

E-04-000032

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FILED
APP. DISTRICT CLERK
MAY 28 10 40 AM '04
CLERK OF DISTRICT COURT
SEDGWICK COUNTY, KANSAS

IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS

STATE OF KANSAS, *ex rel.*,
PHILL KLINE, Attorney General,

Plaintiff,

v.

Omaha Truck Center, Inc., a Nebraska Corporation
d/b/a Kansas Truck Center

Defendant

COPY

04CV2284
Case No. 04-C-

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this ____ day of April, 2004, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through James R. McCabria, Assistant Attorney General. Kansas Truck Center appears by and through its attorneys, _____. There are no other appearances.

WHEREUPON, the Parties advise the Court they have stipulated and agree to the following matters:

1. Phill Kline is the Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq*

3. Defendant Omaha Truck Center, Inc. d/b/a Kansas Truck Center ("KTC" or Defendant) is a Nebraska corporation with its principal place of business being located at 10710 I Street, Omaha, Nebraska 68127. KTC operates truck dealerships in Hutchinson, Liberal, Salina, and Wichita, Kansas.

4. Defendant is a supplier within the definition of K.S.A. 50-624(j) and has engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c). The nature of Defendant's business includes selling and soliciting for sale property and/or services to consumers at retail prices within this State.

5. Defendant admits that this Court has personal and subject matter jurisdiction over all matters and parties hereto.

6. On or about February 14, 2003, Defendant entered into a consumer transaction with Kansas consumer Tom Buzzell for the purchase of a 2000 Freightliner FLD 132 Tractor, VIN 1FUPCSZB9YDG5913. In connection therewith, Defendant gave Buzzell a Warranty Disclaimer as set forth in Exhibit "A" attached hereto. Through the course of investigation, the Attorney General has reason to believe that numerous such Warranty Disclaimers were provided to consumers in connection with consumer transactions involving KTC prior to the date of this Consent Judgment (all of which consumer transactions in which Warranty Disclaimers were provided consumers by KTC prior to the date hereof being collectively referred to as "Alleged Prior Violations").

7. The Attorney General alleges the following described facts relating to the above transactions and investigation constitutes violations of the Kansas Consumer Protection Act:

KTC knew or should have known that the effect of the Warranty Disclaimer would be to violate the prohibition on exclusion of implied warranties of merchantability and/or implied warranty of fitness for a particular purpose, all as prohibited by K.S.A. 50-639.

8. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law. Furthermore, Defendant specifically denies each allegation, or that any Alleged Prior Violations constituted a violation of the Kansas Consumer Protection Act.

9. Defendant agrees to refrain from and to be permanently enjoined from engaging in the acts and practices described in Paragraph Seven hereof in any future transactions, in particular, shall not engage in behavior in connection with a consumer transaction (as defined in K.S.A. 50-624(c), which limits or attempts to limit implied warranties in violation of K.S.A. 50-639.

10. Defendant agrees that engaging in acts or similar acts to those described in Paragraph Seven hereof without adhering to the requirements of Paragraph Nine shall constitute a violation of this Order and hereby stipulates, in that event, to civil penalties in such amount as this Court determines to be appropriate.

11. Plaintiff agrees that, upon payment by Defendant of the sum of \$15,000.00 in investigative fees, expenses and civil penalties to the "Office of the Attorney General" of the State of Kansas, no other or further action shall be taken by Plaintiff or by the office of any county or district attorney in the State of Kansas regarding any Alleged Prior Violations or any and all other warranty disclaimers of the type and kind set forth in Exhibit "A", whether known or unknown to Plaintiff. Payment shall be by cashier's check and shall

be delivered to the Attorney General of the State of Kansas upon signing this Consent Judgment.

12. The provisions of this Consent Judgment will be applicable to Defendant, and every employee, agent or representative of Defendant. Nothing in this Consent Judgment shall be construed to resolve or control any claim brought by any individual consumer, on that consumer's behalf, which implicates any issue raised herein.

13. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, where such restructuring is done for the purpose or object of avoiding compliance with the terms of this Consent Judgment.

14. 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 to interpret this Consent Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, or for the punishment of violations hereof.

15. 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.

16. 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 Attorney General from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction (other than actions in respect of Alleged Prior

Violations). Defendant further understands that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against Defendant upon belief that Defendant is otherwise violating the law.

17. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendant nor shall Defendant represent the decree as such an approval.

18. Nothing in this Consent Judgment shall be construed to affect the ability of any consumer to assert any claims which may vest in those consumers by virtue of any transaction they have entered with Defendant.

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 Defendant shall immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against the Defendant and in favor of Plaintiff in the amount of \$15,000.00.

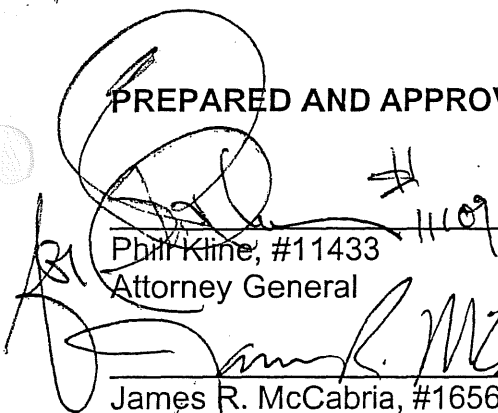
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

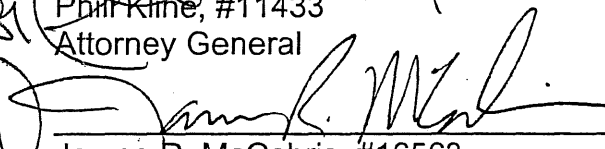
IT IS SO ORDERED.

RICHARD BALLINGER

Judge of the District Court

PREPARED AND APPROVED BY:


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Attorney General


James R. McCabria, #16563
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Attorney for Plaintiff

APPROVED BY:
OMAHA TRUCK CENTER, INC.

By 
Title: VICE PRESIDENT