information necessary to determine these class members' statutory damages—this Court calculated the Class's damages based on the available information UDAC has produced. UDAC's production contained the above-mentioned information for twenty-three class members. Applying the statutory formula found in § 400.625(c)(2) (and UCC § 9-625(c)(2) as adopted by other states), the average amount of damages for this sample is \$8,534.20. When extrapolated for the Class, which consists of 835 accounts, this Court awards statutory damages to the Class in the amount of \$7,126,057.00 ($\$8,534.20 \times 835$). These statutory damages compensate the Class for the actual damages suffered, including: loss of use of tangible property and cost of alternative transportation; loss resulting from the inability to obtain, or increased costs of, alternative financing; harm to credit worthiness, credit standing, credit capacity, character, and general reputation; harm caused by defamation, slander, and libel; harm caused by invasion of privacy; and other uncertain and hard-to-quantify actual damages.

The Court grants Class Counsel the right to pursue collecting this Judgment, in full or in parts, against any available insurer or broker or other potentially responsible third party in any amount Class Counsel and Hammons deem advisable, but in no event an amount greater than \$7,126,057.00 unless further ordered by this Court.

Further, this Court grants the Class injunctive relief in the form of credit repair, where UDAC shall request the four major credit reporting agencies (TransUnion, Equifax, Experian, and Innovis) to remove the repossession-related tradeline from each class member's credit report. Per

affidavit from Hammons's expert, this injunctive relief provides a benefit to each class member in the amount of at least \$10,000. Accordingly, this Court grants injunctive relief to the Class in the form of the removal of the repossession tradeline from each class members' credit report. If UDAC fails to send necessary documentation to delete class members' tradelines within 90 days of this Order, class counsel is granted power of attorney to file the necessary documentation to delete class member's tradelines, on UDAC's behalf.

Finally, this Court finds UDAC is barred from collecting or recovering any alleged deficiency balances from Hammons and each class member. Hammons and each class member are responsible for any tax obligations or consequences that might arise from this Order and Judgment, including any federal, state, and local income taxes that may be due on any payments made to them and any other benefits they receive under the Order and Judgment, including benefits related to writing off any alleged deficiency balances from the Class. However, UDAC shall not issue an IRS Form 1099 to any member of the Class related to the elimination of deficiency balances. The original amount and enforceability of the alleged deficiency balances outstanding on each Class Member's account was disputed in good faith. As a result of this good-faith dispute and the Court's independent judicial findings, the Court finds the alleged deficiency balances never accrued. *Cent. Tr. Bank v. Branch*, 651 S.W.3d 826, 830 (Mo. banc 2022) ("A lender's right to a deficiency judgment accrues only if there is strict compliance with statutory requirements.")

JUDGMENT

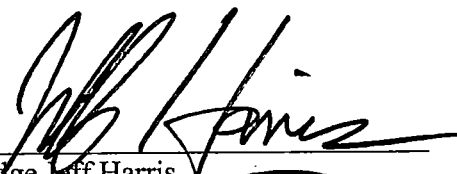
IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment is entered against UDAC as sanctions.

2. The Class is awarded \$7,126,057.00 in statutory damages and injunctive relief worth at least \$8,350,000 for barring UDAC from collecting class members' alleged deficiency balances and deleting their tradelines.
3. UDAC must send the necessary documentation to delete the class members' tradelines within ninety days after the date of this Order, otherwise class counsel is granted power of attorney to file the necessary documentation to delete class member's tradelines, on UDAC's behalf.
4. UDAC is barred from collecting or recovering any alleged deficiency amounts from Hammons and each class member.
5. UDAC must not issue IRS Form 1099 to members of the Class.
6. Hammons's counsel will submit a motion for attorney's fees and costs, Class Representative award, and plan for distribution of monies collected with the Court within thirty days after the date of this Order.

IT IS SO ORDERED.

11-8-23
Date


Judge Jeff Harris

