

FILED
DOUGLAS COUNTY
DISTRICT COURT

2014 JUL 25 A 10: 54

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BY _____

IN THE DISTRICT COURT OF DOUGLAS COUNTY KANSAS

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
SOUTH AUTO SALES and)
SOUTH AUTO SALES LLC and)
SALAH IBRAHIM)
Defendants.)

Case No. 2012CV657
Division 1

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 25th day of July, 2014, this Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through, Adrian Serene, Assistant Attorney General and Robert E. Hiatt, Assistant Attorney General and all Defendants appear by and through Brennan Fagan of Fagan, Emert, & Davis LLC, 730 New Hampshire Street #210 Lawrence, Kansas 66044.

WHEREUPON the parties advise the Court, via their signatures below, that they have stipulated and agreed to the following:

1. Derek Schmidt is the duly elected Attorney General of the State of Kansas.

2. The Attorney General's authority to bring this action is derived from the statutory law of the State of Kansas, specifically the Kansas Consumer Protection Act, ("KCPA") K.S.A. 50-623, *et seq.*

3. Defendant(s) have a principal place of business located at 1003 Main St, Eudora, Kansas 66025.

4. Defendants South Auto Sales LLC is Kansas Limited Liability Company, and formerly did business as South Auto Sales. Both entities are or were a licensed Motor Vehicle dealer(s) in the State of Kansas and are owned, operated, and/or controlled by Salah Ibrahim (hereinafter collectively referred to as "South Auto Sales" or "Defendants").

5. All references to Defendants herein include acts individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

6. Defendants engaged in and continue to engage in the business of selling motor vehicles at 1003 Main in Eudora, Kansas.

7. At all times relevant, and in the ordinary course of business, Defendants have acted as suppliers as defined by K.S.A. 50-624(j).

8. At all times relevant, and in the ordinary course of business, Defendants have engaged in consumer transactions as defined by K.S.A. 50-624(c).

9. Defendant Salah Ibrahim is responsible for all day-to-day business and transaction decisions for South Auto Sales and South Auto Sales LLC.

10. The Court has subject matter jurisdiction over this case and in personam jurisdiction over the parties.

11. Venue is proper in this Court.

12. Defendants admit all allegations made by the Plaintiff; therefore, the entry of this Consent Judgment shall be deemed an admission by the Defendants of all facts and violations alleged by the Plaintiff.

13. While offering vehicles for sale, via promissory note, Defendants violated K.S.A. 50-626 and 50-627.

14. On nineteen (19) separate occasions, in conjunction with the sale of a vehicle via promissory note (a consumer credit sale and/or a consumer credit transaction, pursuant to K.S.A. 16a-1-301 (14) and 16a-1-301(14) respectively), Defendants required consumers to sign a preprinted repossession waiver form. (See copy of the Repossession Waiver Form attached hereto marked as "Exhibit A", and incorporated by reference herein.).

15. The repossession waiver signed by consumers stated in parts as follows:

- a. "the undersigned Buyer does **HEREBY WAIVE ALL POSSESSION RIGHTS IN THE EVENT OF DEFAULT ON THE FINANCIAL AGREEMENT MADE FOR THE PURCHASE OF THE FOLLOWING VEHICLE...**; and
- b. "...no default letter will be sent, nor is there any right to a cure period."

16. The use of Exhibit A falsely states the supplier's rights and obligations as well as a consumer's rights, remedies and obligations in a consumer credit transaction or consumer credit sale, in violation of K.S.A. 50-626(b)(8), 50-627(b)(5), and 50-627(b)(6) of the KCPA.

17. Exhibit A also violates K.S.A. 16a-5-110 and 16a-5-111 of the Kansas Uniform Consumer Credit Code (hereinafter "KUCCC") which constitutes violations of the KCPA pursuant to K.S.A. 16a-6-116 and other provisions of the KUCCC.

18. Defendants agree to refrain from and is permanently enjoined from, engaging in those acts and practices set forth in this Consent Judgment and further agrees that engaging in any such acts, other violations of the KCPA, the KUCCC, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

19. Defendants agree to comply with all applicable laws, statutes, rules, and regulations, relating to consumer transactions in Kansas, including the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, and the KUCCC 16a-1-101 *et seq.*

20. Defendants agree to be permanently enjoined from entering into, forming, organizing, or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, or business entity for the purpose of avoiding compliance with the terms or this Consent Judgment.

21. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to each officer, director, and employee that is involved in Kansas operations of the Defendant within ten (10) days of execution of this Consent Judgment.

22. Defendants agree to reverse the automobile transaction entered into with Drussilla L. Absher and to pay her restitution in the amount of Two Thousand Sixty-Five Dollars and no cents (\$2065.00).

23. If there has been any negative credit reporting done by Defendants in any of the nineteen transactions wherein "Exhibit A" or any variation thereof was used, the Defendants shall reverse that negative credit reporting and provide proof of the same to the Office of the Attorney General within sixty days on the Entry of this Consent Judgment.

24. Defendants agree to pay to a total of Eighteen Thousand Dollars (\$18,000.00) to "Office of the Attorney General" of the State of Kansas for investigative fees and costs and for consumer restitution, pursuant to K.S.A. 50-632 and 50-636 and K.S.A. 50-632 respectively.

25. All funds shall be paid via certified bank check. Restitution to Ms. Drusilla L. Absher shall be made payable directly to her, and the check delivered to the office of the Attorney General, contemporaneously with the delivery of the signed Consent Judgment by Defendants. Staff of the Office of the Attorney General will then transmit the restitution check to Drusilla L. Absher, within a reasonable time after the filing of this Consent Judgment.

26. The remaining monies awarded to the plaintiff, totaling Fifteen Thousand Nine Hundred and Thirty-Five dollars (\$15,935.00), shall be paid by Defendants, via certified bank check, and delivered to the Office of Attorney General Derek Schmidt in the amounts as set out as follows:

a. The Defendants shall pay Three Thousand Nine Hundred and Thirty-Five Dollars and zero cents (\$3,935.00) to the Office of Attorney General Derek Schmidt contemporaneous with the signing of this Consent Judgment.

b. The Defendants shall pay Six Thousand Dollars and zero cents (\$6,000.00) to the Office of Attorney General Derek Schmidt sixty (60) days after the filing of this Consent Judgment.

c. The Defendants shall pay an additional Six Thousand Dollars and zero cents (\$6,000.00) to the Office of the Attorney General Derek Schmidt ninety (90) days after the filing of this Consent Judgment.

d. Any payment not made before the close of business on the date due shall be a violation of this Consent Judgment.

27. The Defendants agree that the restitution paid to Ms. Abser is not forgiveness of debt. Therefore, Defendants shall not prepare or submit a Form 1099 to anyone regarding the restitution paid to Drusilla L. Absher, as there is no debt of any sort due from Ms. Abser.

28. Defendants represent and warrant that all funds they have agreed to pay under this Consent Judgment are lien free and that the payment of such funds does not constitute a fraudulent transfer.

29. The Attorney General shall not be required to file any partial satisfaction of the monetary portion of this judgment until the Defendants have paid all funds awarded in this Consent Judgment in full as scheduled.

30. Jurisdiction is continuing and retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

31. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions, or parts.

32. Each representative signing this Journal Entry of Consent Judgment on behalf of a Defendant warrants that the Defendant for whom the representative appears to be acting regarding entry and execution of this Journal Entry of Consent Judgment has been duly authorized as representative.

33. Defendants represent and warrant that each has been represented by counsel and consulted with and obtained the advice of private legal counsel prior to entering into this Consent Judgment.

34. Each Defendant acknowledges that this Consent Judgment constitutes a stipulation to the allegations set forth herein and that nothing about this Consent Judgment shall operate as a bar to any private action that any consumer may bring or has brought against the Defendants.

35. Compliance with this Consent Judgment does not relieve the Defendants of any obligation imposed by applicable federal, state, or local law, nor shall this Consent Judgment preclude the Attorney General from taking appropriate legal action to enforce any other statutes under his jurisdiction.

36. The parties understand and agree that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed to be an approval of or sanction of any representations, acts, or practices of the Defendants by the Attorney General or the State of Kansas.

37. The Defendants agree that the Attorney General may take appropriate legal action against the Defendants for violation of this Consent Judgment and/or for future violations of the Kansas Consumer Protection Act and any other law that, the Attorney General is authorized to pursue and/or enforce.

38. The investigative fees, costs, and expenses, of the Attorney General are just fair and reasonable.

THE COURT HEREBY ENTERS JUDGMENT against Defendants, having reviewed the file and this Consent Judgment, as follows:

A. Paragraphs one (1) through thirty-eight (38) above are hereby adopted as this Court's findings of fact and conclusions of law, pursuant to K.S.A. 60-252;

B. The actions set out above in paragraphs thirteen (13) through Seventeen (17) are hereby declared to be violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-626(b)(8) , 50-627(b) (5) and 50-627(b) (6)

C. Pursuant to K.S.A. 50-632, the Defendants' acts and practices set out above are declared to be acts and practices which are violations of the Kansas Consumer Protection Act.

D. Judgment against Defendants is entered jointly and severally in favor of the Plaintiff in the amount of Fifteen Thousand Nine Hundred and Thirty-Five dollars (\$15,935.00) pursuant to K.S.A. 50-632 and 50-636 and restitution for the consumer named herein in the amount of Two Thousand Sixty-Five Dollars (\$2,065.00) for a total monetary award of Eighteen Thousand Dollars (\$18,000.00).

E. Each Defendant is permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment. This Consent Judgment applies to all successors and assigns, along with every employee or agent of each-Defendant.

F. This Consent Judgment is a final judicial order, and this Consent Judgment operates as a permanent injunction against the Defendants.

G. The Court retains continuing jurisdiction over this Consent Judgment for an indefinite period of time for the purpose of protecting the integrity of this Consent Judgment and to enforce the terms of this Consent Judgment, if necessary.

H. This Consent Judgment can be modified, with consent of the Court, if changed circumstances subvert its intended purpose.

I. This Consent Judgment can be modified if the modification is agreed to by both parties and approved of by the Court.

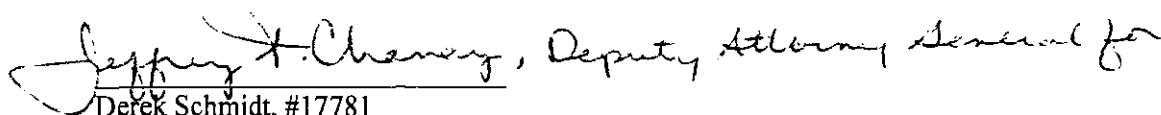
J. The Court retains continuing jurisdiction over this matter in that the injunctive terms of this Consent Judgment remain in effect until dissolved by the Court. Once all funds awarded herein have been properly paid and cleared the bank and upon request of the Defendants, the Plaintiff shall timely file a Partial Satisfaction of Judgment with the Clerk of the Court regarding the monetary portion of this Consent Judgment. The filing of the Partial Satisfaction of Judgment shall not release or discharge the Defendants from the prospective application of the injunctive provisions this Court's Order.

IT IS SO ORDERED

A handwritten signature in black ink, appearing to read "Robert W. Fairchild", written over a horizontal line.

The Honorable Robert W. Fairchild
District Court Judge

Approved and Prepared by:

 Jeffrey H. Cheney, Deputy Attorney General for

Derek Schmidt, #17781

Attorney General of the State of Kansas



Robert E. Hiatt, #13810

Assistant Attorneys General

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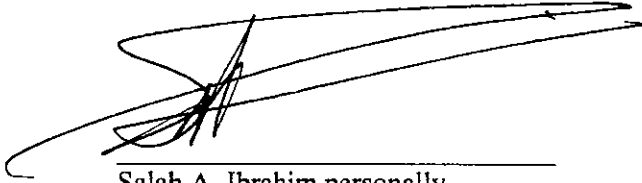
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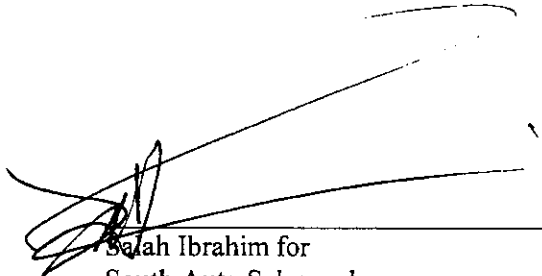
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DEFENDANT(S)

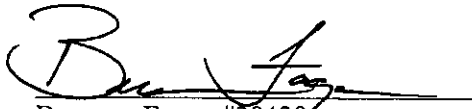


Salah A. Ibrahim personally



Salah Ibrahim for
South Auto Sales and
South Auto Sales LLC

Attorney for Defendants



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