

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

JEFF CAVIL,

Plaintiff,

v.

GLOBE ACCEPTANCE, INC.,

Defendant.

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GLOBE ACCEPTANCE, INC.,

Counterclaimant,

v.

JEFF CAVIL,

Counterclaim Defendant.

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GLOBE ACCEPTANCE, INC.,

Third-Party Plaintiff,

v.

CAROL LYNN WILLIAMS-CAVIL,

Third-Party Defendant.

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CAROL LYNN WILLIAMS-CAVIL,

Third-Party Counterclaimant,

v.

GLOBE ACCEPTANCE, INC.,

Defendant.

Case No. CL 103257

RULING ON PLAINTIFFS' MOTION  
FOR JUDGMENT ON UCC CLAIMS  
AND MOTION FOR ATTORNEY  
FEES AND EXPENSES

FILED  
POLK COUNTY, IA.  
2007 DEC -5 AM 9:20  
CLERK DISTRICT COURT

**INTRODUCTION**

The above-captioned matter came before the Court for hearing on November 14, 2007. Plaintiff Jeff Cavil and Third-Party Counterclaimant Carol Lynn Williams-Cavil (hereinafter "Plaintiffs") were represented by attorney Ray Johnson. Defendant, Globe Acceptance, Inc.

(hereinafter "Defendant") was represented by attorney David Morse. Following oral arguments, and upon review of the court file and applicable law, the Court enters the following ruling:

### **BACKGROUND**

This pending matter stems from a jury verdict entered upon the trial of the above-captioned matter on August 23, 2007, wherein the jury unanimously found that Defendant had violated the Iowa Consumer Credit Code ("ICCC") and/or the Iowa Debt Collection Practices Act ("IDCPA") in an attempt to obtain payment from and/or in repossession of a vehicle purchased by Plaintiffs and financed through Defendant. Actual damages were awarded to Plaintiffs by the jury based on the foregoing findings. Additionally, the jury found that Defendant violated the Iowa Uniform Commercial Code ("UCC") in repossessing and disposing of Plaintiffs' vehicle in a commercially unreasonable manner and by engaging in a breach of the peace in the repossession of such vehicle. Plaintiffs now request that in addition to actual damages awarded to Plaintiffs for their ICCC and IDCPA claims, this Court enter judgment awarding to Plaintiffs statutory damages that they contend are appropriate under Article 9 of the UCC. Defendant resists Plaintiffs' Motion for Judgment on UCC Claims, arguing that an award of statutory damages under Article 9 of the UCC would provide a double recovery to Plaintiffs, which is prohibited by law.

In addition to the foregoing, Plaintiffs have requested an award of attorney's fees and expenses incurred by Plaintiffs' counsel in the above-captioned matter. Defendant likewise resists this motion, arguing that the fees claimed by Plaintiff are unreasonable and excessive.

### **ANALYSIS**

#### **1. UCC Statutory Damages.**

Plaintiffs assert that they are entitled to an award of statutory damages as set forth in Iowa Code section 554.9625(3) for Defendant's violation of the UCC relating to its repossession and sale of Plaintiffs' vehicle. This statutory provision under which Plaintiffs assert their entitlement provides in relevant part:

- a. a person that, at the time of the failure, was a debtor, was an obligor, or held security interest in or other lien on the collateral may recover damages under subsection 2 [of section 554.9625] for its loss; and
- b. if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for

that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

Iowa Code § 554.9625. Iowa Code section 554.9625, subsection 2 (referenced in the foregoing language) sets forth a plaintiff's entitlement to actual damages incurred as a result of a defendant's failure to comply with Article 9 of the UCC. Section 554.9625(3)(a), the relevant provision at issue in this dispute, sets forth a specific formula for calculating minimum statutory damages in the event a plaintiff wishes to pursue such damages in light of a UCC violation. *See Official Comment 4 to Revised UCC § 9-625.* Plaintiffs have elected to pursue statutory damages under section 554.9625(3)(a) based on Defendant's violations of the UCC.

In response to Plaintiffs' motion requesting an award of statutory damages under section 554.9625(3)(a), Defendant asserts that Plaintiffs are precluded from receiving such an award by virtue of Iowa Code section 554.9625(4). This section provides:

*Recovery when deficiency eliminated or reduced.* A debtor whose deficiency is eliminated under section 554.9626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 554.9626 may not otherwise recover under subsection 2 for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

Iowa Code § 9625(4). Defendant asserts that because its violations of the relevant provisions of the UCC preclude it from seeking a deficiency judgment against Plaintiffs, Plaintiffs are not entitled to an award of statutory damages (as set forth in section 554.9625(3)(a)) pursuant to section 554.9625(4). The Court finds Defendant's reliance on section 554.9625(4) in this regard to be misguided.

First, it should be noted that section 554.9625(4) precludes a plaintiff only from seeking *actual damages* under section 554.9625(4) of the Iowa Code in the event the plaintiff's deficiency is eliminated or reduced. *See Iowa Code § 9625(4).* This section has no application to the statutory remedy Plaintiffs seek under section 554.9625(3)(b). Moreover, by specifically referencing section 554.9626, the drafters of section 554.9625(4) have limited said provisions application to non-consumer transactions. *See Iowa Code § 554.9626(1)* ("In an action arising from a transaction, *other than a consumer transaction*, in which the amount of a deficiency or surplus is in issue, the following rules apply . . .") (emphasis added). This section is therefore

silent regarding whether “a double recovery or other over-compensation is possible in a consumer transaction.” Official Comment 3 to Revised UCC § 9-625. Presumably, therefore, because Article 9 does not displace existing law for consumer transactions unless otherwise specifically provided, the law existing with regard to consumers’ ability to recover damages in addition to a reduction or elimination of a deficiency before the adoption of revised section 554.9625 of the Iowa Code still controls. Iowa Code § 554.1103; *see also Coxall*, 781 N.Y.S.2d at 578 (“since Revised Article 9 does not displace existing law for consumer transactions, this Court must apply the pre-revision law”).

The formula set forth in section 554.9625(3)(b) of the Iowa Code for purposes of computing a plaintiff’s entitlement to statutory damages has been and continues to be interpreted as providing “a minimum, statutory, damage recovery for a debtor and secondary obligor in a consumer-goods transaction.” Official Comment 4 to Revised UCC § 9-625; *see also Northwest Bank & Trust Co. v. Gutshall*, 274 N.W.2d 713, 719 (Iowa 1979) (interpreting former section 554.9507(1)), *overruled on separate grounds by Ipalco Emp. Credit Union v. Culver*, 309 N.W.2d 484 (Iowa 1981); *Gulf Homes, Inc. v. Goubeaux*, 664 P.2d 183, 186 (Ariz. 1983) (interpreting former section); *Bank v. Chapmanville v. Workman*, 406 S.E.2d 58, 65 (W. Va. 1991) (same); *Coxall v. Clover Commercial Corp.* 781 N.Y.S.2d 567, 579 (N.Y. City Civ. Ct. 2004) (interpreting revised UCC section 9-625(c)). This statutory damage provision has both punitive and compensatory aspects. It is punitive in the sense that it is intended to impose a flat penalty for non-compliance with Article 9 regardless of a plaintiff’s ability to demonstrate any actual loss resulting from a given violation. *Jacobs v. Healy Ford-Subaru, Inc.*, 652 A.2d 496, 505 (Conn. 1995); *Gulf Homes, Inc.*, 664 P.2d at 186. It is arguably compensatory in the sense that it ensures a plaintiff will receive some level of compensation for a defendant’s violation of Article 9 without regard to the amount of loss actually sustained, thereby providing an incentive to pursue claims for Article 9 violations even when the amount of actual loss that can be demonstrated is minimal. *See Northwest Bank and Trust Co.*, 274 N.W.2d at 719. However, it is clear from our prior case precedent that one is not entitled to seek an award of both actual and statutory damages under the UCC where a plaintiff’s actual damages exceed the amount of the statutory minimum provided in section 554.9625(3)(b) of the Iowa Code. *Id.* Only where a plaintiff’s statutory damage award exceeds the amount of actual loss that can be proven as a

result of an Article 9 violation may a plaintiff be compensated for such loss through the award of statutory damages while still retaining the excess of the statutory damage award above the amount of loss so proven.<sup>1</sup> The damages provided in section 554.9625 of the Iowa Code are therefore not to be considered cumulative in the sense that one may recover both statutory and actual damages for violations based solely on Article 9 provisions when one's actual damages exceed the statutory minimum. *Id.*

Notwithstanding the foregoing, it is clear that Plaintiffs were awarded actual damages in their case based not upon the UCC violations at issue, but rather upon Defendant's violations of the ICCA and/or the IDCPA. (*See* Verdict.) While Plaintiffs' claims arose out of the same set of operative facts, they do not merely represent alternative theories of recovery for one underlying wrong. Defendant's UCC violations were based on Defendant's breach of the peace in repossessing Plaintiffs' vehicle and in disposing of such vehicle in a commercially unreasonable manner. As such, Plaintiffs' claims under the UCC are properly viewed as separate and distinct wrongs.

With regard to an award of damages under multiple consumer protection statutes, there is ample support for the proposition that UCC remedies are to be construed as cumulative to other remedies provided to consumers under state law as opposed to exclusive. *See, e.g., Jacobs*, 652 A.2d at 504; *Davenport v. Chrysler, Credit Corp.*, 818 S.W.2d 23, 31 (Tenn. App. 1991). Plaintiffs received actual damages by virtue of the jury verdict based solely upon the finding that Defendant had violated several provisions of either the ICCA or the IDCPA. These damages were awarded commensurate with the loss the jury perceived Plaintiffs had sustained as a result of ICCA and/or IDCPA violations alone, leaving unresolved the amount of loss sustained as a result of the UCC violations. While Plaintiffs have offered no proof with regard to the amount of additional loss, if any, they may have sustained as a result of Defendant's breach of the peace or failure to dispose of Plaintiffs' vehicle in a commercially reasonable manner, given Plaintiffs'

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<sup>1</sup> For example, if a plaintiff is entitled to an award of \$2,000 under the statutory damage formula provided in section 554.9625(3)(b), but has only proven \$1,500 in actual loss as a result of an Article 9 violation, the plaintiff may elect the \$2,000 award in satisfaction of his/her claim. The plaintiff may not, however, claim entitlement to both his/her actual damages of \$1,500 and the full \$2,000 in statutory damages. The plaintiff's recovery in this instance is simply \$2,000. Likewise, if the foregoing numbers were reversed, thereby providing \$2,000 in actual damages and only \$1,500 under section 554.9625(3)(b), the plaintiff would most definitely be entitled to full compensation (in the amount of \$2,000) for his/her actual loss. However, the plaintiff would take nothing in the form of statutory damages. The plaintiff's recovery is still only \$2,000.

election to pursue only the statutory remedy set forth in section 554.9625(3)(b) of the Iowa Code for said violations, they were not required to offer such proof. As one of the underlying purposes of the statutory damage provision at issue is to ensure compliance with the default provisions of Article 9 regardless of the amount of loss an act of non-compliance ultimately produces, *Jacobs*, 652 A.2d at 504, Defendants' UCC violations, based on separate and distinct wrongs, warrants judgment in favor of Plaintiffs for a minimal statutory amount under section 554.9625(3)(b).<sup>2</sup> However, contrary to Plaintiffs' position, the Court finds that Plaintiffs are not entitled to the amount of statutory damages so claimed in their Motion for Judgment on UCC Claims.

As previously mentioned, Iowa Code section 554.9625(4)'s silence with regard to a plaintiff's ability in consumer transactions to recover both statutory damages under Article 9 and to receive an elimination of any outstanding deficiency as a result of an Article 9 violation has left the law governing a plaintiff's ability in this regard prior to the adoption of revised Article 9 still intact. As such, to the extent that the Supreme Court's decision in *Northwest Bank & Trust Co. v. Gutshall* is not inconsistent with revised Article 9 or any other provisions of law, the Court is confident that such decision compels a reduction in Plaintiffs' statutory damage award to account for the eliminated deficiency at issue in this case. Iowa Code § 554.1103.<sup>3</sup>

In *Northwest Bank & Trust Co.*, a secured creditor, the plaintiff, was denied a deficiency judgment against the defendant, a consumer, based upon its failure to comply with Article 9 of the UCC in repossessing the defendant's vehicle. In light of this violation, the defendant also sought an award of statutory damages under former Iowa Code section 554.9507(1) (now Iowa Code section 554.9625) from the plaintiff. While the court recognized that the formula set forth in said section established a "minimal amount of recovery" that the defendant would normally be entitled to, the court found that the defendant could not recover his statutory damages where the

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<sup>2</sup> Although Defendant was found to have violated two separate Article 9 provisions, statutory damages for said violations may only be recovered once. *Crosby v. Basin Motors Co.*, 488 P.2d 127, 129 (N.M. App. 1971).

<sup>3</sup> While it is true that the decision in *Northwest Bank & Trust Co.* was based upon an interpretation of the former UCC section 554.9507(1), such interpretation is not inconsistent with the current law as it exists under section 554.9625. The Court finds that while the wording of section 554.9625 has undergone some changes, such changes are minimal at best, and the import of such provision remains the same. Courts have continued to interpret the statutory damages formula at issue, contained in revised UCC section 9-625(c) [the same as Iowa Code section 554.9625(3)(b)] as providing a minimum amount of recovery when actual damages are insufficient. See *Coxall v. Clover Commercial Corp.* 781 N.Y.S.2d 567, 579 (N.Y. City Civ. Ct. 2004). As such, until the *Northwest Bank* decision (relative to the statutory damages framework at issue) is overruled or superseded by an Article 9 provision on point, such decision still reflects the law in Iowa as it pertains to consumer transactions.

amount of the deficiency from which he was relieved of liability was greater than the amount of statutory damages at issue. *Northwest Bank & Trust Co.*, 274 N.W.2d at 719, *overruled on separate grounds by Ipalco Emp. Credit Union v. Culver*, 309 N.W.2d 484 (Iowa 1981). In essence, the elimination of the outstanding deficiency constituted part of defendant's relief or damages under Article 9 that prevented the additional recovery of statutory damages where the amount of the deficiency exceeded the minimum statutory damage amount. In simple terms, the defendant was not entitled to a double recovery by receiving both remedies.

In the present case, Plaintiffs were absolved of liability on an outstanding deficiency of \$5,166.97 as a result of the successful verdict in their favor. (See Plaintiff's Trial Exhibit 14.) This was in addition to the trade-in value of the repossessed vehicle awarded to Plaintiffs in the amount of \$3,029.91 based upon Defendant's ICCA and/or IDCPA violations. As such, Plaintiffs have retained the value of an asset while being relieved of considerable debt owed thereon. Plaintiffs calculate their statutory damages under section 554.9526(3)(b) of the Iowa Code to be \$6,697.98. While the Court has reviewed Plaintiffs' calculations to ensure its accuracy, based on the holding in *Northwest Bank & Trust Co.*, the Court finds that Plaintiffs are only entitled to an additional statutory damage award of \$1,531.01, constituting the difference between the minimum statutory damage amount and the deficiency at issue.

The Court notes that it is cognizant of Plaintiffs' contention that the elimination of the deficiency judgment in this case should not preclude the additional recovery of statutory damages under Article 9 given that Plaintiffs' deficiency could have also been reduced or eliminated under the ICCA. However, the Court finds such argument to be immaterial to the resolution of the matter at hand. Unlike the actual damages awarded based on Defendant's ICCA and IDCPA violations, the elimination of the deficiency in this case can be directly attributed to Defendant's violation of the relevant provisions of the UCC. While it is unclear as to what particular statutory violation the jury ultimately considered in eliminating the outstanding deficiency at issue, there is no question that Defendant's violations of Article 9 of the UCC were alone sufficient to prevent a deficiency judgment from being rendered in this case. See *Herman Ford-Mercury, Inc. v. Betts*, 251 N.W.2d 492, 496 (Iowa 1977); *Beneficial Finance Co. of Black Hawk County v. Reed*, 212 N.W.2d 454, 461 (Iowa 1973). Compliance with the relevant provisions of Article 9 at issue was a condition precedent to Defendant's entitlement to any such

judgment. *See Herman Ford-Mercury, Inc.*, 251 N.W.2d at 496. As such, the elimination of the deficiency at issue is properly viewed as part of Plaintiffs' remedy under Article 9 which must be taken into account in awarding statutory damages. *See Northwest Bank & Trust Co.*, 274 N.W.2d at 719. Having already received \$5,166.97 as a result of the eliminated deficiency, Plaintiffs are only entitled to an additional \$1,531.01 to account for the amount they are entitled to recover under section 554.9625(3)(b) of the Iowa Code. *Id.*

## **2. Attorney's Fees.**

In addition to requesting that judgment be rendered on their UCC claims, Plaintiffs have also requested that the Court award reasonable attorney's fees and expenses to their attorney in the amount of \$15,243.20 for the time and expenses incurred in securing a judgment on their claim. Defendant has resisted Plaintiffs' request, arguing that an award of attorney's fees in such amount would be unreasonable and excessive. For the foregoing reason, the Court rejects Defendant's contention and finds that Plaintiffs are entitled to the full amount of the fees so requested.

As Plaintiffs have correctly identified, Iowa Code section 537.5201 provides for the mandatory award of attorney fees for prevailing plaintiffs in actions under chapter 537 of the Iowa Code. The fees to be awarded under this section are to be "determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the consumer." Iowa Code § 537.5201. Plaintiffs' entitlement to attorney's fees under this section is only limited by the requirements of reasonableness. *Id.*

In assessing the reasonableness of attorney's fees in a given situation, our courts have on occasion resorted to the factors set forth in the Iowa Rules of Professional Conduct for purposes of determining the reasonableness of fees charged for legal services. *See, e.g., King v. Armstrong*, 518 N.W.2d 336, 338 (Iowa 1994). Given that there is little authority under Iowa law providing this Court with direction as to how the reasonableness of an attorney's fees in a given case should be assessed under chapter 537, the Court finds an analysis of the factors set forth in Iowa's Rules of Professional Conduct to be an appropriate starting point.

In determining the reasonableness of attorney's fees under our Rules of Professional Responsibility, the Court is generally directed to consider:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) The fee customarily charged in the locality for similar legal services; (4) The amount involved and the results obtained; (5) The limitations imposed by the client or by the circumstances; (6) The nature and length of the professional relationship with the client; (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) Whether the fee is fixed or contingent.

Iowa R. Prof'l Conduct 32:1.5. In the present case, Plaintiffs' attorney, Mr. Johnson, has requested an award of attorney's fees at a rate of \$200 an hour for a total of 75.50 hours of service rendered in this case on behalf of Plaintiffs. Having reviewed the documentation of expended hours submitted by Mr. Johnson, and in considering the factors set forth above, the Court finds, in its experience and judgment, that such an award is reasonable.

First, it should be noted that the claims pursued by Plaintiffs and the case at hand involved many complex matters and issues of first impression requiring extensive time and labor for purposes of litigating said claims. Furthermore, successful litigation under Article 9 of the UCC, the ICCA, and the IDCPA generally requires knowledgeable skill and expertise above and beyond that which would normally be expected with regard to general common law claims for money damages. Mr. Johnson has submitted an Affidavit detailing his extensive experience in areas of consumer protection law and in litigating claims under the foregoing statutory provisions. Mr. Johnson was well adapted to the challenges presented by Plaintiffs' claims, and his experience and expertise in areas of consumer protection law is to be recognized in assessing a reasonable hourly rate for the services he has provided to Plaintiffs. The rate of \$200 is definitely reasonable and commensurate with an attorney of Mr. Johnson's experience. The hourly rate charged does not exceed that which is customarily charged for the services rendered in the metro area, and Defendant does not dispute that such is a reasonable rate.

In addition to the foregoing, there is no evidence suggesting that Mr. Johnson had any prior relationships with Plaintiffs that would warrant a reduction in the rate charged for the services rendered. Additionally, Mr. Johnson had no contingent fee arrangements with Plaintiffs that precluded them from receiving the full amount of their actual and statutory damages. Mr. Johnson has explained that he was precluded from accepting other consumer cases due to the

time spent on Plaintiffs' claims. The time so expended has been well documented by Mr. Johnson, and given the complexity of the matters at hand, the Court cannot find that the amount of hours spent in pursuing Plaintiffs' claims were in any way excessive or unreasonable.

Having found that the amount of hours expended by Mr. Johnson on behalf of Plaintiffs and the hourly rate charged for legal services in this case is reasonable, the Court must still address the arguments offered by Defendant in refuting the reasonableness of the fees so requested. Defendant essentially asserts that because Plaintiffs engaged in an unreasonable settlement posture throughout the course of litigation, thereby prolonging litigation in this matter, any award to Plaintiffs for attorney's fees should be reduced. Additionally, Defendant asserts that because some of the time expended by Mr. Johnson on behalf of Plaintiffs went towards litigating UCC claims, this Court should apportion attorney's fees only for the hours advanced in pursuing Plaintiffs' ICCC and IDCPA claims. For the reasons set forth below, the Court finds Defendant's arguments in this regard to be unavailing.

First, the Court is not persuaded that Plaintiffs engaged in unreasonable settlement negotiations in this case such that a reduction in the amount of fees to be awarded is appropriate. The exhibits submitted by the parties detailing the settlement negotiations at issue simply do not support the conclusion urged by Defendants. While there appears to be some argument over the ultimate value of the settlement offers proffered by Plaintiffs throughout the course of negotiations, and while Plaintiffs' initial settlement offer was in excess of the actual award of damages received by Plaintiffs, it is clear that Plaintiffs greatly reduced their demands shortly after their initial settlement offer was provided, and ultimately offered to settle their claims for less than the amount recovered at trial. As such, the Court does not accept Defendant's argument that Plaintiffs engaged in an unreasonable settlement posture throughout the course of litigation.

In addition to the foregoing, the Court does not believe that a reduction in Plaintiffs' attorney's fees to account for time spent litigating Plaintiffs' UCC claims is necessary in this case. As Plaintiffs have identified, while Iowa courts have not specifically addressed the issue with regard to the fee-shifting provision provided in Iowa Code section 537.5201, there is ample authority in support of the proposition that where fee-shifting statutes are in play, and where various claims involve a common core of facts or are based on related legal theories, attorney fees need not be apportioned between claims even where some of the causes of action pursued do