

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**MANHEIM AUTOMOTIVE FINANCIAL
SERVICES, INC.,**

Plaintiff,

v.

**MARTEN E. GUTHRIE, individually and
d/b/a GUTHRIE WHOLESALE AUTO,
DENA P. GUTHRIE, and OKLAHOMA
AUTO EXCHANGE, LLC.,**

Defendants.

CIVIL ACTION

No. 06-2298-KHV

ORDER

Plaintiff Manheim Automotive Services filed suit against defendants asserting claims arising from a floor plan financing arrangement. Specifically, plaintiff asserted claims against Marten E. Guthrie, individually and d/b/a Guthrie Wholesale Auto, for breach of contract (Count I), breach of personal guaranty (Count II), civil conspiracy (Count V) and fraud (Count VI). Plaintiff sued Dena P. Guthrie for breach of personal guaranty (Count III) and sued Oklahoma Auto Exchange, LLC for tortious conversion of assets (Count IV) and civil conspiracy (Count V). Plaintiff served Marten E. Guthrie and Dena P. Guthrie on July 27, 2006. The Guthrie defendants did not enter an appearance, plead or otherwise defend. On September 7, 2006, the Clerk entered default on plaintiff's original complaint against the Guthries. Fed. R. Civ. P. 55(a); Doc. #12. This matter comes before the Court on plaintiff's Motion For Default Judgment Against Defendants Marten E. Guthrie and Dena P. Guthrie As To Plaintiff's First Amended Complaint (Doc. #24) filed November 20, 2006.¹

¹ Two months after the Clerk entered default against the Guthries, on November 10, 2006, plaintiff filed its First Amended Complaint (Doc. #22). That complaint added allegations
(continued...)

Plaintiff seeks default judgment on its claims for breach of contract (Count I), breach of personal guaranties (Counts II and III) and fraud (Count VI). Count I alleges that Marten E. Guthrie failed to make any payments as required by a promissory note and security agreement through which plaintiff financed Guthrie's purchase of motor vehicles. Counts II and III allege that Marten E. and Dena P. Guthrie each breached an individual guarantee of the amount owed under the promissory note and security agreement. Count VI alleges that Marten E. Guthrie engaged in fraud in order to induce plaintiff to provide him with floor plan financing. As set out in plaintiff's motion for default judgment, Doc. #24, Exhibit 2, defendants Marten E. Guthrie and Dena P. Guthrie are jointly and severally liable to plaintiff in the known amount of \$140,345.62 on each count. The Court finds no just reason to delay the entry of judgment for that amount. See Fed. R. Civ. P. 55.

IT IS THEREFORE ORDERED pursuant to Fed. R. Civ. P. 54(b) and 55(b) that default judgment be and hereby is entered against Marten E. Guthrie as to Counts I, II and VI and against Dena P. Guthrie as to Count III, jointly and severally in the amount of \$140,345.62.

IT IS FURTHER ORDERED that said judgment is certified as final pursuant to Fed. R. Civ. P. 54(b).

¹(...continued)

concerning the citizenship of the members of Oklahoma Auto Exchange, LLC. The first amended complaint did not contain any new or additional claims for relief against any defendants. Under Fed. R. Civ. P. 5(a), no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

Dated this 22nd day of February, 2007 in Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge