

SUPREME COURT - STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. JAMES V. BRANDS

Justice.

SUPREME COURT: DUTCHESS COUNTY

B&L AUTO SUPPLY CO., INC.,

Plaintiff,

DECISION AND ORDER

-against-

Index No: 853/07

POUGHKEEPSIE FORD INC.,

Defendant.

The following papers were read and considered on this motion for summary judgment in lieu of complaint.

SUMMONS
NOTICE OF MOTION FOR SUMMARY JUDGMENT IN LIEU OF COMPLAINT
AFFIDAVIT OF PLAINTIFF'S PRESIDENT
EXHIBITS A-J
AFFIRMATION OF PLAINTIFF'S COUNSEL

Plaintiff seeks judgment against defendant, Poughkeepsie Ford Inc., in the sum of \$38,460.18 resulting from a business relationship between the parties. Plaintiff claims it sold auto parts and supplies to the defendant to be used either as replacement parts for vehicles they service, or to be sold by defendant at retail from its dealership in Poughkeepsie, New York. Further, that upon delivery of the items, in each instance, defendant was presented with an invoice identifying the quantity of items ordered, the quantity of items shipped, the part number of each item shipped, a description of each item shipped, the price of each item, the total amount due, and the payment terms. Upon presentation of each invoice, an authorized representative of defendant allegedly signed the invoice to acknowledge receipt and agreement to pay. Plaintiff also provided defendant with a monthly statement identifying any balance plus an itemized list of any new charges incurred. The aforesaid sum sought represents a balance for all auto parts and supplies delivered by plaintiff to defendant during the months of June through October of 2006 plus late charges.

Although demands for payment have been made, payment has not been received. According to plaintiff, defendant has never articulated any objection to the invoices or monthly statements.

Plaintiff's counsel relies on CPLR §3213 which provides, in relevant part, that when an action is based upon an instrument for the payment of money only, plaintiff may serve with the summons and notice of motion for summary judgment in lieu of complaint.

According to the affidavit of service provided with this motion, the defendant was served with the summons and notice of motion for summary judgment in lieu of complaint by personal delivery to the general manager of defendant on February 16, 2007 at defendant's location at 641 South Road, Poughkeepsie, New York. No notice of appearance nor answer to the motion has been filed.

On the basis of the foregoing, it is hereby

ORDERED that plaintiff's motion is granted. It is well settled, as set forth in the cases cited by plaintiff's counsel, that where a *prima facie* case of payment due by the terms of a written instrument is made, accelerated treatment under CPLR §3213 is permitted upon proof of non-payment. (Citing Weissman v. Sinorm Deli, Inc., 88 NY2d 437, 444 [1996]; North Fork Bank & Trust Company v. Cardiff Rose Enterprises, Inc., 104 AD2d 932, 933 [2nd Dept. 1984] appeal dismissed 64 NY2d 886 [1985]). Plaintiff may submit judgment accordingly.

The foregoing constitutes the decision and order of this court.

Dated: April 25, 2007
Poughkeepsie, New York

ENTER:



JAMES V. BRANDS, J.S.C.

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Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.