

CAVALRY INVESTMENTS, LLC

v.

NEIL T. GREENLEAF et al.

Submitted on Briefs November 18, 2004  
Decided January 26, 2005

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER,  
CALKINS, and LEVY, JJ.

MEMORANDUM OF DECISION

Cavalry Investments, LLC appeals from a judgment entered in the District Court (Wiscasset, *Griffiths, A.R.J.*) in favor of Neil T. Greenleaf and Mona L. Greenleaf on Cavalry's action to recover a deficiency on a loan and on the Greenleafs' counterclaims for violations of the Maine Consumer Credit Code, 9-A M.R.S.A. §§ 5-110, 5-111 (1997),<sup>1</sup> and the Uniform Commercial Code, 11

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<sup>1</sup> Title 9-A M.R.S.A. § 5-110 (1997) has since been amended by P.L. 2003, ch. 98, § 1 (effective Sept. 13, 2003), *codified at* 9-A M.R.S.A. § 5-110 (1997 & Supp. 2004).

M.R.S.A. § 9-504 (1995),<sup>2</sup> made by Cavalry's predecessor-in-interest, KeyBank USA.

Contrary to Cavalry's contention, the court's finding that KeyBank did not send notice of sale of repossessed collateral to the Greenleafs is not clearly erroneous. Furthermore, the court did not err in concluding that the contract between Cavalry and KeyBank made Cavalry liable to the Greenleafs for KeyBank's violations of the MCCC and the UCC; nor did it err in concluding that the lack of notice to the Greenleafs, a condition precedent to recovering a deficiency, *Camden National Bank v. St. Clair*, 309 A.2d 329, 332 (Me. 1973), relieved the Greenleafs of liability for the deficiency and entitled them to statutory damages on their counterclaims pursuant to 11 M.R.S.A. § 9-507 (1995)<sup>3</sup>. We decline to abrogate the established rule that failure to give notice of a repossession sale under 11 M.R.S.A. § 9-504 constitutes an absolute bar to recovery. *See Union Trust Co. of Ellsworth v. Hardy*, 400 A.2d 384, 387 (Me. 1979).

The entry is:

Judgment affirmed.

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<sup>2</sup> Title 11 M.R.S.A. § 9-504 (1995) has since been repealed and replaced by P.L. 1999, ch. 699, § A-2 (effective July 1, 2001), *codified at* 11 M.R.S.A. §§ 9-1610, 9-1611, 9-1615, 9-1617 to 9-1618, 9-1624 (Pamph. 2004).

<sup>3</sup> Title 11 M.R.S.A. § 9-507 (1995) has since been repealed and replaced by P.L. 1999, ch. 699, § A-2 (effective July 1, 2001), *codified at* 11 M.R.S.A. §§ 9-1625, 9-1627 (Pamph. 2004).

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