

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

STATE OF OHIO, ex rel.	)	CASE NO.
MICHAEL DEWINE	)	
ATTORNEY GENERAL OF OHIO	)	
30 East Broad St., 14th Floor	)	JUDGE
Columbus, Ohio 43215	)	
	)	
Plaintiff,	)	COMPLAINT FOR
	)	DECLARATORY JUDGMENT,
v.	)	INJUNCTIVE RELIEF,
	)	RESTITUTION, CIVIL
SOUTH DAYTON AUTO & TRUCK	)	PENALTIES AND OTHER
SERVICE, LLC	)	APPROPRIATE RELIEF
888 East Franklin Street	)	
Centerville, Ohio 45459	)	
	)	
and	)	
	)	
SHANE S. SMITH, individually,	)	
1008 Hyde Park Drive	)	
Kettering, Ohio 45429	)	
	)	
Defendants.	)	

JURISDICTION AND VENUE

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.*, 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, Montgomery County and, as set forth below, are in violation of the Consumer Sales Practices Act, R.C. 1345.01 *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 Montgomery 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.
7. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that Defendants reside in, operated their business from, and engaged in the transactions complained of herein in Montgomery County.

STATEMENT OF FACTS

8. Defendant South Dayton Auto & Truck Service, LLC (“South Dayton Auto”) is an Ohio corporation operating at 888 East Franklin Street, Centerville, Ohio 45459.
9. Defendant Shane S. Smith (“Smith”) is an individual whose last known address is 1008 Hyde Park Drive, Kettering, Ohio 45429.
10. Defendant Smith is the owner of Defendant South Dayton Auto, and dominated, controlled and directed the business activities and sales conduct of South Dayton Auto, and exercised the authority to establish, implement or alter the policies of South Dayton Auto, and committed, allowed, directed, ratified or otherwise caused the following unlawful acts to occur.
11. Defendants were at all times relevant to this action engaged in the business of soliciting, promoting, purchasing, selling, financing and collecting the proceeds of the sales of used motor vehicles from their location in Centerville to consumers residing in Montgomery and other Ohio counties.
12. Defendants, operating under the name South Dayton Auto & Truck Service, LLC, solicited individual consumers to enter into consumer transactions, specifically for the sale of used motor vehicles.
13. At all relevant times hereto, Defendants held license #UD019346 issued by the State of Ohio under R.C. 4517.01 *et seq.*, allowing Defendants to engage in the business of displaying or selling at retail or wholesale used motor vehicles.
14. At all relevant times hereto, the Defendants were displaying or selling used motor vehicles at the South Dayton Auto location.

15. Defendants failed to file applications for certificates of title within Thirty (30) days after the assignment or delivery of motor vehicles.
16. Defendants failed to obtain certificates of title on or before the Fortieth (40th) day after the sale of motor vehicles.
17. Title Defect Recision consumer claims totaling \$16,222.50 thus far were paid from the Title Defect Recision Fund, administered by the Ohio Attorney General's Office, after the Defendants failed to obtain certificates of title on or before the Fortieth (40th) day after the sale of motor vehicles.
18. Defendants failed to post a bond in favor of the State of Ohio with a surety authorized to do business in the State of Ohio, in the amount of not less than Twenty-Five Thousand Dollars (\$25,000) after the Ohio Attorney General's Office paid retail purchasers of the dealer out of the Title Defect Recision Fund.
19. Defendants continued to display, offer for sale, or sell motor vehicles after the Ohio Attorney General's Office paid retail purchasers of the dealer lien holders out of the Title Defect Recision Fund and before a surety bond was obtained.

CAUSE OF ACTION
VIOLATIONS OF THE CERTIFICATE OF MOTOR VEHICLE TITLE ACT

20. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Nineteen (1-19) of this Complaint.
21. The Defendants engaged in unfair and deceptive acts or practices in violation of R.C. 1345.02 by failing to file applications for certificates of title within Thirty (30) days after the assignment or delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b).
22. The Defendants committed unfair and 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).

23. The Defendants committed unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A), by displaying, offering for sale, or selling motor vehicles while failing to post with the Ohio Attorney General's Office, in favor of the State of Ohio, a bond of a surety company authorized to do business in the State of Ohio, in the amount of not less than Twenty-Five Thousand Dollars (\$25,000) after the Ohio Attorney General's Office paid a retail purchaser of the dealer as required by R.C. 4505.181(A)(2).
24. Such acts or practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 *et seq.* The 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.*, 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.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.*

- C. **ORDER** Defendants liable for reimbursement to all consumers found to have been damaged by the Defendants unfair and deceptive acts and practices, and motor vehicle title violations.
- D. **ORDER** Defendants liable for reimbursement to the Title Defect Recision Fund for funds expended to resolve title defects caused by Defendants' motor vehicle title violations.
- E. **ASSESS, FINE, AND IMPOSE** upon Defendants a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each of the appropriate unfair or deceptive acts alleged in the Complaint, pursuant to R.C. 1345.07(D).
- F. **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 the 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.
- G. **ORDER** that the Defendants be enjoined from engaging in consumer transactions as a supplier in the State of Ohio unless any judgment arising from this lawsuit is satisfied in its entirety.

- H. **ORDER** that Defendant Smith be prohibited from applying for, maintaining, or granted a salesperson or auto dealer license under Chapter 4517 of the Revised Code.
- I. **ORDER** the Defendants to pay all court costs.
- J. **GRANT** such other relief as the Court deems to be just, equitable and appropriate.

Respectfully,

MICHAEL DEWINE
Ohio Attorney General



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