FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-1130

FORD MOTOR CREDIT COMPANY, LLC,

Appellant,

v.

YOLANDA D. PARKS,

Appellee.

On appeal from the County Court for Okaloosa County.
James Ward, Judge.

May 11, 2022

MAKAR, J.

At issue is the legibility of the fine print in an electronically filed copy of the two-page motor vehicle lease agreement between Ford Motor Credit Company, LLC, and Yolanda D. Parks. Ford sued Parks for failing to make payments totaling $7,986.45 under the lease, copies of which were attached to Ford's complaint and entered electronically into evidence during the virtual bench trial.

A month post-trial, the trial court entered a final judgment in favor of Parks. The sole reason for doing so was that the trial court deemed the electronically filed lease agreement to be "illegible," such that it "cannot decipher the written contractual language and, thus, cannot enter an award of damages based upon unknown

contract language." Ford appeals, claiming the trial court erred in concluding that the language in the electronically filed copy of the lease was undecipherable.

To begin, Ford points out that no objection to the lease's legibility was made at trial and that the trial court did not "indicate that it found the subject lease agreement to be illegible" at that time; it bemoans that the trial court "did not provide [Ford] with an opportunity to reply with a 'more legible copy' of the subject contract." Once the trial court issued its final order, however, Ford had the opportunity seek a new trial and submit a clearly legible copy, but it didn't do so. *See* Fla. Sm. Cl. R. 7.180 (2021).[1] Ford thereby can't complain that it lacked an opportunity to clear up the matter prior to appealing the final judgment. Filing a legible copy of the lease agreement in the trial court *after* filing a notice of appeal, as was done in this case, is pointless because the trial judge had lost jurisdiction at that point. Perhaps the trial court should have sought a clearer copy of the lease before rendering a final judgment.[2] But the responsibility to ensure that

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[1] Had Ford filed a motion for rehearing on this basis it would have been treated like an authorized motion for new trial. *Arafat v. U-Haul Ctr. Margate*, 82 So. 3d 903, 905 (Fla. 4th DCA 2011) ("We elect to treat Arafat's motion for rehearing as an authorized and timely-filed motion for new trial permitted under the Florida Small Claims Rules of Court.").

[2] As a practical matter, trial courts have a role to play in making sure that key portions of documents submitted into evidence and discussed at trial are legible because scarce judicial resources expended on a public trial might otherwise go to waste if meritorious cases are dismissed on easily correctible grounds; the same would be true if key pages of a document or deposition were missing and needed to be replaced. Ensuring record documents are legible promotes the just adjudication of disputes that might otherwise succumb to litigation gamesmanship. In a particularly comical case, neither party initially submitted a legible version of their contract, and when the defendants "submitted the *first legible copy* of the disputed contract, *from either party*," the plaintiffs moved to strike it. *Fuoroli v. Westgate*

filed documents are legible generally falls on the litigants, not the trial courts.

Turning to the merits, the focus of Ford's appellate argument is that the totality of the record evidence, including the decipherable portions of the "illegible" lease agreement, was sufficient to establish its entitlement to a money judgment in its favor. It argues that it established, via documentary evidence and testimony at trial, the elements of a breach of contract claim: (a) the existence of a contract; (b) a breach of the contract; and (c) damages resulting from the breach. *A.R. Holland, Inc. v. Wendco Corp.*, 884 So. 2d 1006, 1008 (Fla. 1st DCA 2004).

Putting aside the latter two elements, no one contests that the first element was established, i.e., that a written contract existed between Ford and Parks. The contract was attached to Ford's complaint, was separately admitted into evidence without objection, and was the focus of Ford's witness who testified Parks entered and then breached it. Indeed, the trial judge stated that this action is "based on a written contract between the parties." The only question is its legibility and sufficiency as evidence.

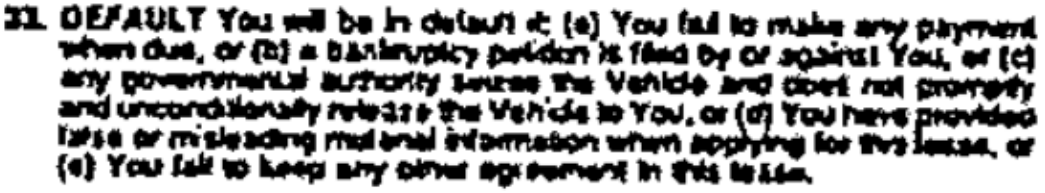
Little caselaw exists nationwide involving whether an appellate court may substitute its judgment as to a document's legibility for that of the trial court. The limited caselaw reflects that appellate courts may do so, but only if the relevant portions of the document are readily discernable. For example, in *Burrell v.*

Planet Hollywood Las Vegas, LLC, No. 2:10-CV-2191 JCM (GWF), 2014 WL 131668, at *2 (D. Nev. Jan. 14, 2014). In "emphatically" denying the motion as "nonsensical," the trial judge noted that the "illegible version is difficult to read simply because of the minimization and repeated scanning of the document before [it was] electronically filed" but he declined "to permit this breach of contract action to proceed to trial using an illegible version of the disputed document when a legible one is readily available." *Id.* He concluded that the plaintiffs "cannot contend with a straight face that they would be prejudiced in any manner if the court accepts the late filing of the document at the very heart of a lawsuit *initiated by them* and from which their causes of action flow." *Id.*

Kaiser's Estate, 344 S.W.2d 622, 625 (Mo. Ct. App. 1961), the Missouri appellate court examined a handwritten note and concluded that it was legible, stating that "[w]hile not clearly written, by any means, it can be read. Some of the words are misspelled, but they can be discerned." Georgia appellate courts review documents for legibility, but reported cases typically confirm the trial court's determinations. *See, e.g., Black v. Floyd*, 630 S.E.2d 382, 383 (Ga. 2006) ("Our own review of the copies confirms the trial court's characterization of them, in that they are almost completely illegible. Such documents are not entitled to evidentiary consideration." (citing numerous Georgia cases)); *see also Butler Auction Co., Inc. v. Hosch*, 171 S.E.2d 651, 652 (Ga. Ct. App. 1969) (affirming judgment where an auction contract attached to the complaint was an "illegible photographic or electrostatic" copy, which the clerk of the trial court certified could not be made legible).

The electronically filed copy of the lease agreement at issue is not entirely illegible. Many portions of the agreement are legible without magnification because they are in a larger font; other portions are legible because computer magnification increases their visual size rendering them readable. As Ford points out, the agreement "was electronically filed and, although not a perfect image, the words can be deciphered, especially when using a computer monitor which has the capability to be magnified." The pertinent inquiry is whether the *relevant* portions of the electronically filed lease agreement are decipherable, even if not perfectly legible, with readily available computer magnification.

By this standard, the agreement is decipherable as to the parties (who are clearly legible), the nature of the agreement and its terms (clearly legible as an automobile lease agreement with specified payments due), and nonpayment as a ground for default in paragraph 33 (which is legible in part and decipherable in part).



Paragraph 33 is entitled "DEFAULT" in a large, legible font. The first sentence of the paragraph says that "You will be in default if (a) You fail to make any payments when due[.]" These decipherable portions make clear that Parks is in default (i.e., breach) if she fails to make payments. As in *Kaiser's Estate*, we do not agree that the electronically filed copy is entirely illegible; these key provisions "can be read" or "discerned," 344 S.W.2d at 625, and are sufficient evidence to establish Ford's contractual basis for its claim of default by Park.

As to the other two elements of Ford's breach of contract claim, the record evidence and testimony establish that Parks failed to make required payments; both she and Ford's witness testified to the breach. She initially made about seventeen monthly payments to Ford but stopped doing so thereafter, resulting in repossession of the vehicle and related expenses incurred by Ford. This record evidence was unrebutted, thereby establishing the latter two elements: breach and damages. While portions of paragraph 33 detailing the default balance due (after repossession and sale of the vehicle) are, in large measure, decipherable, some portions are less so; Ford's witness, however, specifically testified about how the balance due of $7,986.45 was calculated pursuant to the terms of paragraph 33, thereby providing competent substantial evidence to support the amount of damages sought and proven.

We therefore conclude that the trial court erred in entering judgment in favor of Parks; the judgment below is reversed with instruction to enter a final judgment of $7,986.45 in Ford's favor.

REVERSED and REMANDED with instructions.

JAY, J., concurs; TANENBAUM, J., concurs in result with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

TANENBAUM, J., concurring in result.

The county court erred for sure, and the judgment it rendered against Ford Motor Credit Company ("FMCC") must be reversed. The dispensing of justice surely can come with challenges in small-claim cases like this one, in which a large corporation appearing by counsel is up against an individual appearing *pro se*. On the one hand, the county court must honor the corporation's entitlement to prove its case for contract damages. On the other, the court feels a gentle tug toward a flexible application of the rules so the individual may participate fully. The county court certainly has leeway to strike the right procedural balance. *See* Fla. Sm. Cl. R. 7.010 (providing that the small-claims rules "shall be construed to implement the simple, speedy, and inexpensive trial of actions at law in county courts"). In the American judicial enterprise, however, there is no room for play in the joints (so to speak) when it comes to faithfully applying the law, not even in a small-claim case. The county court appears to have gone astray on this fundamental point.[1]

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[1] For this reason, the "tsk-tsk" directed at FMCC by the majority for failing to file a motion for new trial seems misplaced. FMCC did what it was supposed to do; the county court did not. Nothing points to a hiccup in the proceeding (other than the requirement that the parties participate by video-conference) warranting a new trial. There does not appear to have been any objections, and FMCC was able to present all its evidence. Why should FMCC have had to ask to do it all again, as the majority suggests? To put it simply, FMCC was blindsided by the judgment—something a rehearing motion might have been competent to address, but not a motion for new trial. These two motions are not interchangeable, contrary to how the Fourth District treated them in the *Arafat* case cited by the majority. *Cf.* Fla. R. Civ. P. 1.530 (treating a motion for new trial and a motion for rehearing separately). I question whether FMCC could have filed a good-faith motion for new trial, and I am dubious that a baseless motion could be considered an authorized motion for the purpose of tolling the time for filing an appeal. Because a motion for rehearing was not authorized, *see* Fla. Sm. Cl. R. 7.180, the county court put FMCC in a tough spot. FMCC's decision just to plow forward with the appeal strikes me as the right call.

I endeavor here to address what, in my view, *should* be the basis for reversal, which has nothing to do with whether the county court should have been able to read an obscure, tucked-away paragraph on the second page of a digital scan. The reversible error is the county court's lack of authority to do what it did—render a judgment resting on an apparent defense that was not raised or tried by consent. Relatedly, even if that defense properly had been in play, the essential terms of the agreement between the parties and the quantification of FMCC's damages as result of Parks's breach were readily apparent to all. By any measure, the disposition imposed by the county court did not comport with the proven facts and the applicable law. It was wholly unreasonable.

FMCC claimed that Parks breached her 24-month car lease when she stopped making monthly payments. Parks was seven payments short of satisfying her obligation under the lease agreement. FMCC did its best to fit the awkwardly long and skinny sized, two-page lease agreement into an 8.5-by-11-inches PDF,[2] and that PDF was part its electronically filed statement of claim. The exhibit looked like this in the digital record:

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[2] Nearly everyone today knows what a "PDF" is. For the sake of posterity, though, it stands for "portable document format." This file typically is created by optically scanning a paper document and converting the data into a digital file that can be opened on a computer screen and ostensibly read as if looking at the original. The quality of this digital copy is primarily a function of resolution, with a higher-resolution initial scan producing a PDF file that is truer to the scanned document. At times, though, a digital scan can be so poor that it cannot be characterized reasonably as a "true copy" of the original in the same way the product of a toner copier would have been, back before Florida's courts went digital. In this brave new world, if a trial court is going to require parties to put on documentary "evidence" by electronic filing rather than the old-fashioned way, it will have to be sensitive to the potential shortcomings of digital exhibits. In those instances, the court should work transparently to accommodate those shortcomings when they manifest themselves, an unreadable PDF being but one example. That did not happen in the case below.

DEAL: 115966

FLORIDA MOTOR VEHICLE LEASE AGREEMENT

DATE 08/06/2015

1-800-727-7000
FORD CREDIT
www.fordcredit.com

LESSEE (and Co-Lessee) Name and Address (Including County and Zip Code)
YOLANDA DENISE PARKS
[illegible]
DEFUNIAK SPGS FL 32433 WALTON

LESSOR (Name and Address)
GARY SMITH FORD, INC
#1 BEAL PARKWAY N.E.
FORT WALTON BEACH, F 32548

"Finance Company" is FORD MOTOR CREDIT COMPANY. The "Holder" is CAB EAST LLC and its assigns. By signing "You" (Lessee and Co-Lessee) agree to lease this Vehicle according to the terms on the front and back of this lease and the terms of the Wear-Care Addendum, if any, attached to this lease.

If Your payment schedule is shown in Item 2(a), You entered into a "Monthly Payment Lease."
If Your payment schedule is shown in Item 2(b), You entered into an "Advance Payment Lease."

New/Used	Mileage at Delivery	Year/Make/Model	Vehicle Identification Number	Vehicle Use
NEW	218	2015 FORD FOCUS	1FADP3F27FL209188	PERSONAL

TRADE-IN ____ (Year/Make/Model) $ N/A (Gross Allowance) $ N/A (Amount Owing)

1. Amount Due At Lease Signing or Delivery (Itemized Below) *	2. Payments	3. Other Charges (not part of Your monthly payment)	4. Total of Payments (The amount You will have paid by the end of the lease)
$ 2250.00	(a) Monthly Payments: Your first monthly payment of $ 393.82 is due on 08/06/2015, followed by 23 payments of $ 393.82 due on the 5TH day of each month. The total of Your monthly payments is $ 9451.68. (b) Advance Payment: Your Payment of $ N/A is due on N/A. The total of Your payment is $ N/A	Disposition fee (if You do not purchase the Vehicle) $ N/A; N/A $ N/A; Total $ N/A	$ 11307.88

* Itemization of Amount Due at Lease Signing or Delivery

5. Amounts Due At Lease Signing or Delivery:	
a. Capitalized cost reduction	$ 1480.92
b. First monthly payment	393.82
c. Advance payment	N/A
d. Refundable security deposit	N/A
e. Title fees	N/A
f. Registration fees	163.25
g. Acquisition fee	N/A
h. CAP REDUCTION TAX	111.07
i. UPFRONT FEE TAX	30.44
j. N/A	N/A
k. TIRE BATTERY	6.50
l. RENTAL SUR /EFF	84.00
m. N/A	N/A
Total	$ 2250.00

6. How the Amount Due At Lease Signing or Delivery will be paid:	
a. Net trade-in allowance	$ N/A
b. Rebates and noncash credits	2250.00
c. Amount to be paid in cash	N/A
d. N/A	N/A
Total	$ 2250.00

7. Your payment is determined as shown below:

a. Gross capitalized cost. The agreed upon value of the Vehicle ($ 19425.00) and any items You pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) (Itemized below - Item 18) **		$ 20519.90
b. Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash that You pay that reduces the gross capitalized cost	-	1480.92
c. Adjusted capitalized cost. The amount used in calculating Your base payment	=	19038.98
d. Residual value. The value of the Vehicle at the end of the lease used in calculating Your base payment	-	12345.00
e. Depreciation and any amortized amounts. The amounts charged for the Vehicle's decline in value through normal use and for other items paid over the lease term	=	6693.98
f. Rent charge. The amount charged in addition to the depreciation and any amortized amounts	+	2098.18
g. Total of base payments. The depreciation and any amortized amounts plus the rent charge	=	8792.16
h. Lease payments. The number of payments in Your lease	÷	24
i. Base payment	=	366.34
j. Sales / Use tax	+	27.48
k. N/A	+	N/A
l. N/A	+	N/A
m. Total payment	=	$ 393.82
n. Lease term in months		24

Early Termination. You may have to pay a substantial charge if You end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier You end the lease, the greater this charge is likely to be.

8. Excess Wear and Use. You may be charged for excessive wear based on our standards for normal use. At the scheduled end of this lease, unless You purchase the Vehicle, You must pay to Lessor $0.15 per mile for each mile in excess of 23218 miles shown on the odometer. See Items 22 and 27 on back and the Wear-Care Addendum, if any, attached to this lease for additional excess wear and use terms.

9. Extra Mileage Option Credit. At the scheduled end of this lease, You will receive a credit of $0. N/A per unused mile for the number of unused miles between N/A and N/A miles, less any amounts You owe under this lease. You will not receive any credit if the Vehicle is destroyed, if You terminate Your lease early, exercise any purchase option, are in default or the credit is less than $1.00.

10. Purchase Option at End of Lease Term. $ 12845.00 plus official fees and taxes, and a reasonable documentary fee if allowed by law, is Your lease end purchase option price. You have the option to purchase the Vehicle at the end of the lease term from a party designated by the Holder for the purchase option price if You are not in default.

11. Other Important Terms. See Your lease documents for additional information on early termination, purchase option and maintenance responsibilities, warranties, late and default charges, insurance, and any security interests, if applicable.

12. WARRANTY The Vehicle is covered by any warranty indicated below:

- [X] Standard new vehicle warranty provided by the manufacturer or distributor of the Vehicle.
- [ ] N/A

13. OFFICIAL FEES AND TAXES $ 1,040.03. The estimated total amount You will pay for official and license fees, registration, title and taxes over the term of Your lease, whether included with Your monthly payments or assessed otherwise. The actual total of fees and taxes may be higher or lower depending on the tax rates in effect or the value of the leased property at the time a fee or tax is assessed.

14. VEHICLE INSURANCE MINIMUMS You must insure the Vehicle during this lease. This insurance must be acceptable to Finance Company and protect You and Holder with (a) comprehensive fire and theft insurance with a maximum deductible amount of $1,000; and (b) collision and upset insurance with a maximum deductible of $1,000; and (c) automobile liability insurance with minimum limits for bodily injury or death of $ 100,000 for any one person and $ 300,000 for any one accident, and $ 50,000 for property damage. You will list the Holder as additional insured and loss payee under the insurance policy unless Lessor or Finance Company specifies otherwise. You must give Finance Company evidence of this insurance. (See Item 23 on back)

LESSOR IS NOT PROVIDING VEHICLE OR LIABILITY INSURANCE

15. LATE PAYMENTS You will pay a late charge on each payment that is not received within 10 days after it is due. The charge is 5% of the full amount of the scheduled payment or $50.00 whichever is less.

16. LESSOR SERVICES N/A
(See Item 21 on back) N/A

17. OPTIONAL INSURANCE These coverages are not required to enter into this lease and will not be provided unless You sign below. If insurance is to be obtained by Lessor, the coverages are shown in a notice given to You this date and are for the term of this lease.

a. N/A (Insurance Type) $ N/A (Initial Coverage) $ N/A (Premium) ____ (Insured(s))
____ (Insurance Company)
Lessee: X ____ Co-Lessee: X ____

b. ____ (Insurance Type) $ N/A (Initial Coverage) $ N/A (Premium) ____ (Insured(s))
____ (Insurance Company)
Lessee: X ____ Co-Lessee: X ____

c. ____ (Insurance Type) $ N/A (Monthly Coverage) $ N/A (Premium) ____ (Insured(s))
N/A (Insurance Company)
Lessee: X ____ Co-Lessee: X ____

d. N/A (Insurance Type) $ N/A (Initial Coverage) $ N/A (Premium) ____ (Insured(s))
N/A (Insurance Company)
Lessee: X ____ Co-Lessee: X ____

e. N/A (Insurance Type) $ N/A (Initial Coverage) $ N/A (Premium) ____ (Insured(s))
N/A (Insurance Company)
Lessee: X ____ Co-Lessee: X ____

THIS IS A LEASE AGREEMENT.
THIS IS NOT A PURCHASE AGREEMENT.
PLEASE REVIEW THESE MATTERS CAREFULLY AND SEEK INDEPENDENT PROFESSIONAL ADVICE IF YOU HAVE ANY QUESTIONS CONCERNING THIS TRANSACTION. YOU ARE ENTITLED TO AN EXACT COPY OF THE AGREEMENT YOU SIGN.

**18. Itemization of Gross Capitalized Cost

Agreed Upon Value of the Vehicle	Sales/Use Tax and Other Applicable Taxes	Title Fees	License and Registration Fees	Extended Warranty and Service Contract	Acquisition Fee	Documentation Fee
$ 19425.00	+ $ N/A	+ $ N/A	+ $ N/A	+ $ N/A	+ $ 645.00	+ $ 449.90
N/A	N/A	N/A	N/A	N/A	N/A	Total Gross Capitalized Cost
+ $ N/A	+ $ N/A	+ $ N/A	+ $ N/A	+ $ N/A	+ $ N/A	= $ 20519.90

LIMITED RIGHT TO CANCEL

By signing below, the Lessee and Co-Lessee agree that the section on the back of this lease entitled "Limited Right to Cancel" will apply. The limited right to cancel this lease will end when Holder purchases this lease or within 15 days, whichever occurs first.

Lessee X Yolanda D Parks Co-Lessee X ____

SIGNATURES AND IMPORTANT NOTICES

Modification: This lease sets forth all of the agreements of Lessor and You for the lease of the Vehicle. There is no other agreement. Any change in this lease must be in writing and signed by You and Finance Company.

Lessee: YOLANDA DENISE PARKS By: X Yolanda Denise Parks Title: ____
Co-Lessee: ____ By: X ____ Title: ____

YOU ACKNOWLEDGE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THE ARBITRATION PROVISION ON THE REVERSE SIDE OF THIS CONTRACT.

NOTICE: (1) Do not sign this lease before You read it or if it has any blank spaces to be filled in. (2) You have the right to get a filled-in copy of this lease. You acknowledge that You received a filled-in copy of this lease at the time You signed it and notice of an assignment of this lease by the Lessor to Holder.

Lessee: YOLANDA DENISE PARKS By: X Yolanda Denise Parks Title: ____
Co-Lessee: ____ By: X ____ Title: ____

Lessor and Lessee are hereby notified that Holder has assigned to Gt Exchange, in its capacity as Holder's qualified intermediary, its rights (but not its obligations) with respect to the purchase of this Vehicle and the sale of this Vehicle at lease termination. Lessor accepts this lease and assigns it to Holder under the terms of the lease plan agreement between Lessor and Holder.

Lessor: GARY SMITH FORD, INC By: X [signature] Title: [signature]

FC 19000-P (FEB 15)
FC 19000-APP
Previous editions may NOT be used.

SEE OTHER SIDE FOR ADDITIONAL AGREEMENTS

ORIGINAL
PLY 1 - ORIGINAL PLY 2 - LESSEE PLY 3 - LESSOR PLY 4 - CO-LESSEE/GUARANTOR

VEHICLE MAINTENANCE, INSURANCE AND USE

[illegible]

ENDING YOUR LEASE

[illegible]

DEFAULT AND LOSS OF VEHICLE

[illegible]

ADDITIONAL INFORMATION

[illegible]

LIMITED RIGHT TO CANCEL

[illegible]

READ THIS ARBITRATION PROVISION CAREFULLY AND IN ITS ENTIRETY

ARBITRATION

[illegible]

RIGHTS YOU AND WE AGREE TO GIVE UP

[illegible]

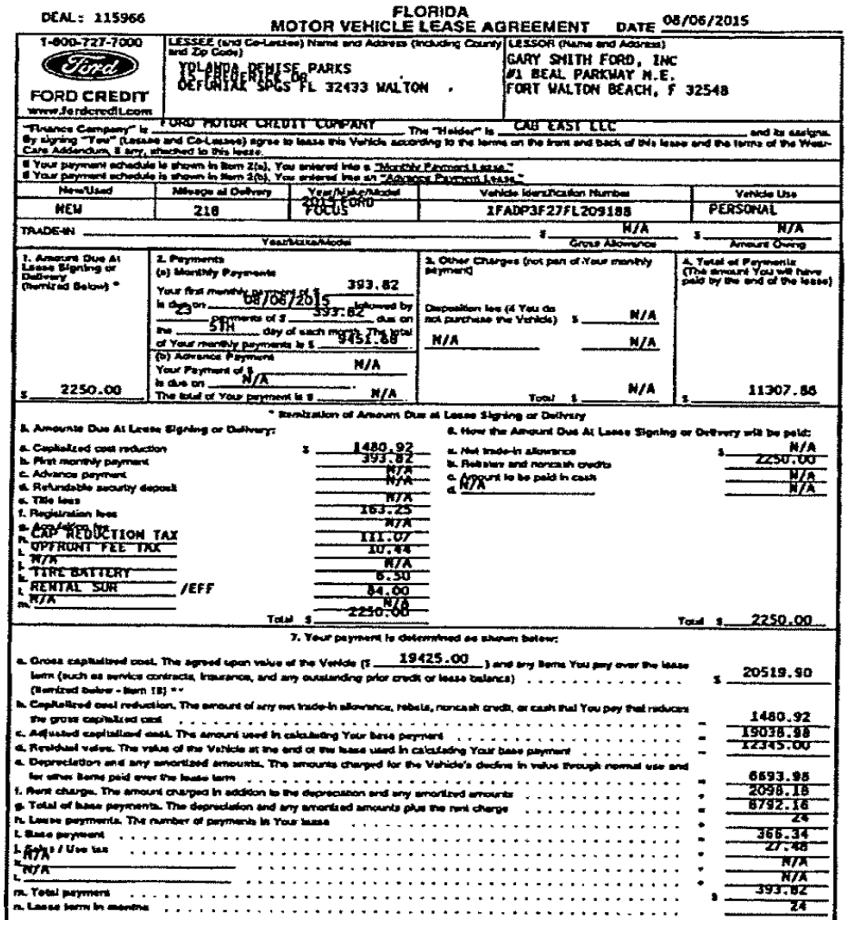
- RIGHT TO A TRIAL, WHETHER BY A JUDGE OR JURY
- RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER IN ANY CLASS CLAIM YOU MAY HAVE AGAINST US WHETHER IN COURT OR IN ARBITRATION
- BROAD RIGHTS TO DISCOVERY AS ARE AVAILABLE IN A LAWSUIT
- RIGHT TO APPEAL THE DECISION OF AN ARBITRATOR
- OTHER RIGHTS THAT ARE AVAILABLE IN A LAWSUIT

RIGHTS YOU AND WE DO NOT GIVE UP: [illegible]

[illegible]

NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION

The reader of this opinion will just have to trust me that on a computer screen, with just two fingers, one could zoom in to see the pertinent text easily. When I do this, I see the essential terms of the lease agreement on the first page, as follows:



DEAL: 115966

FLORIDA
MOTOR VEHICLE LEASE AGREEMENT DATE 08/06/2015

1-800-727-7000
FORD CREDIT
www.fordcredit.com

LESSEE (and Co-Lessee) Name and Address (including County and Zip Code)
YOLANDA DENISE PARKS
[illegible]
DEFUNIAK SPGS FL 32433 WALTON

LESSOR (Name and Address)
GARY SMITH FORD, INC
#1 BEAL PARKWAY N.E.
FORT WALTON BEACH, F 32548

"Finance Company" is FORD MOTOR CREDIT COMPANY. The "Holder" is CAB EAST LLC and its assigns. By signing "You" (Lessee and Co-Lessee) agree to lease this Vehicle according to the terms on the front and back of this lease and the terms of the Wear-Care Addendum, if any, attached to this lease.

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New/Used	Mileage at Delivery	Year/Make/Model	Vehicle Identification Number	Vehicle Use
NEW	218	2015 FORD FOCUS	1FADP3F27FL209188	PERSONAL

TRADE-IN Year/Make/Model $ N/A Gross Allowance $ N/A Amount Owing

1. Amount Due At Lease Signing or Delivery (Itemized Below) *	2. Payments	3. Other Charges (not part of Your monthly payment)	4. Total of Payments (The amount You will have paid by the end of the lease)
$ 2250.00	(a) Monthly Payments: Your first monthly payment of $ 393.82 is due on 08/06/2015, followed by 23 payments of $ 393.82 due on the 5TH day of each month. The total of Your monthly payments is $ 9451.68 (b) Advance Payment: Your Payment of $ N/A is due on N/A. The total of Your payment is $ N/A	Disposition fee (if You do not purchase the Vehicle) $ N/A N/A N/A Total $ N/A	$ 11307.86

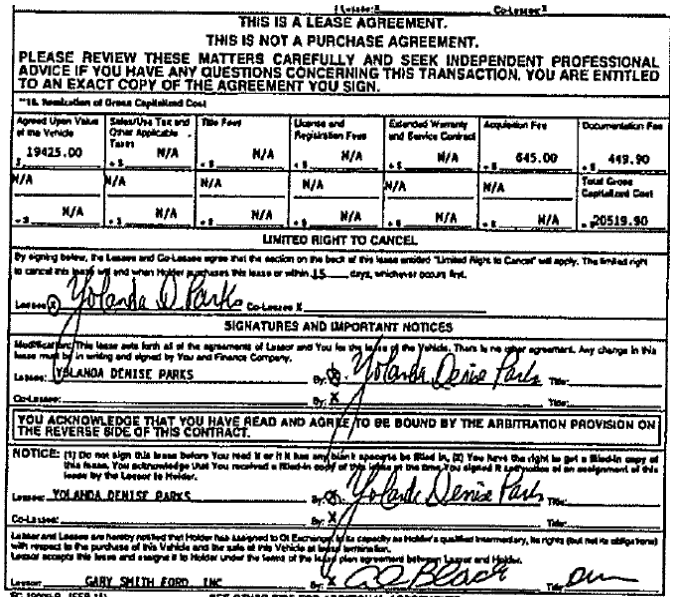
* Itemization of Amount Due at Lease Signing or Delivery

5. Amounts Due At Lease Signing or Delivery:		6. How the Amount Due At Lease Signing or Delivery will be paid:	
a. Capitalized cost reduction	$ 1480.92	a. Net trade-in allowance	$ N/A
b. First monthly payment	393.82	b. Rebates and noncash credits	2250.00
c. Advance payment	N/A	c. Amount to be paid in cash	N/A
d. Refundable security deposit	N/A	d. N/A	N/A
e. Title fees	N/A		
f. Registration fees	163.25		
g. Acquisition fee	N/A		
h. CAP REDUCTION TAX	111.07		
i. UPFRONT FEE TAX	10.44		
j. N/A	N/A		
k. TIRE BATTERY	6.50		
l. RENTAL SUR /EFF	84.00		
m. N/A	N/A		
Total	$ 2250.00	Total	$ 2250.00

7. Your payment is determined as shown below:

a. Gross capitalized cost. The agreed upon value of the Vehicle ($ 19425.00) and any items You pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) (Itemized below - Item 18) **		$ 20519.90
b. Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash that You pay that reduces the gross capitalized cost	−	1480.92
c. Adjusted capitalized cost. The amount used in calculating Your base payment	=	19038.98
d. Residual value. The value of the Vehicle at the end of the lease used in calculating Your base payment	−	12345.00
e. Depreciation and any amortized amounts. The amounts charged for the Vehicle's decline in value through normal use and for other items paid over the lease term	=	6693.98
f. Rent charge. The amount charged in addition to the depreciation and any amortized amounts	+	2098.18
g. Total of base payments. The depreciation and any amortized amounts plus the rent charge	=	8792.16
h. Lease payments. The number of payments in Your lease	×	24
i. Base payment	=	366.34
j. Taxes / Use tax	+	27.48
k. N/A	+	N/A
l.	+	N/A
m. Total payments	=	$ 393.82
n. Lease term in months		24

Parks clearly signed the agreement, as can be seen lower down on the front of the agreement:



THIS IS A LEASE AGREEMENT.
THIS IS NOT A PURCHASE AGREEMENT.
PLEASE REVIEW THESE MATTERS CAREFULLY AND SEEK INDEPENDENT PROFESSIONAL ADVICE IF YOU HAVE ANY QUESTIONS CONCERNING THIS TRANSACTION. YOU ARE ENTITLED TO AN EXACT COPY OF THE AGREEMENT YOU SIGN.

**16. Itemization of Gross Capitalized Cost

Agreed Upon Value of the Vehicle	Sales/Use Tax and Other Applicable Taxes	Title Fees	License and Registration Fees	Extended Warranty and Service Contract	Acquisition Fee	Documentation Fee
+ $ 19425.00	+ $ N/A	+ $ N/A	+ $ N/A	+ $ N/A	+ $ 645.00	+ $ 449.90
N/A + $ N/A	N/A + $ N/A	N/A + $ N/A	N/A + $ N/A	N/A + $ N/A	N/A + $ N/A	Total Gross Capitalized Cost = $ 20519.90

LIMITED RIGHT TO CANCEL

By signing below, the Lessee and Co-Lessee agree that the section on the back of this lease entitled "Limited Right to Cancel" will apply. The limited right to cancel this lease will end when Holder purchases this lease or within 15 days, whichever occurs first.

Lessee: Yolanda D. Parks Co-Lessee X

SIGNATURES AND IMPORTANT NOTICES

Modification: This lease sets forth all of the agreements of Lessor and You for the lease of the Vehicle. There is no other agreement. Any change in this lease must be in writing and signed by You and Finance Company.

Lessee: YOLANDA DENISE PARKS By: Yolanda Denise Parks Title:

Co-Lessee: By: X Title:

YOU ACKNOWLEDGE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THE ARBITRATION PROVISION ON THE REVERSE SIDE OF THIS CONTRACT.

NOTICE: (1) Do not sign this lease before You read it or if it has any blank spaces to be filled in. (2) You have the right to get a filled-in copy of this lease. You acknowledge that You received a filled-in copy of this lease at the time You signed it and prior to an assignment of this lease by the Lessor to Holder.

Lessee: YOLANDA DENISE PARKS By: Yolanda Denise Parks Title:

Co-Lessee: By: X Title:

Lessee and Lessor are hereby notified that Holder has assigned to Ot Exchange, in its capacity as Holder's qualified intermediary, its rights (but not its obligations) with respect to the purchase of this Vehicle and the sale of this Vehicle at lease termination. Lessor accepts this lease and assigns it to Holder under the terms of the listed plan agreement between Lessor and Holder.

Lessor: GARY SMITH FORD INC By: X Title:

The county court required that the bench trial be conducted by video-conference. That meant FMCC had to submit its trial exhibits electronically. The PDF of the lease agreement included in the digital exhibit composite was of a lower quality, with more pixelization, compared to the one attached to the statement of claim, but the county court still had access to the higher quality PDF reproduced above. At all events, there was unrebutted testimony at trial about the terms of this contract, Parks's compliance with its terms for a spell, when she stopped making her monthly payments, and how FMCC calculated its contractual damages based on Parks's breach. Parks herself testified and did not dispute any of this—no mention that she did not understand the terms of the lease agreement and certainly no assertion that the written lease agreement that she signed was not in fact a contract. Rather, her one defense was that the car was a "lemon," so she dropped the car off at the dealership, removed the tags, and stopped making payments. Parks conceded, however, that she did not make a "lemon" claim under the applicable law.

This should have been a straightforward breach-of-contract case. An action for a debt owed on a contract is hardly new to the common law. "It is elementary that in order to recover on a claim for breach of contract the burden is upon the claimant to prove by a preponderance of the evidence the existence of a contract, a breach thereof and damages flowing from the breach." *Knowles v. C. I. T. Corp.*, 346 So. 2d 1042, 1043 (Fla. 1st DCA 1977); *cf. Borden*

Lumber Co. v. S. Atl. Dry Dock Co., 101 So. 846, 846–47 (Fla. 1924) (noting that common-law assumpsit was available action to recover damages for nonperformance of a contract, that the amount claimed did not need to be liquidated, and that the plaintiff needs to establish, essentially, "the promise and the breach thereof"); *Hazen v. Cobb*, 117 So. 853, 857 (Fla. 1928) (discussing special assumpsit, the common-law predecessor to a breach-of-contract cause of action, and noting that "[t]here is no doubt about the proposition that the action of assumpsit lies for the recovery of damages for the breach or nonperformance of a simple contract"); *Ballas v. Lake Weir Light & Water Co.*, 130 So. 421 (Fla. 1930) (discussing elements of assumpsit on a simple contract).

As the majority and I already have observed, the existence of a written agreement between FMCC and Parks was not at issue; Parks certainly never asserted it in defense. *But cf. Conners v. Gaskins*, 90 So. 379, 380 (Fla. 1921) (explaining that a "plea of nonassumpsit operates as a denial in fact of the express contract alleged or the matters of fact from which the contract alleged may be implied," which in turn "puts the plaintiff upon proving his whole case"). Historically speaking, if a valid express contract existed, and there had been substantial performance under the contract by the plaintiff—such that all that remained was for the defendant to pay money to the plaintiff under the contract—the plaintiff was allowed to "offer the contract in evidence to show that he has performed what was agreed to be done and to show the value of the services performed or the materials furnished." *Hazen*, 117 So. at 858; *cf. Thomson v. Kyle*, 23 So. 12, 17 (Fla. 1897) (explaining how "it is an elementary rule of law that there must be at least a substantial performance thereof in order to authorize a recovery as for performance of the contract"); *Sanford v. Abrams*, 2 So. 373, 378 (Fla. 1887) ("Yet it remained incumbent upon the plaintiff to prove what his services were reasonably worth to the defendant under the contract as alleged in his declaration"). This, FMCC did in spades, through both testimony and exhibits.

Despite the overwhelming evidence establishing Parks's failure to perform under the lease agreement, which plainly required her to keep making payments, the county court rendered judgment against FMCC. Per the final order, FMCC supposedly requested a remedy in reliance on paragraph thirty-three, which

appeared on the back of the lease agreement and addressed defaults. While acknowledging the existence of a valid written contract, the county court claimed it was unable to "decipher" the "illegible" text of the lease agreement, such that it could not award damages "based upon unknown contract language." That said, the record before the county court left no doubt about the contract terms and the calculation of what Parks owed.

The majority fails to find a Florida opinion that addresses a trial court's refusal to grant relief based on its own ability to read a term in a contract admitted into evidence. This probably is because such subjective readability, by itself, is not a common-law basis to deny contract damages. I truly can come up with only one explanation for the county court's basing its disposition entirely on pixelization in the lease agreement PDF—some implicit statute of frauds theory. *Cf.* 725.01, Fla. Stat. (precluding suit on a contract that cannot be performed within one year unless it is "in writing and signed by the party to be charged therewith"); *Rundel v. Gordon*, 111 So. 386, 389 (Fla. 1927) (explaining that to avoid operation of the statute of frauds, a plaintiff must present writings that "themselves [] show the essential elements of the contract," and that "[s]uch matters cannot be left to oral evidence"); *see also Rhode v. Gallat*, 70 So. 471, 472 (Fla. 1915) (noting that the written agreement required by the statute of frauds "cannot rest partly in writing and partly in parol, but the written memorandum must disclose all the terms of the sale"). Why else would the county court refuse to look at the available testimony and the documentary evidence to clear up any professed uncertainty about the fuzzy digital text?

The statute of frauds is an affirmative defense. *See* Fla. R. Civ. P. 1.110(d); *cf. Wise v. Quina*, 174 So. 2d 590, 597 (Fla. 1st DCA 1965). It exists in the law to "intercept the frequency and success of actions based on nothing more than loose verbal statements or mere innuendos," and it "should be strictly construed to prevent the fraud it was designed to correct." *Tanenbaum v. Biscayne Osteopathic Hosp., Inc.*, 190 So. 2d 777, 779 (Fla. 1966) (internal quotation and citation omitted). Parks did not at any point in the trial argue or attempt to prove the applicability of the defense. The record does not reflect that the issue was tried by consent. Parks in turn forfeited this defense, if it ever was available as a viable

theory in the first place. *See Wise*, 174 So. 2d at 597; *cf. MacGregor v. Hosack*, 58 So. 2d 513, 516 (Fla. 1952). The county court, in turn, had no legal basis to base its judgment on the readability of the lease agreement in evidence, such as it was.

As the supreme court has explained,

> It is fundamental that a judgment upon a matter entirely outside of the issues made by the pleadings cannot stand; and where, as here, an issue was not presented by the pleadings nor litigated by the parties during the hearing on the pleadings as made, a decree adjudicating such issue is, at least, voidable on appeal.

Cortina v. Cortina, 98 So. 2d 334, 337 (Fla. 1957); *cf. Lovett v. Lovett*, 112 So. 768, 776 (Fla. 1927) (suggesting that a trial court operates in an "arbitrary and unjust" manner, and thereby in excess of its jurisdiction, where it "render[s] a judgment . . . upon a matter entirely outside of the issues" framed by the pleadings, making the judgment void); *Santana v. Henry*, 12 So. 3d 843, 847–48 (Fla. 1st DCA 2009), *approved,* 62 So. 3d 1122 (Fla. 2011) ("A trial judge may not *sua sponte* dismiss an action based on affirmative defenses not raised by proper pleadings." (citation omitted)). Especially in a bench trial, where the judge "is the decider of the claims and defenses of the parties," the court must not "become a party's advocate and raise a legal issue sua sponte." *Bank of N.Y. Mellon ex rel. J. P. Morgan Chase Bank, N.A. v. Barber*, 295 So. 3d 1223, 1225 (Fla. 1st DCA 2020) (internal quotation and citation omitted). Unfortunately, this seems to have happened here. Nothing else explains the outcome in the light of FMCC's unrebutted evidence.

Before I close, I want to address a related error underlying the judgment on review. Even if the statute of frauds had been raised by Parks (and if the majority were correct that "legibility" was relevant in the county court and at issue in this appeal), the defense as to the ostensible clarity of the agreement's terms would not have found purchase at trial. Look at the magnified portions from the front of the lease agreement that I reproduced above. The essential terms are all there and are easily readable. Parks clearly signed the agreement and agreed to be charged with the payment obligation in return for possession and use of the car. There was a

clear meeting of the minds between Parks, the dealership, and FMCC. The dealership would let the car to Parks, FMCC would finance the depreciation and other net capital costs and service fees as specified, and in return, Parks would make twenty-four monthly payments, each in the amount and by the date indicated on the face of the agreement.

The paragraph that the county court considered to be illegible, paragraph thirty-three, was just a default paragraph. The readability of this provision—which the majority opinion ponders at length—is of no moment as to whether FMCC was entitled to recover what Parks owed. There is no indication in the record how this paragraph was essential. Even without this paragraph, it was obvious from the agreement that if Parks stopped making the payments, she would be in breach. While the default paragraph provides some detail on how damages would be calculated, its absence from the agreement (or its legibility) could not render the agreement otherwise unenforceable. The text spelling out the parties' respective obligations—agreed to by Parks through her signature—was clearly readable and unambiguous in its meaning. Any question about the meaning of the default language in paragraph thirty-three did not foreclose FMCC's use of testimony and exhibits to demonstrate the amount to which it is entitled as damages. *Cf. Rundel*, 111 So. at 389.

This is exactly what FMCC did. An exhibit admitted without objection (and then explained further through testimony) showed as follows:

Ford Motor Credit Company LLC
P.O. Box 6508
Mesa, AZ 85216-6508

Statement of Account Summary

July 13, 2018

PARKS,YOLANDA D

Account Number: [redacted]

Unpaid Adjusted Capitalized Cost:	**$13,523.92**
Unpaid Lease Payments Through 3/20/17	$1,099.02
Late Charges	$58.26
Repo Expenses	$1,005.25
Subtotal of Additional Charges	**$2,162.53**
Payments/Credits:	
Sales Proceeds	$7,700.00
Payments	$0.00
Subtotal of Payments/Credits	**$7,700.00**
Balance Now Due:	**$7,986.45**

The county court, in turn, could not reasonably have harbored any doubt about whether FMCC proved its entitlement to the claimed amount in damages. It appears from this that the county court effectively held FMCC to a burden of proof that does not exist at common law. For the county court to have done so was error.

The temptation to help Parks, a *pro-se* defendant, might be understandable, even forgivable. But a finger on the scale to deny relief to a party that overwhelmingly, and without rebuttal, has met its burden of proof is never allowed. The law demands better, and it now requires that FMCC be given a judgment against Parks for the amount of damages it proved. I join in the majority's disposition on the reasoning I have now laid out.

Michael Ingino of Moody, Jones & Ingino, P.A., Plantation, for Appellant.

Yolanda D. Parks, pro se, Appellee.