

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON**

GFRS EQUIPMENT LEASING FUND II, LLC,
Plaintiff,

v.

Case No. 20-30798-CB
Hon. Michael P. Hatty

LAKESIDE MARINE CONSTRUCTION,
LLC; BENJAMIN CAMERON; and ROSINA
PHILLIPS,
Defendants.

**OPINION AND ORDER REGARDING PLAINTIFF’S MOTION FOR
POSSESSION PENDING FINAL JUDGMENT**

At a session of the 44th Circuit Court,
held in the City of Howell, Livingston County,
on the 24th day of August, 2020.

THIS MATTER comes before this Court on Plaintiff’s Motion for Possession Pending Final Judgment. This Court having heard argument from Plaintiff at a hearing on August 20, 2020; those Defendants served failing to respond to Plaintiff’s Motion or appear for the above-mentioned hearing; and this Court being otherwise fully advised in the premises, Plaintiff’s Motion is GRANTED for the reasons set forth herein.

Plaintiff filed this action on June 29, 2020, alleging Defendant Lakeside Marine Construction, LLC (hereinafter “Lakeside”) had executed a lease agreement for a Caterpillar excavator a year prior. The lease provided for an initial payment of \$3,500 and then 36 monthly payments of \$1,517 thereafter, for a total of \$58,112. Plaintiff further alleged that defendants Benjamin Cameron (hereinafter “Cameron”) and Rosina Phillips (hereinafter “Phillips”) executed the agreement as guarantors. Lakeside allegedly put a welder up as collateral and a UCC financing statement was apparently filed as to Plaintiffs’ security interest. In its complaint,

Plaintiff alleges that after the initial payment, Defendants made five monthly payments but have been in default since December 2019.

On June 30, 2020, this Court granted Plaintiff's ex-parte order that Defendants "shall refrain from damaging, destroying, concealing, disposing of, or using so as to substantially impair its value" the excavator and welder, pursuant to MCR 3.105(E)(2)(a). That order further directed Defendants to show cause why Plaintiff is not entitled to immediate possession, pursuant to MCR 3.105(E)(2)(b).

At a hearing on a motion for possession pending final judgment, MCR 3.105(3)(b) provides that "the plaintiff must establish (i) that the plaintiff's right to possession is probably valid; and (ii) that the property will be damages, destroyed, concealed, disposed of, or used so as to substantially impair its value, before trial."

As to the probability of the validity of Plaintiff's right to possession, the contract documents at issue were attached to Plaintiff's complaint, which is verified. Further, Plaintiff's sworn statements on the record during the hearing on this matter provided further information relating to and supporting the allegations contained in the complaint, especially related to Plaintiff's right of possession through Defendants' alleged breach of the agreement to which Plaintiff has a security interest. At this same hearing, Plaintiff stated that Lakeside and Cameron are evading service and that the property at issue has been relocated since the commencement of this action. For these reasons, this Court finds that Plaintiff has established its burden pursuant to MCR 3.105(3)(b) and its Motion is GRANTED.

IT IS HEREBY ORDERED THAT Defendants shall deliver the below-described property to Plaintiff within 21 days:

- Caterpillar 305.5D CR Mini Hydraulic Excavator, Serial No. CAT3055DHFLZ00466

- 2014 Lincoln Ranger 8 Welder, Serial No. 2809616601

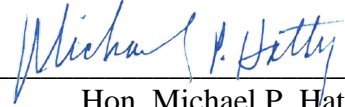
IT IS FURTHER ORDERED THAT if the above-described property is not returned to Plaintiff within 21 days, the Livingston County Sherriff shall seize such property and return it to Plaintiff.

IT IS FURTHER ORDERED THAT Plaintiff will surrender the property to the person adjudged entitled to possession, diligently prosecute this action to final judgment, and pay an money that may be recovered against them in the action.

IT IS SO ORDERED.

8/24/2020

Date



Hon. Michael P. Hatty
Circuit Court Judge