

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS P 3: 58
Division 7

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
CARSO, INC.)
D/B/A SUPPLY HOUSE)
D/B/A COATING AND CHEMICALS,)
and)
JACK CARATOZZOLO, an individual)
)
Defendants.)

Case No. 2015-CV-771

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2016 APR - 1 P 3: 58

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 1st day of April, 2016, 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 Meghan E. Stoppel, Assistant Attorney General. Defendants appear by and through the undersigned counsel.

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, qualified 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, K.S.A. 50-623, *et seq.*

3. Defendant Carso, Inc. d/b/a Supply House d/b/a Coating and Chemicals ("Carso") is a New York corporation with a principal place of business at 12 Walnut Street, Port Jefferson, New York 11777.

4. Defendant Jack Caratozzolo ("Caratozzolo") is an individual who resides at 12 Walnut Street, Port Jefferson, New York 11777.

5. All references to Defendants herein include acts performed individually, in concert, or by or through employees, directors, officers, owners, members, 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.

6. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

7. Defendants stipulate and admit that venue is proper in this Court.

ALLEGATIONS

8. Plaintiff alleges that Defendants have acted as "suppliers" in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-624(l).

9. Plaintiff alleges that Defendants have engaged in "consumer transactions" in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-624(c).

10. Plaintiff alleges that at all times relevant to Plaintiff's Petition, Defendants acted as "telephone solicitors" in Kansas, as that term was defined by K.S.A. 2002 Supp. 50-670(a)(3) and is currently defined by K.S.A. 2014 Supp. 50-670(a)(4).

11. Plaintiff alleges that at all times relevant to Plaintiff's Petition, Defendants engaged in "consumer telephone calls" in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-670(a)(1).

12. Plaintiff alleges that at all times relevant to Plaintiff's Petition, Defendants contacted Kansas consumers by telephone for the purpose of soliciting the sale of Defendant Carso's agricultural products.

13. Plaintiff alleges that at all times relevant to Plaintiff's Petition, and while soliciting Kansas consumers, Defendants engaged in acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 2014 Supp. 50-632 *et seq.* and the Kansas No Call Act, K.S.A. 2014 Supp. 50-670 *et seq.*, which acts and practices include, but are not limited to:

- a. making, or causing to be made, unsolicited consumer telephone calls to Kansas consumers whose telephone numbers are listed on the National Do Not Call Registry, in violation of K.S.A. 2002 Supp. 50-670a(e) and K.S.A. 2014 Supp. 50-670a(c);
- b. failing to consult the National Do Not Call Registry prior to making unsolicited consumer telephone calls in Kansas, in violation of K.S.A. 2002 Supp. 50-670a(b) and K.S.A. 2014 Supp. 50-670a(a);
- c. failing to identify the business on whose behalf Defendants were soliciting while making unsolicited consumer telephone calls to Kansas consumers, in violation of K.S.A. 2014 Supp. 50-670(b)(2);
- d. willfully misrepresenting themselves as some other entity or person, in violation of K.S.A. 2014 Supp. 50-626;
- e. making false or deceptive statements to Kansas consumers regarding Defendant Carso's agricultural products, in violation of K.S.A. 2014 Supp. 50-626.

14. Defendants deny each and every one of the allegations set forth in paragraph thirteen (13) above.

15. Pursuant to K.S.A. 50-632(b), nothing contained, asserted and/or alleged in this Consent Judgment constitutes an admission by Defendants of a violation of the KCPA, the

Kansas No Call Act or any other applicable law or regulation as alleged by Plaintiff above and in the above captioned action and in fact Defendants deny each specific allegation. Notwithstanding, Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purpose of settlement.

INJUNCTIVE RELIEF

16. Defendants agree to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph thirteen (13) above, and Defendants agree that in the event it is proven that Defendants are engaging in any such acts or similar acts, after the date of this Consent Judgment, such acts or similar acts shall constitute a violation of this Consent Judgment.

17. Defendants agree to refrain, and to be permanently enjoined, from making, causing to be made, or assisting others in making “consumer telephone calls” in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-670(a)(1) and amendments thereto.

18. Defendants agree 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.* and the Kansas No-Call Act, K.S.A. 50-670, *et seq.*

19. Defendants agree to comply with the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, the Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*, and all federal regulations promulgated thereby, including the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*

20. Defendants agree to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division but will not nor will they be deemed to admit any alleged complaints or claims.

21. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of signing the Consent Judgment or within fifteen (15) days after any person assumes such position or responsibilities.

22. Defendants 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.

23. Defendants shall require their independent contractors to comply with the terms set forth in this Consent Judgment.

24. Defendants 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.

25. Defendants agree 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.

INVESTIGATIVE FEES AND CIVIL PENALTIES

26. Defendants agree to pay to the Office of the Kansas Attorney General the following amounts:

- a. three thousand dollars (\$3,000.00) in civil penalties for violations of the Kansas No Call Act, pursuant to K.S.A. 2014 Supp. 50-670a(i);
- b. two thousand (\$2,000.00) in civil penalties for violations of the KCPA, pursuant to K.S.A. 2014 Supp. 50-636; and
- c. five thousand dollars (\$5,000.00) in investigative fees, pursuant to K.S.A. 2014 Supp. 50-632(c)(7).

27. Defendants agree to pay the aforementioned fees and penalties to the Office of the Kansas Attorney General in eight (8) installments of one thousand, two hundred and fifty dollars (\$1,250.00) to be paid on or before the first date of every month beginning on May 1, 2016, with the final installment due on or before December 1, 2016, until the total amount of \$10,000.00 is paid in full.

28. Upon receipt of all payments required under paragraph twenty-seven (27), Plaintiff agrees to release and discharge Defendants from all claims Plaintiff could have brought for civil penalties, costs, and/or investigative fees under the KCPA, K.S.A. 50-623 *et seq.* or the Kansas No Call Act, K.S.A. 50-670 *et seq.* based on Defendants' conduct prior to the date of entry of this Consent Judgment and to file a satisfaction of money judgment, pursuant to K.S.A. 60-2803, with the Clerk of the Shawnee County District Court.

29. Payment shall be made 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:

Meghan E. Stoppel, Assistant Attorney General
Consumer Protection/Antitrust Division
Office of the Kansas Attorney General
120 SW 10th Ave, 2nd Floor
Topeka, Kansas 66612

30. Defendants agree to be held jointly and severally liable for the entire amount set forth in paragraph twenty-six (26).

31. Defendants agree 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.

OTHER PROVISIONS

32. 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.

33. 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.

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

35. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of the Defendants nor shall the Defendants represent the decree as such an approval. The parties further understand 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 as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

36. This Consent Judgment represents the entire agreement between Plaintiff and Defendants, 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.

37. Nothing in this Consent Judgment shall be construed to create, waive or limit any private right of action and/or any defense available to the Defendants.

38. Each of the Defendants' representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of each Defendant. Each Defendant further represents that it has had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

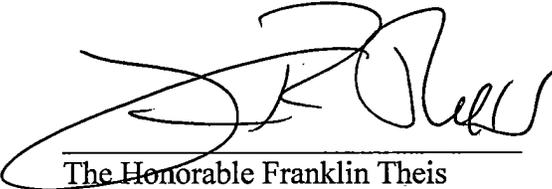
39. This Consent Judgment may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendants immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants and in favor of Plaintiff in the amount of \$10,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and 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.



The Honorable Franklin Theis
District Court Judge

Prepared and approved by:

PLAINTIFF:

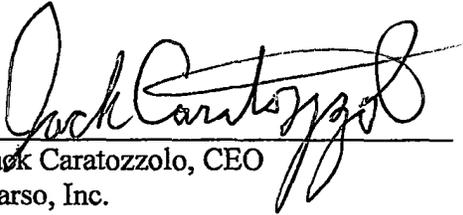


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