

ELECTRONICALLY FILED
2020 Jun 29 PM 12:12
CLERK OF THE COWLEY CO-ARKANSAS CITY DISTRICT COURT
CASE NUMBER: 2020-CV-000058-A



Court: Cowley Co-Arkansas City District Court
Case Number: 2020-CV-000058-A
Case Title: State of Kansas, ex rel Derek Schmidt Atty General
vs. Jesus Barroteran
Type: Journal Entry of Consent Judgment

SO ORDERED.

The image shows a handwritten signature in cursive, which appears to read 'C. Smith'. To the right of the signature is the official seal of the District Court for Cowley County, Kansas. The seal is circular and features a central figure holding a scale of justice, surrounded by the text 'SEAL OF THE DISTRICT COURT, COWLEY COUNTY, KANSAS'.

/s/ Honorable Christopher E. Smith, District Court
Judge

Sarah M. Dietz, #27457
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
Tel: (785) 296-3751
Fax: (785) 291-3699
sarah.dietz@ag.ks.gov

IN THE DISTRICT COURT OF COWLEY COUNTY, KANSAS

STATE OF KANSAS, <i>ex rel.</i>)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
)	
)	CASE NO.
JESUS BARROTERAN)	2020-CV-000058-A
D/B/A AUTO DELICIAS DOS)	
A/K/A AUTO DELCIAS II)	
)	
)	
Defendant.)	
)	

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this date, the parties' 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 Sarah M. Dietz, Assistant Attorney General.

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, qualifying and acting Attorney General for 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 Jesus Barroteran d/b/a Auto Delicias Dos a/k/a Auto Delicias II ("Defendant") is a Kansas sole proprietorship with a primary business address at 526 S. Summitt, Arkansas City, Kansas 67005.

4. All references to the Defendant herein include acts performed individually, in concert, or by or through employees, directors, officers, owners, managers, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, including their predecessors, subsidiaries, affiliates and successors.

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

6. This Court has personal and subject matter jurisdiction over this controversy by the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, specifically K.S.A. 50-638(a).

ALLEGATIONS

7. Defendant has acted as a "supplier" in Kansas, as that term is defined by K.S.A. 50-624(l).

8. Defendant has engaged in "consumer transactions" in Kansas, as that term is defined by K.S.A. 50-624(c).

9. Defendant has engaged in consumer transactions with "consumers," as that term is defined in K.S.A. 50-624(b).

10. Plaintiff alleges that, were this matter to be litigated, the following could be proven:

That Defendant has attempted to limit a consumer's rights or benefits under the Kansas Consumer Protection Act, in violation of K.S.A. 52-625(a). Additionally, Defendant

has attempted to limit a consumer's rights to receive a notice of right to cure, in violation of UCCC 16a-5-110.

11. Pursuant to K.S.A. 50-632(b), this Consent Judgment is not an admission by Defendant of a violation of the Kansas Consumer Protection Act. Notwithstanding, Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and solely for the purpose of settlement.

INJUNCTIVE RELIEF

12. The Defendant agrees to comply with all Kansas Laws, statutes, rules and regulations relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*

13. The Defendant agrees to comply with all rules and requirements under the Uniform Commercial Credit Code. Such compliance shall include, but not be limited to, proper notices prior to repossession of any vehicle under UCCC 16a-5-110.

14. In compliance with the Uniform Commercial Credit Code, the Defendant agrees to remove all references, in both English and Spanish, to immediate confiscation after failure to make payments from all Motor Vehicle Purchase Agreements/Bills of Sale.

15. The Defendant will not limit a consumer's rights under the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.* and, therefore, agrees to modify the Motor Vehicle Purchase Agreements/Bills of Sale, in both English and Spanish, by removing: 'lose everything you paid' or 'lose everything given' in the event of a return of the vehicle and any similar language to that effect.

16. The Defendant agrees to remove the provisions, in both English and Spanish, from the Motor Vehicle Purchase Agreements/Bills of Sale:

“If I don’t comply with this contract, it is my understanding and I accept that Professional detectives with international capacity will be hired to find my Location and I will be subject to all the legal procedures that are necessary for him to enforce the contract and for all the expenses occurred by the seller.”

17. The Defendant shall not cause or encourage third parties, nor knowingly permit third parties acting on their behalf, to engage in practices from which Defendants are prohibited by this Consent Judgment.

18. The Defendant shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices which are prohibited in this Consent Judgment or for any other purpose which would otherwise circumvent the spirit or purposes of this Consent Judgment.

19. The Defendant agrees that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, affiliates, assignees and successors.

MONETARY RELIEF

20. Defendant agrees to pay the Office of the Kansas Attorney General \$2,500.00 in investigative fees and expenses, pursuant to K.S.A. 50-636, in the form of a cashier’s check, money order or other certified funds payable to the Office of the Kansas Attorney General, mailed to:

Sarah M. Dietz, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612

21. Payment shall be made over the course of five (5) months, in the amount of \$500 per month, beginning on the 1st of July, 2020 and on or before the 1st of each month following up until payment has been made in full.

22. Defendant agrees that time is of the essence for each of the aforementioned payments, and Defendant shall be responsible for the timely submission of each payment.

23. In the event that Defendant fails to make any payments in accordance with paragraph 27 of the Judgment, upon ten (10) days after the failure to make the proscribed payment, the full amount of the unpaid judgment balance shall immediately become due and payable.

SUSPENDED MONETARY JUDGMENT

24. Judgment is hereby entered in favor of plaintiff and against Defendant in the amount of \$15,000 for the payment of civil penalties for violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-636. *Provided, however*, all \$15,000 of this monetary judgment shall be suspended against Defendant as long as the Court makes no finding(s), as provided in the following section of this Consent Judgment titled “Right to Reopen,” that Defendant has violated any provision of this Consent Judgment.

RIGHT TO REOPEN

22. Plaintiff’s agreement to Suspended Monetary Judgment contained in this Consent Judgment is expressly premised upon Defendant’s material compliance with the terms of this Consent Judgment.

23. Defendant’s “material compliance” with the terms of this Consent Judgment shall mean material compliance with all of the provisions included in Paragraphs 12-21.

24. If, upon motion by the Attorney General to the Court, the Court finds that the Defendant has violated a material term of this Consent Judgment, the suspension of the monetary judgment as to the Defendant will be terminated and the entire judgment amount of \$15,000 shall become immediately due and payable to the Plaintiff, and interest computed at the rate prescribed under Kansas law, shall begin immediately to accrue on the unpaid balance.

25. Defendant agrees that pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

26. Proceedings instituted under the foregoing paragraphs are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Consent Judgment.

OTHER PROVISIONS

27. 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.

28. 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.

29. 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.

30. 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 applicable law.

31. This Consent Judgment represents the entire agreement between Plaintiff and the Defendant, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Consent Judgment which are not fully expressed herein or attached hereto.

32. Defendant hereby represents and warranties 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 represent that the Defendant has read the Consent Judgment and knows and understands the contents thereof. Defendant further represents and warranties that Defendant is signing this Consent Judgment as the result of his 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.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the

stipulation and agreement of the parties contained herein are adopted and approved as findings of fact and conclusions of law of the Court and any monies owed hereunder by the Defendant immediately becomes a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$2,500.00 in investigative fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$15,000.00 in civil penalties, subject to the suspension recited herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, the provisions of K.S.A. 50-632(b), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME SHOWN ON THE ELECTRONIC FILE STAMP.

Respectfully submitted,



DEREK SCHMIDT, #17781
KANSAS ATTORNEY GENERAL

Tel: (785) 296-3751
Fax: (785) 291-3699
sarah.dietz@ag.ks.gov



Sarah M. Dietz, #27457
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597

Approved by:



Jesus Barroteran, Owner
Auto Delicias II

A handwritten signature in blue ink, appearing to be 'JB', written over a horizontal line.

Jason Brewer, #19834
Attorney for Defendant