

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel.
MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO
30 East Broad St., 14th Floor
Columbus, Ohio 43215

Plaintiff,

v.

KELLIE AUTO SALES INC.
c/o Anne Piar
Statutory Agent
101 Phillipi Rd.
Columbus, Ohio 43228

and

RAED SAID, aka
RAYMOND SAID Individually
444 N. Front St., Apt. 203
Columbus, Ohio 43215

and

RORY C. BOWMAN, aka
R. CHRISTOPHER BOWMAN
Individually
1206 Carolwood Ave.
Columbus, Ohio 43227

Defendants.

CASE NO.

11 CVH07 - 9216
JUDGE

COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF,
RESTITUTION, CIVIL
PENALTIES, AND OTHER
APPROPRIATE RELIEF

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2011 JUL 26 PM 12:37
CLERK OF COURTS

JURISDICTION

1. Plaintiff, State of Ohio, by and through Counsel, the Attorney General of Ohio, Michael DeWine, having reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, the Retail Installment Sales

Act, R.C. 1317.01 *et seq.*, the Odometer Rollback and Disclosure Act, R.C. 4549.41 *et seq.* and the Certificate of Motor Vehicle Title Act R.C. 4505.01 *et seq.*

2. The actions of Defendants, hereinafter described, have occurred in the State of Ohio and Franklin County and, as set forth below, are in violation of the Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, the Retail Installment Sales Act, R.C. 1317.01 *et seq.*, the Odometer Rollback and Disclosure Act, R.C. 4549.41 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.*
3. Defendants, as described below, are “supplier[s]” as that term is defined in R.C. 1345.01(C) as Defendants were, at all times relevant herein, engaged in the business of effecting or soliciting “consumer transactions” as that term is defined in R.C. 1345.01(A).
4. Defendants, as described below, engaged in “consumer transactions” by offering for sale, selling or financing the purchase of used motor vehicles to individuals for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
5. The actions of Defendants, hereinafter described, have occurred in the State of Ohio and Franklin County.
6. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Consumer Sales Practices Act and R.C. 4549.48 of the Odometer Rollback and Disclosure Act.

7. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that the transactions complained of herein, and out of which this action arose, occurred in Franklin County.

STATEMENT OF FACTS

8. Defendant, Kellie Auto Sales Inc., (hereinafter "Kellie Auto") is an Ohio corporation with its principal place of business located at 101 Phillipi Rd. Columbus, Ohio, Franklin County.
9. On information and belief, Defendant, Raymond Said, aka Raed Said (hereinafter "Said") is an individual whose business address is 101 Phillipi Rd., Columbus, Ohio. Defendant Said owns and operates Defendant Kellie Auto, and dominated, controlled and directed the business activities and sales conduct of Defendant Kellie Auto, and exercised the authority to establish, implement or alter the policies of Defendant Kellie Auto, and committed, allowed, directed, ratified or otherwise caused the following unlawful acts to occur.
10. On information and belief, Defendant, Rory C. Bowman, aka R. Christopher Bowman (hereinafter "Bowman") is an individual who has been at all times relevant to this action, employed by Defendants Kellie Auto and Said as the general collections manager for Defendant Kellie Auto. As general collections manager, Defendant Bowman dominated, controlled and directed the business activities, sales, and collections conduct of Defendant Kellie Auto, and exercised the authority to establish, implement or alter the policies of Defendant Kellie

Auto, and committed, allowed, directed, ratified or otherwise caused the following unlawful acts to occur.

11. Defendants are, and have been at all times relevant to this action, engaged in the business of soliciting, promoting, purchasing, selling, leasing, financing and collecting the proceeds of the sales of used motor vehicles from their present location at 101 Phillipi Rd., Columbus 43228 to consumers residing in Franklin, other Ohio counties and other states.
12. Defendants, operating under the name Kellie Auto, solicited individual consumers to enter into consumer transactions, specifically for the sale or lease of used motor vehicles.
13. Defendants offered zero percent financing to consumers interested in purchasing or leasing used motor vehicles.
14. At all relevant times hereto, Defendant Kellie Auto held license # UD012013 issued by the State of Ohio under R.C. 4517.01 et seq., allowing it to engage in the business of displaying or selling at retail or wholesale used motor vehicles.
15. At all relevant times hereto, Defendant Kellie Auto held license # LD006597 issued by the State of Ohio under R.C. 4517.01 et seq., allowing it to engage in the business of displaying or leasing at retail or wholesale used motor vehicles.
16. At all relevant times hereto, Defendants were displaying or selling or leasing at retail or wholesale used motor vehicles at their principal place of business.

17. Some of the consumers who purchased used motor vehicles from Defendants were required to make substantial deposits as partial payment for the used motor vehicles.
18. Consumers paid deposits for the purchase of used motor vehicles contingent upon zero percent financing through the Defendants (via "buy here pay here" purchasing and financing) and Defendants delivered these motor vehicles without a written agreement stating the parties' obligations should consumers default on making their monthly payments.
19. Defendants failed to provide consumers with dated receipts stating:
 - a. The time during which the option to purchase the used motor vehicles was binding.
 - b. Whether the deposits, as that term is defined in O.A.C. 109:4-3-07(D), were refundable or under what conditions the deposits were refundable.
20. In some instances, a written retail installment contract was completed for consumer transactions even though the used motor vehicles were being offered at zero percent financing.
21. In some instances, after delivery of the used motor vehicle to the consumer occurred, and even before payments were due, or consumers were in default of the terms of the retail installment contracts, Defendants repossessed the vehicles.

22. Some consumers, whose vehicles were repossessed, requested that Defendants refund their deposits and all payments made under the retail installment contracts.
23. Defendants refused to refund the consumers' deposits and payments after repossessing the vehicles even though consumers were not in default of the retail installment contracts.
24. Defendants repossessed used motor vehicles for non-payment even though the retail installment contracts failed to notify consumers of the due-date of each payment necessary to pay off the total amount of the time balance.
25. In some instances Defendants failed to provide consumers with a written odometer disclosure statement or a true and complete odometer disclosure statement.
26. Defendants entered into consumer transactions on terms the Defendants knew were substantially one-sided in favor of the Defendants by entering into retail installment contracts with consumers and extending credit to consumers without obtaining adequate information from them regarding the consumers' ability to pay their obligations in full pursuant to the terms of the contract.
27. Defendants entered into consumer transactions on terms the Defendants knew were substantially one-sided in favor of the Defendants by entering into retail installment contracts with consumers and failing to include in the retail installment contracts the actual payment due dates.

28. Defendants required consumers to make payments pursuant to payment schedules that were not based on the combined total of the cash price and all finance charges and service charges nor were the payment schedules payable in substantially equal consecutive installments.
29. Defendants advertised and offered consumers zero percent financing while failing to disclose to consumers that the actual cash price of the vehicles included finance charges.
30. Defendants failed to file applications for certificates of title within Thirty (30) days after the assignment or delivery of a motor vehicle.
31. Defendants failed to obtain certificates of title on or before the Fortieth (40th) day after the sale of motor vehicles.
32. Defendants failed to send notices to consumers informing them of their default and why the default led to the vehicle's repossession within Five (5) days after the repossession and failed to allow the vehicles to be inspected by consumers after the motor vehicles were repossessed.
33. Defendants failed to dispose of consumers' motor vehicles after repossession in a commercially reasonable manner, and failed to provide a notice to consumers at least Ten (10) days prior to disposition of the collateral stating the time and place the collateral would be sold, and the minimum price for which such collateral would be sold, together with a statement that the debtor could be held liable for any deficiency resulting from such sale.

34. Defendants represented to consumers that the consumer transactions involved a warranty and then failed to fulfill their obligations under the stated warranty.
35. Defendants charged consumers late fees for payments that were less than Ten (10) days late.
36. Defendants accelerated all payments due where the default in the retail installment contract payment was less than Thirty (30) days.
37. Defendants failed to make certain repairs to the vehicles before or after the sale after promising to do so.
38. Defendants failed to notify consumers that their motor vehicles were equipped with GPS tracking devices.
39. Defendants failed to notify consumers that some of the vehicles being purchased by consumers were rebuilt salvage vehicles.
40. Defendants filed small claims complaints against consumers in the Franklin County Municipal Court and alleged in the complaints that Defendants had a purchase money security interest in the motor vehicle and that the motor vehicles were involved in accidents leaving the collateral a total loss and without proper insurance coverage.
41. Defendant Bowman, acting on behalf of the other Defendants, signed some of the small claims complaints referred to in paragraph 40 and swore to the veracity of the facts alleged in the complaints when he knew that facts contained within the complaints were false, specifically that the collateral was not in an accident, rather the collateral had been repossessed by the Defendants.

42. Defendants counsel or Defendant Bowman routinely appeared at hearings before Franklin County Municipal Court Magistrates held to determine whether the Defendants requested relief would be granted.
43. In many instances consumers did not defend the lawsuits described in the preceeding Three (3) paragraphs and the magistrates' granted default judgments.
44. At times, default judgments were issued even before consumers had opportunities, pursuant to the Ohio Rules of Civil Procedure, to file answers or otherwise defend the lawsuits. In at least one instance a hearing was scheduled, held and a magistrate granted a default judgment approximately Seven (7) days after service of process of the complaint was perfected on the consumer.
45. After obtaining the judgments referred to in paragraph Forty-Four (44) Defendants pursued collections against consumers for the amount of the judgments, including the filing of praecipes for certificates of judgment to the Ohio Bureau of Motor Vehicles (hereinafter 'BMV') on uncollected judgments for drivers license suspensions.
46. In some instances consumers were not aware they had been sued by the Defendants in small claims court or that their drivers' licenses were suspended.

FIRST CAUSE OF ACTION
VIOLATIONS OF THE RETAIL INSTALLMENT SALES ACT (RISA)

47. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Six (1-46) of this Complaint.

48. Defendants entered into retail installment contracts with consumers and failed to include in the retail installment contracts the date of each payment necessary to pay the time balance of the total amount due under the retail installment contracts, in violation of R.C. 1317.04(G).
49. Defendants entered into retail installment contracts with consumers and failed to provide consumers with payment schedules that were based on a combined total of the cash price and all finance charges and service charges, in violation of R.C. 1317.06(C).
50. Defendants entered into retail installment contracts with consumers and failed to provide consumers with payment schedules where all payments were substantially equal, in violation of R.C. 1317.06(C).
51. Defendants entered into retail installment contracts with consumers and failed to disclose the actual cost of credit, in violation of R.C. 1317.06(C).
52. Defendants repossessed used motor vehicles for non-payment even though the retail installment contracts failed to include any language notifying consumers of the date of each payment necessary to pay the time balance of the total amount due under the retail installment contracts, in violation of R.C. 1317.12 and R.C. 1317.16.
53. Defendants repossessed automobiles even before the payments were due or consumers were in default of the retail installment contracts, in violation of R.C. 1317.12.
54. Defendants failed to send a notice setting forth specifically circumstances

- constituting a default within Five (5) days after repossessing a consumer's motor vehicle, in violation of R.C. 1317.12.
55. Defendants failed to allow the repossessed vehicles to be inspected by the consumers after repossessing consumers' motor vehicles, in violation of R.C. 1317.12.
 56. Defendants failed to dispose of consumers' vehicles after repossessions in a commercially reasonable manner, and failed to provide notices to consumers at least Ten (10) days prior to disposition of the collateral stating the time and place the collateral would be sold and the minimum price for which such collateral would be sold, together with a statement that the debtor could be held liable for any deficiency resulting from such sale, in violation of R.C. 1317.16.
 57. Defendants imposed late fees for payments that were less than Ten (10) days late, in violation of R.C. 1317.06(B).
 58. Defendants accelerated payments where the default in the installment payment was less than Thirty (30) days, in violation of R.C. 1317.06(C).
 59. The acts and practices described in paragraphs 48-58 are unfair, deceptive and unconscionable sales practices in violation of the Consumer Sales Practices Act, R.C. 1345.02 and R.C. 1345.03.
 60. The acts or practices described in paragraphs 48-50 and 52-58 have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

SECOND CAUSE OF ACTION
VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT (CSPA)

61. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Six (1-46) of this Complaint.
62. Defendants entered into a consumer transactions when the Defendants knew at the time the consumer transactions were entered into that there was no reasonable probability of payment of the obligation in full by the consumers, in violation of R.C. 1345.02(A) and R.C. 1345.03(A) as set forth in R.C. 1345.03(B)(4).
63. Defendants required consumers to enter into consumer transactions on terms the Defendants knew were substantially one-sided in favor of the Defendants, in violation of R.C. 1345.02(A) and R.C. 1345.03(A) as set forth in R.C. 1345.03(B)(5).
64. Defendants represented that a consumer transaction involved a warranty and then failed to fulfill their obligations under the stated warranty, in violation of R.C. 1345.02.
65. Defendants failed to provide to the consumers at the time of the initial deposits dated written receipts stating clearly and conspicuously whether the deposits were refundable and under what conditions, in violation of R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-07(B)(5).
66. Defendants failed to make certain repairs to the vehicles before or after the sale after promising to do so, in violation of R.C. 1345.02.

67. Defendants failed to notify consumers that their motor vehicles were equipped with GPS tracking devices, in violation of R.C. 1345.02.
68. Defendants made untrue statements of fact in some of the small claims complaints filed against consumers in the Franklin County Municipal Court, misled the magistrates into granting judgments based on the untrue statements of fact that the Defendants then used to pursue illegal collections and license suspensions against consumers who had purchased vehicles from the Defendants, in violation of R.C. 1345.02(A) and R.C. 1345.03(A).
69. Defendants delivered motor vehicles to consumers pursuant to sales which were contingent upon financing without written agreements stating the parties' obligations should such financing not be obtained in violation of R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-16(30).
70. Defendants failed to disclose prior to obtaining the signatures by the consumers on any documents for the purchase of the vehicles the fact that such vehicles were previously titled as a salvage vehicles when the Defendants had actual knowledge of such facts, in violation of R.C. 1345.02 and the Ohio Adm. Code 109:4-3-16(29).
71. The acts or practices described in paragraphs 62-64 and 66-67 have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

THIRD CAUSE OF ACTION
VIOLATION OF THE ODOMETER ROLLBACK AND DISCLOSURE ACT

72. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Six (1-46) of this Complaint.
73. Defendants have committed an unfair and deceptive act or practice in violation of the Consumer Sales Practices Act, R.C. 1345.02, and the Odometer Rollback and Disclosure Act, R.C. 4549.46(A), by failing to provide true and complete odometer disclosures required by R.C. 4505.06.
74. Such acts or practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

FOURTH CAUSE OF ACTION
VIOLATIONS OF THE CERTIFICATE OF MOTOR VEHICLE TITLE LAW

75. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Six (1-46) of this Complaint.
76. Defendants engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02 and R.C. 4505.06(A)(5)(b) by failing to file applications for certificates of title within Thirty (30) days after the assignment of delivery of motor vehicles.
77. Defendants committed unfair or deceptive acts or practices in violation of the

Consumer Sales Practices Act, R.C. 1345.02(A), by selling motor vehicles to consumers, in the ordinary course of business, and then failing to obtain certificates of title on or before the Fortieth (40th) day of sale of the motor vehicles as required by R.C. 4505.181(B)(1).

78. Such acts or practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

- A. ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in Plaintiff's Complaint violates the Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, the Retail Installment Sales Act, R.C. 1317.01 *et seq.*, the Odometer Rollback and the Disclosure Act, R.C. 4549.41 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.* in the manner set forth in this Complaint.
- B. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Defendants and their officers, agents, servants, representatives, salespeople, employees, successors and assigns and all persons acting in concert or participating with them, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from further violating the Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, the Retail Installment Sales Act, R.C. 1317.01 *et seq.*, the Odometer Rollback and

Disclosure Act, R.C. 4549.41 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.*

- C. ORDER Defendants jointly and severally liable for reimbursement to all consumers found to have been damaged by the Defendants' unfair, deceptive, and unconscionable acts and practices, odometer rollback, disclosure and motor vehicle title violations.
- D. ASSESS, FINE, AND IMPOSE upon Defendants, jointly and severally, a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each of the appropriate unfair, deceptive or unconscionable acts alleged in the Complaint, pursuant to R.C. 1345.07(D).
- E. ASSESS, FINE, AND IMPOSE upon Defendants, jointly and severally, an additional civil penalty of not less than One Thousand Dollars (\$1,000.00) nor more than Two Thousand Dollars (\$2,000.00) for each violation of the Odometer Rollback and Disclosure Act, pursuant to R.C. 4549.48(B).
- F. ASSESS, FINE, AND IMPOSE upon Defendants, jointly and severally, an additional civil penalty of not more than Two Hundred Dollars (\$200.00) for each violation of the Certificate of Motor Vehicle Title Act, pursuant to R.C. 4505.99.
- G. ORDER the Defendants, jointly and severally, to pay to the Attorney General all costs together with all expenses the Attorney General incurred in the investigation of this action, and the payment of reasonable attorneys' fees incurred by the Attorney General in the prosecution of violations of the Odometer Rollback and Disclosure Act, pursuant to R.C. § 4549.48(A).

- H. ORDER, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, Defendants to maintain in their possession and control for a period of Five (5) years all business records relating to Defendants' solicitation and sale of used motor vehicles in Ohio and to permit the Ohio Attorney General or his representative, upon reasonable twenty-four (24) hour notice, to inspect and/or copy any and all records.
- I. Order that the Defendants be enjoined from engaging in consumer transactions until they have satisfied all restitution, civil penalties, Attorney General costs to investigate and prosecute this action and any court costs ordered.
- J. ORDER Defendants to pay all court costs.
- K. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General



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