

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division 1

2016 JUN 21 P 3:25

STATE OF KANSAS, <i>ex rel.</i> ,)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
JIM CLARK LEASING INC.)
D/B/A JIM CLARK AUTO WORLD)
)
Defendant.)

Case No. 2016CV482

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 21 day of June, 2016, Plaintiff's 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 James Welch, Deputy Attorney General. Defendant appears through Vincent M. Cox, attorney for Defendant.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

PARTIES, JURISDICTION, AND VENUE

1. Derek Schmidt is the duly elected and acting attorney general of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act ("KCPA"), K.S.A. 50-623 *et seq.*
3. Defendant Jim Clark Leasing, Inc. is a corporation organized and existing under the laws of Kansas.

4. Defendant carries on business as “Jim Clark Auto World” at premises located at 100 SW 29th St., Topeka, Kansas.

5. Defendant is a “supplier” within the definition of K.S.A. 50-624(l).

6. Defendant is engaged in “consumer transactions” in Kansas, as defined by K.S.A. 50-624(c).

7. Jurisdiction and venue are appropriate in District Court of Shawnee County, Kansas, pursuant to K.S.A. 50-638(a) and (b), respectively.

FACTUAL AND LEGAL ALLEGATIONS

8. During December, 2015 Defendant advertised its business to Kansas consumers via a “prize notice,” within the meaning of K.S.A. 50-692(a)(2).

9. Defendant’s prize notice did not comply with K.S.A. 50-692(c)(2)(A), 50-692(c)(2)(B), 50-692(c)(2)(C), and 50-692(c)(4).

10. K.S.A. 50-692 is part of and supplemental to the KCPA, pursuant to K.S.A. 50-692(j).

11. Any violation of K.S.A. 50-692 is an “unconscionable act or practice under the KCPA,” pursuant to K.S.A. 50-692(g).

12. Unconscionable acts or practices are prohibited under the KCPA, pursuant to K.S.A. 50-627(a).

13. Each unconscionable act or practice is punishable by a civil penalty of not more than \$10,000, pursuant to K.S.A. 50-636(a).

INJUNCTIVE RELIEF

14. Defendant agrees to comply with the KCPA in all transactions involving Kansas consumers.

15. Defendant agrees to be 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 or this Consent Judgment.

INVESTIGATIVE FEES AND CIVIL PENALTIES

16. Defendant agrees to pay to the Office of the Kansas Attorney General the following amounts, due upon the filing of this Consent Judgment.:

- a. Two thousand dollars (\$2,000.00) in civil penalties for violations of the KCPA, pursuant to K.S.A. 2015 Supp. 50-636; and
- b. Two thousand dollars (\$2,000.00) in investigative fees, pursuant to K.S.A. 2015 Supp. 50-632(c)(7); and

OTHER PROVISIONS

17. The provisions of this Consent Judgment will be applicable to Defendant.

18. Jurisdiction is 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.

19. 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.

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

or from any other Federal or State agency to enforce any other federal, state, or local law under its jurisdiction.

21. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the attorney general of the Defendant's business practices, nor shall the Defendant represent the Consent Judgment as such approval. The parties further 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 this Consent Judgment shall not be construed to be an approval of or sanction of any representations, acts, or practices of the Defendant, nor shall any inaction by the attorney general be considered a waiver by the attorney general of any rights under this Consent Judgment or the law.

22. Defendant hereby represents and warrants that Defendant has had the opportunity to consult with and receive the advice of legal counsel regarding all matters relative to this Consent Judgment, including the rights and obligations of Defendant under this Consent Judgment and the consequences of breach hereunder. Defendant represents that Defendant has read the Consent Judgment and knows and understands the contents thereof. Defendant further represents and warrants that Defendant is signing this Consent Judgment as the result of their own free act, and that Defendant has not relied on any statement(s) or representation(s) of the attorney general or anyone acting on his behalf, except for those contained in this Consent Judgment.

23. By signing this Consent Judgment, the representative of the Defendant represents and warrants that such person is duly and legally authorized to execute this Consent Judgment on behalf of this Defendant, thus binding the Defendant to the provisions of this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the stipulations and agreements of the parties contained herein are adopted and approved pursuant to the Kansas Consumer Protection Act, the provisions of K.S.A. 50-632(b), the findings of fact and conclusions of law of the Court and judgment is entered against Defendant and in favor of Plaintiff for civil penalties and investigative fees in the amount of \$4,000.00; the terms of the Consent Judgment are approved and adopted as the Order of the Court.

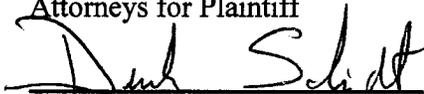
IT IS SO ORDERED.



District Court Judge

Prepared and approved by:

Attorneys for Plaintiff



Derek Schmidt, KS# 17781
Attorney General
Office of the Attorney General
Consumer Protection Division
120 SW 10th Ave., 4th Floor
Topeka, Kansas 66612



James Welch, KS# 09546
Office of the Attorney General
Consumer Protection Division
120 SW 10th Ave., 4th Floor
Topeka, Kansas 66612

and

Jim Clark Leasing Inc. d/b/a Jim Clark Auto World



Vincent M. Cox, KS# 22051
Cavanaugh, Biggs & Lemon
2942A S.W. WanaMaker Drive, Suite 100
Topeka, Kansas 66614-4479