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96-103
TO-ESA

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division _____

STATE OF KANSAS, *ex rel.*
CARLA J. STOVALL, Attorney General

Plaintiff,

vs.

GARTNER OIL COMPANY,

Defendant.

Case No. 96 CV 1216

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

JOURNAL ENTRY OF JUDGMENT

NOW on this 29th day of Oct, 1997, this matter comes before the Court on stipulation of the parties. Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through counsel James J. Welch, Assistant Attorney General. Defendant, Gartner Oil Company, appears by and through counsel Leonard M. Robinson, Attorney At Law.

I. STIPULATED FACTS

WHEREUPON, the Court is advised that the parties have stipulated to the following facts, which the Court hereby adopts as its own findings of fact as set forth herein:

1. Defendant, Gartner Oil Company is a corporation organized under the laws of the State of Kansas. The principal office of the corporation is located at 2044 North Tyler, Topeka, Kansas 66608. Defendant, Gartner Oil Company applied with the Kansas Secretary of State for authority to do business in Kansas in December 1991, by filing its Articles of Incorporation, and

has been served with process through its registered agent Jeffrey Ungerer at Suite 101, 2231 SW Wanamaker, Topeka, Kansas 66614.

2. Defendant is in the business of selling tobacco products, with the Kansas Retail Cigarette License #71172.

3. On February 10, 1996, Defendant Gartner Oil Company, through its employee, Scott Ditch, sold one pack of Kool Filter Kings, a tobacco product, to Joshua Lacey, a minor consumer under the age of 18, for the price of \$2.00.

4. Topeka Police Department Cadet Joshua Lacey was acting with parental consent and under the direct supervision of the Office of the Attorney General as part of a statewide random investigation of cigarette sales to persons under the age of 18.

5. At no time before or during the consumer transaction did Defendant have any reason to believe that Joshua Lacey was not purchasing cigarettes for personal, family, household, business or agricultural purposes.

6. At the time of the sale, Joshua Lacey was a minor under the age of 18, with a date of birth of January 28, 1979, whose physical appearance resembled a minor under the age of 18.

7. At no time prior to the sale of the tobacco product to Joshua Lacey did Scott Ditch request any form of identification, as an age verification, of Joshua Lacey.

8. Defendant voluntarily agrees and stipulates to this Journal Entry of Judgment without trial or adjudication of any issue of fact or law.

II. CONCLUSIONS OF LAW

WHEREUPON, the Court issues the following conclusions of law based upon the foregoing stipulated facts:

1. Defendant Gartner Oil Company is a supplier within the definition of K.S.A. 50-624(i) and has engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c) and (h).

2. Topeka Police Department Cadet Joshua Lacey is a consumer as defined by K.S.A. 50-624(b).

3. The sale of tobacco products to persons under 18 years of age is a crime under K.S.A. 79-3321.

4. The State law, K.S.A. 79-3321, that prohibits the sale of tobacco products to person under 18 years of age is intended to protect the health, safety and welfare of persons under 18 years of age.

5. The unconscionable acts and practices prohibited by the Kansas Consumer Protection Act are not limited to those acts specifically listed in K.S.A. 50-627(b)(1) through (7).

6. The sale of tobacco products to persons under 18 years of age constitutes an inherently unconscionable act and practice, in violation of the Kansas Consumer Protection Act, K.S.A. 50-627(a) and (b), in that the supplier knew, or had reason to know, that:

- a. The supplier is taking advantage of the inability of the consumer to reasonably protect the consumer's interest because of the consumer's (i) age, (ii) inability to ascertain the illegal nature of said sale, the highly addictive nature of tobacco products, and the serious health risk of the tobacco products, and (iii) other similar factors, in violation of K.S.A. 50-627(b)(1);
- b. The consumer is unable to receive a material benefit of the subject of the transaction, in violation of K.S.A. 50-627(b)(3);
- c. The transaction is excessively one-sided in favor of the Defendant, in violation of K.S.A. 50-627(b)(5); and
- d. The transaction, in violation of a state law, K.S.A. 79-33121, designed to protect the public's health, safety and welfare, is in violation of K.S.A. 50-627(b).

7. Defendant's sale of tobacco products to Joshua Lacey, a person under the age of 18, is an unconscionable act and practice in violation of K.S.A. 50-627(a) and (b).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Plaintiff and against Defendant Gartner Oil Company as follows:

1. That the above acts and practices are declared unconscionable in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632;

2. That Defendant and its employees, agents and representatives are enjoined from further sales of tobacco products to persons under the age of 18, pursuant to K.S.A. 50-632;

3. That a civil penalty in the amount of \$3,000.00 is entered against Defendant Gartner Oil Company in favor of Plaintiff for violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632 and K.S.A. 50-636.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact of the Court, and based upon these stipulated facts the Court enters the foregoing conclusions of law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon execution of this Journal Entry and receipt of the amount set forth herein, the Attorney General agrees to release Defendant Gartner Oil Company from, and not to pursue any further claims, demands or civil causes of action under the Kansas Consumer Protection Act with respect to the sale of tobacco products to persons under the age of 18, prior to April 1, 1997.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$3,000.00, with \$1,500.00 of the judgment amount due at the time of the filing of this Journal Entry, and subsequent payments of \$100.00 per month due the first of each month, commencing December 1, 1997, for fifteen (15) months. If any payment is not made pursuant to this order then all payments shall immediately become due and owing.

IT IS SO ORDERED.

151 Hon. James Buchholz
DISTRICT COURT JUDGE

Approved by:

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