

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00565 COA**

LESLIE HARTFIELD

APPELLANT

v.

FIDELITY FINANCIAL SERVICES, INC.

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	12/29/95
TRIAL JUDGE:	HON. ROBERT G. EVANS
COURT FROM WHICH APPEALED:	JASPER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	THOMAS Q. BRAME, JR.
ATTORNEYS FOR APPELLEE:	STEPHEN E. GARDNER CHAD HAMMONS
NATURE OF THE CASE:	CIVIL - CONTRACT
TRIAL COURT DISPOSITION:	CREDITOR AWARDED REPLEVIN OF AUTO IN WHICH SECURITY INTEREST WAS HELD
DISPOSITION:	AFFIRMED - 2/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	3/30/98

BEFORE McMILLIN, P.J., DIAZ, AND HERRING, JJ.

PER CURIAM:

On April 22, 1992, Leslie Hartfield signed a promissory note in the amount of \$5,500 payable to Fidelity Financial Services, Inc. The note also granted Fidelity a security interest in an automobile owned by Hartfield. This security interest was properly perfected, and Fidelity was listed as first lienholder on the certificate of title of the automobile.

Subsequently, Hartfield defaulted on the promissory note, and on March 4, 1994, Fidelity filed suit in Rankin County, Mississippi, to recover the amount owed on the note, plus interest and attorney fees.

On June 27, 1994, Fidelity was granted a default judgment against Hartfield in the amount of \$15,867.85. However, Fidelity was unable to collect on this judgment because Hartfield subsequently filed for bankruptcy. The judgment was ultimately discharged. However, the bankruptcy court made possible the seizure of the vehicle by lifting the automatic stay, created pursuant to 11 U.S.C. § 362, when Hartfield filed for bankruptcy. The vehicle was then abandoned by the bankruptcy estate, and Mrs. Hartfield refused to return or turn over the vehicle to Fidelity.

On March 8, 1995, Fidelity filed an action in replevin in Jasper County, Mississippi, to recover the automobile that secured Hartfield's original debt to Fidelity pursuant to the promissory note. Hartfield answered this action by alleging the affirmative defenses of estoppel by judgment, election of remedies, and res judicata. The trial court ruled that none of these defenses applied, and granted summary judgment to Fidelity. Hartfield now appeals to this Court, and raises the following issue as taken verbatim from her brief:

Can a creditor (Fidelity, the appellee), who loaned money to a debtor (Hartfield, the appellant), and took a security interest in an automobile, on an alleged default, first sue the debtor and reduce the entire claim to judgment; and then, many months later enforce its security interest by replevin of the collateral, or is the replevin of the collateral, after the claim is reduced to a money judgment, barred by the doctrines of res judicata, election of remedies, and/or estoppel by judgment?

We agree with the trial court that Fidelity was clearly entitled to enforce its security interest by replevin of the collateral, even though it had already reduced the amount of the indebtedness to judgment. The provisions of Section 75-9-501(1) of the Mississippi Code of 1972 makes clear that the two remedies mentioned above of a secured creditor are cumulative so long as the secured party does not attempt to pursue both remedies simultaneously. *See also Phillips v. Ball and Hunt Enter., Inc.*, 933 F.Supp. 1290, 1300 (W.D. Va. 1996), *State Bank of Piper City v. A-Way, Inc.*, 504 N.E.2d 737, 739-40 (Ill. 1987), *Ruidoso State Bank v. Garcia*, 587 P.2d 435 (N.M. 1978), *Shultz v. Delaware Trust Co.*, 360 A.2d 576 (Del. 1976). Because we review an appeal from a grant of summary judgment *de novo*, we are unrestrained by our normal standards of review. *Delta Pride Catfish, Inc. v. Home Ins. Co.*, 697 So. 2d 400, 402 (Miss. 1997). We must simply review the record to determine if the non-moving party was entitled to a judgment as a matter of law. *Id.* at 403. Based upon the language of Section 75-9-501(1) of the Mississippi Code of 1972 and the above cited cases, we hold that Fidelity was entitled to a judgment as a matter of law as none of the defenses pled by Hartfield exist in this situation. Thus, we affirm the decision of the trial court.

THE JUDGMENT OF THE JASPER COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.