

# MARKS & WEINBERG, P.C.

## DaimlerChrysler Serv. N. Am. v. Ouimette 830 A.2d 38 (Vt. 2003)

Vendor-financers and those funders purchasing vendor paper should be aware that the shorter four-year statute of limitations contained in Article 2 of the Uniform Commercial Code may apply in lieu of the six-year statute of limitations provided by Article 9 of the UCC.

In this case, Duane Ouimette and Stephanie Faulkner (the "Purchasers") purchased an automobile from a dealership along with an extended warranty and insurance agreement. The Purchasers made an initial down payment and financed the remaining payments through a "simple interest retail installment sales contract." As security for their obligations under that contract, Purchasers granted the dealership a security interest in the automobile. The dealership immediately assigned its rights to Chrysler Credit Corp., which later became DaimlerChrysler Services North America, LLC ("DaimlerChrysler").

When the Purchasers failed to make the required payments, DaimlerChrysler repossessed and sold the car and terminated the warranty and insurance contracts. Five years later, DaimlerChrysler sued Purchasers for the deficiency. When the Purchasers failed to appear at trial, DaimlerChrysler moved for default judgment against them.



The court denied DaimlerChrysler's motion for default judgment, holding that the claim was barred by the four-year statute of limitations for sales contracts under Article 2 of the UCC and that the claims did not benefit from the six-year statute of limitations for secured transactions under Article 9 of the UCC. The Vermont Supreme Court affirmed, holding that it was appropriate for the trial court to raise the statute of limitations of its own accord, because "to hold otherwise would obligate the court to issue judgment against a party that has not made an appearance no matter how old or unjust the claim."

The court held that DaimlerChrysler's claim was governed by Article 2 of the UCC and not by Article 9, because the claim was nothing more than "an action to enforce the obligation of a buyer to pay the full sale price to the seller." The key here was that, although the retail installment contract operated as a security agreement and the rights were assigned to DaimlerChrysler, the ultimate funder, the transaction really related to a sale of goods and the Article 2 statute of limitations therefore applied.

The court also rejected DaimlerChrysler's argument that the extended warranty and insurance agreements, which was also secured by a lien on the automobile, rendered the overall transaction a secured loan. The court viewed the additional payment obligations with respect to the warranty and insurance as merely "incidental parts" of the sales contract.

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