STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

MICHAEL E. BELL, et ux.,

Plaintiffs,

vs.

TERRENCE A. GODBOUT, et ux, et al..

Defendants.

Case No. **CV 2003 7599**

MEMORANDUM DECISION AND ORDER ON DEFENDANT OAKLAND'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF BELL'S MOTION FOR WRIT OF POSSESSION/ORDER TO SHOW CAUSE, AND ORDER

I. INTRODUCTION.

This case arises out of a consignment sale of a 1998 BMW M Roadster. The seller, plaintiff Michael E. Bell (Bell) placed his 1998 BMW on consignment for sale with defendants Godbout/Auto Classics Inc. (ACI), but Bell retained physical possession of his certificate of title. ACI then sold the car to a purchaser, defendant Chad Oakland (Oakland) who paid ACI the full price of $29,400.00. Oakland took possession of the car but did not receive the certificate of title. ACI then disappeared or became insolvent. The seller Bell remains unpaid, and the buyer

Oakland did not receive the certificate of title (Bell still retains title). Both the seller Bell and the purchaser Oakland are victims of the dealer's (ACI) fraud.

Oakland has brought a summary judgment motion only as against Bell, based on Oakland's second cause of action in his counterclaim, which requests Bell specifically perform and tender the Certificate of Title to the BMW. Amended Answer, Affirmative Defenses, Counterclaims and Cross-Claims, p. 15, ¶ XXX. Two days after Oakland filed his motion for summary judgment Bell filed a Motion for Writ of Possession per Idaho Code §8-302 on the ground that the BMW should not have been delivered by ACI to Oakland under Idaho Code §49-502 and alleging Oakland is in wrongful possession under I.C. §49-502 and §49-503. An "Order to Show Cause to Defendant Chad Oakland, Pursuant to I.C. §8-302(1)" was signed by the Court and hearing was scheduled for June 16, 2004.

The matters were briefed, and oral argument on Oakland's Motion for Summary Judgment and Bell's Motion for Writ of Possession and Order to Show Cause were heard on June 16, 2004. The matter was taken under advisement due to its complexity. Oakland filed a Post Hearing Brief in Support of Motion for Summary Judgment on June 17, 2004, and Bell filed a Post Hearing Brief in Support of Motion for Writ of Possession and Against Defendant's Motion for Summary Judgment on June 21, 2004.

II. ANALYSIS: Which Statutory Scheme – the Motor Vehicle Titles Act or the Uniform Commercial Code Controls this Case?

Crucial to determining the rights of Bell and Oakland is determining which statutes control in this case, the Motor Vehicle Titles Act or the Uniform Commercial Code. In these situations, the majority of courts have decided to protect the rights of innocent third-party

purchasers over the rights of unpaid sellers/suppliers. If that is applied in this case, Oakland would get title and Bell would not get his car back.

Bell claims he is the owner of the car under I.C. § 49-503 because he has title in his name and that until Oakland's name is on the title Oakland acquires no right, title, claim or interest in the car. Plaintiff's Memorandum of Points and Authority, p. 2. Idaho Code § 49-503 is very clear:

> …no person acquiring a vehicle from the owner, whether the owner is a dealer or otherwise, shall acquire any right, title, claim or interest in or to the vehicle until he has issued to him a Certificate of Title to that vehicle, nor shall any waiver or estoppel operate in favor of that person against a person having possession of a Certificate of Title or an Assignment of the Certificate of the vehicle for a valuable consideration.

Latham Motors, Inc. v. Phillips, 123 Idaho 689, 694, 851 P.2d 985, 990 (Ct.App. 1985) and *Northland Insurance Co. v. Boise's Best Autos & Repairs,* 132 Idaho 228, 233, 970 P.2d 21, 26 (Ct.App. 1992) emphasize that statute's clarity. Reading only I.C. § 49-503 one would conclude Bell should get his car back since Oakland lacks title. That would not be an unjust result, as Bell by retaining title clearly did all he could to protect himself. Also, the burden of obtaining title is upon the buyer. *Lopez v. Langer,* 114 Idaho 873, 877, 761 P.2d 1225, 1229 (1988).

Oakland claims that Bell failed to comply with Idaho's motor vehicle statues, that Bell's failure to deliver title to the consigned vehicle was in violation of I.C. § 49-502 and I.C. § 49-1636. Oakland's Memorandum in Support of Motion for Summary Judgment, p. 8. A plain reading of I.C. § 49-502 shows that Oakland is just as much in violation of that statute (because he purchased without a certificate of title) as Bell is for selling a vehicle without a certificate of title. Oakland's argument as to I.C. § 49-1636(1) is equally misplaced, as Oakland focuses on the first part of that statute and ignores the fact that a copy of the title was given by Bell to ACI.

As stated above, reading only Idaho Code § 49-503, Bell should prevail over Oakland. However, the analysis of this case does not end with Idaho Code § 49-503. The Court must also look at Idaho Code § 49-512, which reads:

> The method provided in this chapter for perfection of a security interest on a vehicle is exclusive, **except as to security interests in <u>vehicles held in inventory for sale</u>, which shall be governed by the provisions of chapter 9, title 28, Idaho Code.**

It is the emphasized portion of I.C. § 49-512 which causes Bell's certain victory under I.C. § 49-503 to become a victory for Oakland. Because Bell's BMW was "inventory", the Uniform Commercial Code protects Oakland over Bell, and Bell's protections under Idaho Code § 49-503 evaporate.

As between Bell and Oakland, neither are wrongdoers. At first glance, Bell did all he could to protect himself…he kept the title. Oakland, on the other hand, bought an expensive

used car without getting the title, without seeing the title. At first glance, the equities seem to tip in favor of Bell. Because the legal result is different than the equitable result, this Court has researched the issue well beyond the briefs submitted. *Martin v. Nager*, 469 A.2d 519, 522-23 (N.J.Super 1983) has an in depth analysis of this issue of the interplay between the UCC and motor vehicle acts. The Superior Court of New Jersey stated: "…some courts have invoked the rule that where one of two innocent parties must suffer through the act of negligence or fraud of a third party, the loss should fall upon the one whose conduct created the circumstances which enabled the third-party to perpetrate the wrong or cause the loss." *Id.,* at p. 527. "Other courts have rationalized that the loss must fall upon the consignor (Bell in the present case) since it 'placed the truck in the stream of commerce.'" *Id. citing Coffman Truck Sales v. Sackley Cartage Co.,* 58 Ill.App.3d 68, 69, 15 Ill.Dec. 554, 555, 373 N.E.2d 1026, 1027 (Ill.Ct.App. 1978). "The seller 'is the party who set in motion the chain of events leading to the title dispute.'" *Id.,* 469 A.2d 519 at 528.

What this case comes down to is: 1) analysis of the "entrustment doctrine" of the Uniform Commercial Code, and 2) the inescapable conclusion that Bell's BMW, as it sat at the ACI business when Oakland bought it, was "inventory" under I.C. § 49-512. This is what causes the Uniform Commercial Code to control the outcome of this dispute between Bell and Oakland.

The entrustment doctrine in Idaho can be found in I.C. § 28-2-403. The general idea is that any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entrustor to a buyer in the ordinary course of business. I.C. § 28-2-403(2). A buyer in the ordinary course of business is a "person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind." I.C. 28-1-201(9).

Numerous jurisdictions have struggled with the interplay between the Uniform Commercial Code and their motor vehicles title acts. In some aspects the two statutes are concerned with the same subject matter and appear to be conflicting. *Shannon v. Snedeker,* 470 A.2d 25, 29 (N.J.Super 1983). However, almost all of these jurisdictions have determined that a good faith purchaser should prevail. *Id*. When statutes are in *pari materia*, although apparently conflicting, they should, if possible, be construed in harmony with each other to give effect to each. *Id*.

> The apparent conflict between the provisions of the UCC and the [motor vehicle act] arises because the transfer of a motor vehicle, unlike the transfer of other chattels, must be made in accordance with documentary evidence executed only in the method prescribed by the [motor vehicle act]. But these statutes should be read and construed together and given fair effect to both if possible.

Martin v. Nager, 469 A.2d 519, 522-23 (N.J.Super 1983)

In *Simplot v. Williams C. Owens M.D.,* 119 Idaho 271, 805 P.2d 477 (Ct.App. 1990), the Idaho Court of Appeals had to determine whether the Vehicle Titles Act or the UCC governed the sale of a GMC bus. The Idaho Court of Appeals held the Motor Vehicle Act controlled because the vehicle in question did not constitute ***inventory for sale*** pursuant to I.C. § 49-512. *Id*. 119 Idaho at 273-74. Again, Idaho Code § 49-512 reads:

> The method provided in this chapter for perfection of a security interest on a vehicle is exclusive, except as to security interests in vehicles held in inventory

> for sale, which shall be governed by the provisions of chapter 9, title 28, Idaho Code.

In determining whether the vehicle in *Simplot* was held as inventory for sale, the court focused on whether the seller was in the business of selling used vehicles. *Id*. at 274. The seller of the vehicle in *Simplot* was a private party (Howard) who had first used his GMC bus as security and signed the certificate of title over to the secured party but Howard kept possession of the bus. Later, Howard sold the bus to another party. Since Howard was a private party and was thus not in the business of selling used vehicles, the Court of Appeals held the UCC did not apply and instead Idaho Code § 49-503 controlled. Again, Idaho Code § 49-503 reads:

> Except as provided in sections 49-502, 49-510 through 49-512, and 49-514, Idaho Code, no person acquiring a vehicle from the owner, whether the owner is a dealer or otherwise, shall acquire any right, title, claim or interest in or to the vehicle until he has issued to him a certificate of title to that vehicle…

In the present case, the seller ACI, **is** a used car dealer and is in the business of selling goods of that kind. That key feature in *Simplot* is different in the present case. The fact that ACI was in the business of selling goods of that kind is the first step that leads to the conclusion that Oakland prevails over Bell.

The next question that must be answered in this case is whether a second-hand vehicle placed on *consignment* for sale or return with a used car dealer who deals in goods of that kind should be considered inventory for the purposes of I.C. § 49-512. Other jurisdictions have found that under the UCC the principal test to determine whether goods are inventory is "whether they are held for immediate or ultimate sale". *Maaxl Sales Company v. Critiques, Inc.,* 796 F.2d 1293, 1298 (10th Cir. 1986). *Maxxl* is not a motor vehicle case, but under that test, Bell's BMW at ACI is "inventory". Courts have held that consigned goods should be considered inventory for the purposes of creditor's rights. *Id. In re Corvette Collection of Boston, Inc.*, 294 B.R. 409, 413 (Bkrtcy.S.D.Fla. 2003); *Coffman Truck Sales v. Sackley Cartage Co.,* 58 Ill.App.3d 68, 69, 15 Ill.Dec. 554, 555, 373 N.E.2d 1026, 1027 (Ill.Ct.App. 1978); *Island v. Warkenthien*, 287 N.W.2d 487 (S.D. 1980); and *Martin v. Nager*, 469 A.2d 519 (N.J.Super 1983) are but four

motor vehicle cases which find that consigned goods are considered inventory for the purposes of creditor's rights.

Because this Court finds Bell's BMW was "inventory" as it sat at ACI's business, as between Bell and Oakland, Oakland prevails.

Martin v. Nager, 469 A.2d 519 (N.J. Super 1983) is factually on point. Like the present case, it was an action between the innocent seller and innocent purchaser when the crooked consignment dealer became insolvent at the same time the purchaser delivered the money and received the car, and the buyer failed to receive the money. Just as in the present case, seller kept the title to the car. The Superior Court of New Jersey, Chancery Division, also examined the interplay between their UCC and their motor vehicle statutes. That court stated the basic goals of each set of statutes were in "perfect harmony, the UCC is to protect good faith purchasers and, as will be later discussed, the purpose of the MVCOL is to protect innocent purchasers of motor vehicles." 469 A.2d at 523. New Jersey's Motor Vehicle Statute appears to be similar to Idaho's. As noted in the case, the New Jersey statute requires: "When a used motor vehicle is sold in this state, the seller shall…execute and deliver to the purchaser, an assignment of the certificate of ownership…." *Id.,* at 522, citing N.J.S.A 39-10-9. Similar to I.C. § 49-502, that New Jersey statute puts the onus on the seller to deliver to the buyer the certificate of title:

> No person shall sell or otherwise dispose of a vehicle without delivery to the purchaser or transferee a certificate of title with an assignment as necessary to show title in the purchaser, nor purchase or otherwise acquire or bring into the state a vehicle except for temporary use as provided by section 49-432, Idaho Code, unless he shall obtain a certificate of title in his name in accordance with the provisions of this chapter.

Martin cites *Pfleuger v.Colquitt,* 620 S.W.2d 739 (Ct.Civ.App.Tex. 1981). The Texas court reached a result similar to the New Jersey court in *Martin*, holding that the Texas Business and Commercial Code is consistent with the Texas Certificate of Title Act. 620 S.W.2d at 742. The Texas court held that its Certificate of Title Act is "intended to protect purchasers and lenders against schemes by persons without authority or ownership, rather than to permit owners to disavow the acts of authorized agents." *Id.*

Martin also cites *Security Pacific Nat'l Bank v. Goodman,* 24 Cal.App.3d 131, 100 Cal.Rptr. 763 (Ct.App.2d Dist.Div.4 Cal. 1972). That case concerned a boat, but Section 700 of the California Harbors and Navigation Code is very similar to I.C. § 49-503. Section 700 reads: "No transfer of the title or any interest in or to an undocumented vessel numbered under this code shall pass, and any attempted transfer shall not be effective, until ...the endorsed certificate of ownership has been delivered or mailed to the Department of Harbors and

Watercraft for transfer." 24 Cal.App.3d at p. 136. The bank, which had a security interest in the boat and had title, claimed Section 700 caused the subsequent purchaser to have no interest because the transfer without title was "ineffective". *Id.* That court noted:

> This statute is substantially the same as the language of the Vehicle Code relating to the transfer of motor vehicles (see Veh. Code, § 5600), and we look to the vehicle cases for authoritative interpretation. It has long been established that a transfer of the property interest in a motor vehicle is effective as between the immediate parties even though they have not complied with the registration statute. (*Kenny v. Christainson* (1927) 200 Cal. 419. 423 [253 p. 715, 50 A.L.R. 1297]; *Henry v. General Forming, Ltd.* (1948) 33 Cal.2d 223, 226 [200 P.2d 785].) Under the principle established by this line of cases, the agreement between Redinger and Jeffries, followed by the delivery of the boat to Jeffries, effectively transferred Redinger's right of possession to Jeffries. This transaction did not cut off the security interest of the bank, as we have pointed out above, but it did transfer Redinger's possessory interest to Jeffries despite noncompliance with the registration statute.

Id. Those last six words dictate the result in the present case. *Martin* also cites *Island v. Warkenthien*, 287 N.W.2d 487 (S.D. 1980). The facts in *Island* are also similar to those in the present case. The plaintiff bought a car that the defendant had placed on consignment with an automotive dealer. *Id*. The plaintiff had the car, the defendant had possession of title, and the dealer was insolvent. *Id.* The sole question in *Island* was whether the South Dakota Title Statutes controlled over the UCC. In explaining why the title statutes did not control, the Supreme Court of South Dakota perhaps said it best:

> …the spirit and intent of the title statute, which is to prevent fraud through the sale of stolen cars, would not be served in a case involving a bona fide purchaser for value without notice. The Commercial Code provisions dealing with entrustment and buyers in the ordinary course of business are clearly applicable to facts presented here. Therefore, using the general rule of *pari materia,* the logical result is to give effect to the Commercial Code provisions rather than the title statutes since the latter statutes were not meant to penalize good faith purchasers.

469 A.2d 519 at 528. There is nothing in the present case to indicate that Oakland is anything other than a bona fide purchaser for value. What these cases are telling us is, as between the two

innocent parties (Bell and Oakland), the Uniform Commercial Code clearly protects Oakland, and since this was a sale of "inventory", the law will not allow non-compliance with the motor vehicle title statutes to trump the protections of the Uniform Commercial Code. The major purpose behind such motor vehicle title statues is to facilitate the recovery of stolen cars and establish a source of information concerning the title and liens on vehicles. They were not intended to harm the innocent bona fide purchaser. *Atwood Chevrolet Olds, Inc. v. Aberdeen Municipal School Dist.,* 431 So.2d 926, 927-28 (Miss. 1983). The Mississippi Supreme Court held:

> … the purpose of [the motor vehicle] statute can still be achieved even though the "entrustment" statute is given prevalence. In this limited respect, the Commercial Code provision must prevail. Thus, it was not necessary for the purchaser to receive, at the time of delivery of the vehicle, the certificate of origin before title could pass to him. The sale was complete upon delivery.

Id., 431 So.2d at 928.

This is all consistent with (and due to) the "entrustment" doctrine, discussed above. Again, that doctrine, found at I.C. § 28-2-403, is any entrusting of possession of goods to a merchant who deals in goods of that kind, gives him power to transfer all rights of the entrustor to a buyer in the ordinary course of business. I.C. § 28-2-403(2). A buyer in the ordinary course of business is a "person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind." I.C. 28-1-201(9).

> A strict application of the certificate of ownership law requiring the buyer to bear the burden in this kind of transaction until he has title in hand would have the effect of eliminating all protection to buyers in the ordinary course and of decreasing the marketability of goods overall.

Shannon v. Snedeker, 470 A.2d 25, 28 (N.J.Super 1983). *See also Price v. Universal C.I.T. Credit Corp.,* 427 P.2d 919 (Ariz. 1967).

The purpose of the motor vehicle statutes is not to allow former owners a basis for recovering the vehicle after a dealer has resold it for value. *Martin*, 469 A.2d at 528. The basic goal of the UCC is to protect good faith purchasers. *Id*. at 524. The majority of jurisdictions hold that these interpretations give meaning to both the motor vehicle act and the UCC consistent with the purposes of both. *Id*. *See also Jones v. Mitchell,* 816 So.2d 68, 71 (Ct.App. Alabama 2001); *Cherry Creek Dodge, Inc. v. Carter,* 733 P.2d 1024 (Wyo. 1987); *Heinrich v. Titus-Will Sales, Inc.,* 868 P.2d 169 (Ct.App. Wash. 1994).

Bell's BMW is a second-hand vehicle sold by a used car dealership, ACI, who was in the business of selling goods of that kind, and the BMW was held by that dealership for the purpose of "immediate or ultimate sale". The vast majority of other jurisdictions have considered goods placed on consignment for sale or return to be inventory for the purposes of creditor's rights. Bell's BMW at ACI for consignment sale must be considered "inventory" under I.C. § 49-512. Accordingly, the transaction is governed by the Uniform Commercial Code.

There is Idaho precedent in favor of Bell's position. A close reading of Idaho Supreme Court case *Lux v. Lockridge*, 65 Idaho 639, 150 P.2d 127 (1944) is warranted. In *Lux*, the plaintiff traded in his truck to a dealer in exchange for a new truck. *Id* at 641. A condition of the transaction was if the plaintiff was unable to get the new truck, his trade-in truck would be returned to him. *Id*. Plaintiff was unable to get the new truck but subsequently, the dealer sold the plaintiff's trade-in truck to the defendant. *Id*. The plaintiff requested that the trade-in truck be returned when he was unable to receive the new truck. *Id*. The Idaho Supreme Court held:

> A purchaser not receiving the certificate of title is not a bona fide purchaser for value, and therefore as against defendant the contract existing between plaintiff and the company could be shown, defeating his rights to retain the truck.

Id. at 643. The dissent in *Lux* is instructive and reflects the modern majority view. Justice Ailshie's dissenting opinion states:

> It appears to me that the statute under consideration (sec. 48-402-b) was never intended to have application to the immediate parties (vendor and vendee) to a bona fide sale of a motor vehicle. The statue is clearly an "Anti-Theft Act."

Id. *Lux* is factually distinguishable from this case. *Lux* did not involve a consignment for sale, and most importantly it **did not involve a dealer who acts as an agent with apparent and express authority to sell.** In *Lux,* the dealer was **not** supposed to sell the trade-in vehicle. Therefore, the UCC's entrustment doctrine does not fit the facts of *Lux;* whereas, the entrustment doctrine applies to the facts of the present case.

The majority decision in *Lux* is cited in *Nelson v. Fisch,* 39 N.W.2d 594 (Iowa 1949). *Nelson* shows that if the facts were slightly different in the present case, the outcome would be different. In that case the buyer knew that the title was not available from the seller. In discussing the rule that "where one of two innocent persons must suffer by the act of the third, he who puts it in the third person's power to inflict the injury must bear the loss", the Iowa Supreme Court held it was not the original owner's delivery of possession of the car to the seller, but the buyer's "payment of money with knowledge that the certificate of title was not available, that made the injury possible." 39 N.W.2d 594, 598. In *Nelson* an agent of the buyer inquired about the certificate of title and was told "that he could not get it that day because 'it wasn't there'". 39 N.W.2d 594, 597. The Iowa Supreme Court noted "In face of this 'red light' he took the car because Richardson said 'he would send it (the certificate) out just as soon as he got it'" and "The money was paid to Richardson without inquiry of plaintiff". *Id.* There is nothing indicating that we have such facts as pertain to Oakland in the present case.

Slayton v. Zapp, 108 Idaho 244, 697 P.2d 1258 (Ct.App. 1985) reinforces the motor vehicle title act, but does not discuss the interplay with our Uniform Commercial Code. *Dissault v. Evans,* 74 Idaho 295, 261 P.2d 822 (1953), while factually arising in a different setting, shows the bona fide purchaser can prevail in a motor vehicle case and that the motor vehicle act does not require actual physical delivery of title at the time of sale. *Dissault* supports the ruling by the Court in this case on summary judgment (awarding title to the vehicle as against one possessing the certificate of title when the purchaser is a bona fide purchaser for value and the certificate of title is not issued in the name of the party holding the title). *Latham Motors, Inc. v. Phillips,* 123 Idaho 689, 851 P.2d 985 (Ct.App. 1993) discusses *Dissault* at length and shows why different factual situations result in different outcomes in these cases. This Court finds the facts of this case, specifically Oakland's good faith status, to be more similar to *Dissault* than *Latham.*

Bell entrusted the 1998 BMW to a dealer, Auto Classics Inc. (ACI), which dealt in goods of that kind. Bell delivered the vehicle to the dealer and provided it with the express and apparent authority to sell that vehicle. According to the entrustment doctrine found in I.C. § 28-2-402, ACI was empowered to transfer all rights in that vehicle to the buyer. That is the majority view. Accordingly, Oakland's motion for summary judgment is GRANTED.

III. ATTORNEY FEES.

Oakland claims he is entitled to attorney fees under I.C. § 12-120(2) and *McKinney v. Kirkness,* 107 Idaho 740, 692 P.2d 384 (1984). Defendant's Memorandum, p. 9. Bell argues the decision by the Idaho Supreme Court in *McKinney* set forth no legal analysis for the ruling by the trial court on the title issue, which was apparently not appealed. Plaintiff's Memorandum, p. 6. Bell also argues that Oakland cited no authority in their Complaint for an award of attorney fees. *Id.* There is no citation for Bell's argument that the basis for attorney fees must be found in the pleadings. Oakland has alleged attorney fees. Answer, Affirmative Defenses, Counterclaims and Cross-claims, p. 23. Clearly, attorney fees cannot be awarded *sua sponte* if not claimed under a pertinent statute. Walters, A Primer for Attorney Fees in Idaho, 38 Idaho Law Rev. Vol. 1, 1-88, p. 4, n. 11. That is not the situation in the present case. Oakland claimed attorney fees in his pleading, and he specified the basis in his memorandum. That is all that is necessary. The statute need not be cited in the pleading.

However, the Court finds that Idaho Code § 12-120(2) does not allow Oakland to prevail on his claim for attorney fees against Bell. Idaho Code § 12-120(2) specifically incorporates only the basis of Idaho Code § 12-120(1), which is actions involving $25,000 or less, and applies that basis to counterclaims as well. The underlying action, the sale of the BMW, involved a transaction worth $29,400.00. That is over the limit prescribed in Idaho Code § 12-120(1), thus attorney fees under Idaho Code § 12-120(2) are not awarded to Oakland against Bell. In *McKinney* the amount in controversy was $7,100.00, well below the limit of I.C. § 12-120(1).

IV. ORDER.

IT IS HEREBY ORDERED defendant Oakland's Motion for Summary Judgment as to his second cause of action on his counterclaim against plaintiff Bell, specific performance, is GRANTED. Plaintiff Bell is directed to deliver the certificate of title to the vehicle to defendant Oakland.

IT IS FURTHER ORDERED defendant Oakland's motion for summary judgment as to his third cause of action on his counterclaim against plaintiff Bell, attorney's fees, is DENIED.

IT IS FURTHER ORDERED plaintiff Bell's Motion for Writ of Possession and Order to Show Cause is DENIED.

DATED this 23rd day of October, 2004.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of October, 2004, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
Romer Brown	664-2193	Ian Smith	765-9089
Brent Schlotthauer	765-4702		

_____
Secretary