

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

CV

2015 05 1108

MARY L. SWARTZ
BUTLER COUNTY
CLERK OF COURTS

STATE OF OHIO ex rel. ATTORNEY
GENERAL MICHAEL DEWINE
441 Vine Street, 1600 Carew Tower
Cincinnati, Ohio 45202

Plaintiff,

v.

DIXIE IMPORTS, INC.
4597 Dixie Highway
Fairfield, OH 45014

And

MUSTAPHA AITMOUHA
4597 Dixie Highway
Fairfield, OH 45014

And

EARL BURNS
4597 Dixie Highway
Fairfield, OH 45014

Defendants.

Case No.

Judge

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

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 ("CSPA"), R.C. 1345.01 *et seq.*, the Retail Installment Sales Act ("RISA"), R.C. 1317.01 *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, Butler County and other Ohio counties and, as set forth below, are in violation of the CSPA, RISA, and the Certificate of Motor Vehicle Title Act.
3. Defendants 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 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. Defendants are used motor vehicle dealers as that term is defined in R.C. 4517.01(L), as they are engaged in the business of selling, displaying, offering for sale, or dealing in used motor vehicles.
6. The actions of Defendants, hereinafter described, have occurred in the State of Ohio and Butler County.
7. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
8. 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 Butler County.

STATEMENT OF FACTS

9. Mustapha Aitmouha (“Aitmouha”) is a natural person residing in Butler County, Ohio.
10. Earl Burns (“Burns”) is a natural person residing in Butler County, Ohio.

11. Dixie Imports, Inc. is an Ohio corporation.
12. Defendants own and operate Dixie Imports, a used car dealership with locations at 4597 Dixie Highway, Fairfield, Ohio 45014 and 5210 Dixie Highway, Fairfield, Ohio 45014.
13. Aitmouha, at all times pertinent hereto, was the sole owner and directed and controlled all business activities of Dixie Imports, Inc., including the solicitation for sale and sale of used motor vehicles.
14. Aitmouha controlled and directed the business activities and sales conduct of Dixie Imports, Inc., causing, personally participating in, or ratifying the acts and practices of both Dixie Imports, Inc. and the dealership Dixie Imports.
15. Burns, at all times pertinent hereto, was the dealership manager and directed and controlled all business activities of Dixie Imports, Inc., including the solicitation for sale and sale of used motor vehicles.
16. Burns controlled and directed the business activities and sales conduct of Dixie Imports, Inc., causing, personally participating in, or ratifying the acts and practices of both Dixie Imports, Inc. and the dealership Dixie Imports.
17. Defendants hold licenses UD018651, LD006791, and UD020829 issued by the State of Ohio under R.C. 4517.01 et seq., allowing them to engage in the business of displaying or selling at retail or wholesale used motor vehicles.
18. At all times relevant to this investigation, Defendants offered to consumers used vehicle sales and financing from their business location in Butler County.

19. Defendants used a document captioned "Retail Installment Sale Contract" for some of the consumer transactions in which the cash price of the used vehicle would be paid for by the consumers in installments over time.
20. When repossessing vehicles, Defendants failed to send a notice setting forth specifically circumstances constituting a default within five (5) days after repossessing a consumer's motor vehicle.
21. After a vehicle had been repossessed, Defendants failed to permit consumers to inspect the vehicle.
22. Defendants failed to dispose of consumers vehicles after repossession in a commercially reasonable manner, and failed to provide notice to the 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.
23. Defendants failed to provide a proper accounting and/or refund to consumers after reselling the consumers' repossessed automobiles.
24. Defendants failed to provide consumers at the time of the initial deposits with dated written receipts stating clearly and conspicuously whether the deposits were refundable and under what conditions.
25. Defendants failed to file applications for certificates of title within thirty (30) days after the assignment of delivery of the motor vehicles.

26. Defendants sold motor vehicles to consumers, in the ordinary course of business, and then failed to obtain certificates of title in the name of the purchaser on or before the 40th day of sale of the motor vehicles.
27. Some deals were contingent upon the Defendants being able to arrange financing for the consumers.
28. Defendants accepted down payments from consumers in these situations and did not return their down payments after financing was not arranged.
29. Defendants used a Spot Delivery Agreement that allowed the Defendants to require the consumer to return the vehicle if financing was unable to be arranged. Defendants left blank the space for the number of days they had to arrange financing in the Spot Delivery Agreement.
30. Defendants had deals that were contingent upon the Defendants being able to arrange financing for the consumer and the Defendants failed to use a Spot Delivery Agreement or notify the consumer that the deal was contingent upon financing approval.
31. At least one consumer has obtained a judgment, which is unpaid, against Defendants arising from a consumer transaction.
32. Title Defect Recision consumer claims totaling \$3,100 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 the motor vehicles.
33. R.C. 4505.181 requires that a dealer post a bond in an amount not less than \$25,000 after

the Attorney General has paid a retail purchaser of the dealer from the Title Defect Recision Fund.

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34. After the payout was made from the Title Defect Recision Fund, the Defendants continued to operate without posting a bond.
 35. Defendants advertise "Guaranteed Financing" on a banner displayed on their lot.
 36. Defendants are unable to guarantee financing and many consumers have complained that they were unable to obtain financing from or through the Defendants.
 37. Defendants did not clearly and conspicuously state in close proximity to the "Guaranteed Financing" offer any material exclusions, reservations, limitations, modifications, or conditions.
 38. All facts above have occurred in the two years prior to this lawsuit.

PLAINTIFF'S FIRST CAUSE OF ACTION:
VIOLATIONS OF THE RISA

39. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of this Complaint.
40. Defendants repossessed automobiles before the payments were due, in violation of R.C. 1317.16.
41. When repossessing vehicles, Defendants failed to send a notice setting forth specifically the circumstances constituting a default within five (5) days after repossessing a consumer's motor vehicle, in violation of R.C. 1317.12.
42. Defendants failed to provide notice to the 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.

43. Defendants failed to provide a proper accounting and/or refund to consumers after reselling the consumers' repossessed automobiles in violation of R.C. 1317.16.
44. Defendants failed to legibly disclose the terms of contracts and/or failed to fill in all the blanks of the retail installment contracts, in violation of R.C. 1317.04.
45. The acts and practices described in Paragraphs 40 through 44 are unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02.
46. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, 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).

PLAINTIFF'S SECOND CAUSE OF ACTION:
VIOLATIONS OF THE CSPA

47. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of this Complaint.
48. Defendants failed to provide consumers at the time of the initial deposits with dated written receipts stating clearly and conspicuously whether the deposits were refundable and under what conditions, in violation of O.A.C. 109:4-3-07.
49. The Defendants failed to file applications for certificates of title within Thirty (30) days after the assignment of delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b).
50. The Defendants sold motor vehicles to consumers, in the ordinary course of business, and

then failed 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).

51. 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 O.A.C. 109:4-3-16(B)(30).
52. Defendants engaged in consumer transactions while having unsatisfied judgments against them that arose from prior consumer transactions.
53. Defendants failed to post a bond after the Attorney General paid a retail purchaser of the dealer from the Title Defect Recision Fund due to the Defendants failure to deliver title to the purchaser, as required by R.C. 4505.181.
54. Defendants advertised "Guaranteed Financing" without clearly and conspicuously stating in close proximity to the offer any material exclusions, reservations, limitations, modifications, or conditions, in violation of O.A.C. 109:4-3-02(A)(1).
55. The acts and practices described in Paragraphs 48 through 54 are unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02.
56. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, 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:

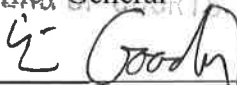
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- A. ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in Plaintiff's Complaint violates the CSPA, R.C. 1345.01 *et seq.*, the RISA, R.C. 1317.01 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.* 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 CSPA, R.C. 1345.01 *et seq.*, the RISA, R.C. 1317.01 *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 and deceptive acts and practices.
 - D. ORDER Defendants jointly and severally liable 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, jointly and severally, 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. ENJOIN the Defendants from engaging in any consumer transaction as a Supplier in the State of Ohio until they have satisfied all monetary obligations hereunder.
 - G. ORDER the Defendants to pay all court costs.

H. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE

Attorney General



Eric M. Gooding

Assistant Attorney General

Consumer Protection Section

441 Vine Street, 1600 Carew Tower

Cincinnati, Ohio 45202

(513) 852-1527 (phone)

(877) 381-1751 (fax)

Eric.Gooding@ohioattorneygeneral.gov

Counsel for Plaintiff