

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO, ex rel.)
MICHAEL DEWINE)
Ohio Attorney General)
Cleveland Regional Office)
615 W. Superior Avenue, 11th Floor)
Cleveland, Ohio 44113-1899)

Plaintiff,)

-vs-)

Phoenix Indoor Auto Sales)
c/o Phoenix Auto Credit, LLC)
903 E. Tallmadge Ave.)
Akron, OH 44310)

and)

Elizabeth Severy)
3870 Wood Duck Ct.)
Oshkosh, WI 54904)

Defendants)

CASE NO.

JUDGE

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

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through 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.*, 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 in Summit County as well as other Ohio counties, and are in violation of the CSPA, 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 Summit County.

6. This Court has jurisdiction over the subject matter of this action pursuant to R.C. 1345.04 of the CSPA.

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 Summit County, Ohio.

STATEMENT OF FACTS

8. Defendant Phoenix Indoor Auto Sales (“Phoenix”) is an Ohio company registered with the Ohio Secretary of State since June 16, 2008, most recently operating from an address at 903 E. Tallmadge Ave., Akron, Ohio 44310.

9. Defendant Elizabeth Severy is a natural person and the Agent for Phoenix Indoor Auto Sales. Defendant Elizabeth Severy’s most recent address is 3870 Wood Duck Ct.,

Oshkosh, WI 54904.

10. At all times relevant herein, Defendant Severy has had an ownership interest in and operated the business known as Phoenix Indoor Auto Sales and dominated, controlled and directed the business activities and sales conduct of Phoenix Indoor Auto Sales and exercised the authority to establish, implement or alter the policies of Phoenix Indoor Auto Sales, 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 Akron to consumers residing in Summit and other Ohio counties.

12. Defendants, operating under the name Phoenix Indoor Auto Sales, solicited individual consumers to enter into consumer transactions, specifically for the sale of used motor vehicles.

13. Defendants represented to several consumers that the used motor vehicles they were selling included warranties which Defendants either failed to honor or failed to provide, resulting in the harm to the consumers.

14. In some instances, consumers purchased motor vehicles from Defendants which they left in Defendants' care in order for some automotive repair work to be performed. When the consumers returned for the vehicles they had paid for, Defendants had re-sold or otherwise removed the motor vehicles from the property.

15. At all times relevant hereto, Defendants held license #UD017571 issued by the State of Ohio under R.C. 4517.01 *et seq.*, allowing them to engage in the business of displaying or selling used motor vehicles.

16. At all times relevant hereto, Defendants were displaying or selling used motor vehicles at addresses associated with Phoenix Indoor Auto Sales, including its last known location on 903 E. Tallmadge Rd., Akron, OH 44310.

17. Defendants failed to file applications for certificates of title within thirty (30) days after the assignment or delivery of motor vehicles.

18. Defendants failed to obtain certificates of title on or before the fortieth (40th) day after the sale of motor vehicles.

19. Title Defect Rescission ("TDR") consumer claims totaling One Hundred Sixty Thousand, Sixteen dollars and thirty-one cents (\$160,016.31) thus far have been paid from the TDR Fund, administered by the Ohio Attorney General's Office, after Defendants failed to obtain certificates of title on or before the fortieth (40th) day after the sale of motor vehicles.

**VIOLATIONS OF THE CERTIFICATE OF MOTOR VEHICLE TITLE ACT
AND CSPA**

20. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through nineteen (1-19) of this Complaint.

21. Defendants engaged in unfair and deceptive acts and practices in violation of the CSPA, 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. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, 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. 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).

FAILURE TO HONOR WARRANTY

24. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-three (1-23) of this Complaint.

25. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by representing to consumers that the consumer transaction involved a warranty and then either failing to fulfill their obligations pursuant to the warranty or failing to pay the warranty company.

26. 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).

FAILURE TO DELIVER

27. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-six (1-26) of this Complaint.

28. Defendant has committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-09, by selling motor vehicles to consumers, receiving payments for the vehicles, and then failing to deliver the motor vehicles or to refund the monies paid within a reasonable time.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. **ISSUE A DECLARATORY JUDGMENT** declaring that each act or practice

complained of herein violates the CSPA, 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;

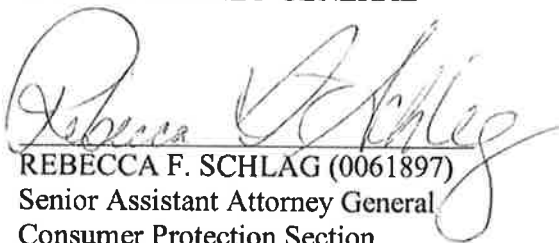
- B. ISSUE PERMANENT INJUNCTIVE RELIEF** enjoining Defendants, under these or any other names, and their officers, agents, servants, representatives, salespersons, employees, successors and assigns and all persons acting in concert or participation with Defendants, directly or indirectly, from further violating the CSPA, R.C. 1345.01 *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, and motor vehicle title violations.
- D. ORDER** Defendants jointly and severally liable for reimbursement to the TDR 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 appropriate unfair or deceptive act alleged in the Complaint, pursuant to R.C. 1345.07(D).
- 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**, as a means of ensuring 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.

- H. **ORDER** that the Defendants be enjoined from engaging in consumer transactions as suppliers in the State of Ohio until they have satisfied all restitution, civil penalties, Attorney General costs to investigate and prosecute this action, and any court costs ordered.
- I. **ORDER** that Defendant Severy be prohibited from applying for or granted a salesperson or auto dealer license under R.C. 4517.
- J. **ORDER** Defendants, jointly and severally, to pay all court costs.
- K. **GRANT** Plaintiff his costs in bringing this action and such further relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DeWINE
OHIO ATTORNEY GENERAL



REBECCA F. SCHLAG (0061897)
Senior Assistant Attorney General
Consumer Protection Section
Cleveland Regional Office
615 W. Superior Ave., 11th FL
Cleveland, OH 44113-1899
(216) 787-3030
Trial counsel for Plaintiff State of Ohio
Rebecca.Schlag@OhioAttorneyGeneral.gov

