

FILED

2011 MAY 31 A 11:52

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, *ex rel.*
MIKE DeWINE
ATTORNEY GENERAL OF OHIO
615 W. Superior Ave. 11th Floor
Cleveland, Ohio 44113

Plaintiff,

v.

THOMAS SULLIVAN, individually, and
d/b/a EXPRESS MUFFLER AND
BRAKE
31637 Newbury Dr.
Avon Lake, OH 44012

and

EXPRESS CARS LTD.
c/o Robert P. Demarco, Esq.
Statutory Agent
30505 Bainbridge Rd., Suite 225
Solon, Ohio 44139

Defendants.

Judge: NANCY MARGARET RUSSO

CV 11 756464

JUDGE

**COMPLAINT, REQUEST FOR
DECLARATORY AND INJUNCTIVE
RELIEF, DAMAGES AND CIVIL
PENALTIES**

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through its counsel, the Attorney General of Ohio, Mike 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 Consumer Sales Practices Act, R.C. 1345.01 et seq.
2. The actions of Defendants Express Cars Ltd. and Thomas Sullivan (Defendants), have occurred in the State of Ohio and Cuyahoga County and violate the Consumer Sales Practices Act, R.C. 1345.01 et seq.

3. This Court has jurisdiction over the subject matter of this action pursuant to R.C. 1345.04 of the Consumer Sales Practices Act.
4. This Court has venue to hear this case pursuant to Civ. R. 3(B)(1)-(3), in that some of the transactions complained of herein, and out of which this action arises, occurred in Cuyahoga County, Ohio.

DEFENDANTS

5. Defendant Express Cars Ltd. is an Ohio limited liability company with its principal place of business located at 6444 Union Avenue, Cleveland, Ohio 44105.
6. Defendant Thomas Sullivan owns and operates Defendant Express Cars Ltd., and directs and controls all business activities of the limited liability defendant, including the solicitation for sale and sale of used motor vehicles and motor vehicle repairs. Defendant Thomas Sullivan also does business as Express Muffler and Brake as a sole proprietorship.
7. Defendants are “suppliers” as that term is defined in R.C. 1345.01(C) as Defendants, at all times relevant herein, engaged in the business of effecting “consumer transactions” by soliciting for sale and selling used motor vehicles and motor vehicle repairs to “individuals” from Cuyahoga County, other counties in the State of Ohio, and in other states for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
8. Defendants were motor vehicle dealers as that term is defined in R.C. 4517.01(L).

STATEMENT OF FACTS

9. Defendants were at all relevant times engaged in the business of soliciting, promoting, leasing, purchasing, and/or selling motor vehicles, or soliciting or selling the repair of motor vehicles.
10. Defendant Express Cars Ltd., at all relevant times hereto, was licensed by the Ohio Bureau of Motor Vehicles under dealer license number UD018710.
11. Defendants accepted deposits from consumers without obligating the Defendants to refrain for a specified period of time from offering for sale to any other person the goods; and failed to provide at the time of the initial deposit a dated written receipt stating clearly and conspicuously the cash selling price and the amount of the deposit, and whether the deposit was refundable and under what conditions, to wit: Defendants accepted a deposit in the amount of One Thousand Seven Hundred Dollars and 00/100 (\$1,700.00) from Ohio consumer Arthur O'Neal, on behalf of Ohio consumer Rennel Johnson, to be credited towards the purchase of a 1999 4 door Chevrolet Malibu vehicle identification number 1G1ND52J9X6226485. Defendants failed to state a specified period of time within which Defendants would refrain from selling the vehicle. Defendants also failed to provide either Mr. O'Neal or Mr. Johnson with a dated receipt stating the cash selling price and the amount of the deposit, and whether the deposit was refundable and under what conditions.
12. Defendants failed to immediately make available a refund of a consumer's deposit when the consumer's offer was not accepted within four working days of delivery of such deposit, to wit: On February 13, 2010, Defendants accepted a deposit in the amount of One thousand Seven Hundred Dollars and 00/100 (\$1,700.00) from

Ohio consumer Arthur O'Neal, on behalf of Ohio consumer Rennel Johnson, to be credited towards the purchase of a 1999 4 door Chevrolet Malibu vehicle identification number 1G1ND52J9X6226485. Defendants sold the vehicle to another consumer on March 8, 2010 and failed to refund the deposit.

13. Defendants failed to file an application for certificate of title within thirty days after the assignment or delivery of a motor vehicle, to wit: On December 22, 2009 Defendants sold a 1993 Chevrolet Geo Prism vehicle identification number 1Y1SK5385PZ036690 to Ohio consumer John Valentine for a total purchase price of Two Thousand Eighty Eight Dollars and 47/100 (\$2,088.47). The motor vehicle was titled to Defendants on June 11, 2009. To date Defendants have failed to make application for a certificate of title in the consumer's name.
14. Defendants charged a documentary service fee in a motor vehicle transaction that exceeded ten percent of the amount the buyer was required to pay pursuant to the contract, excluding tax, title and registration fees, and any negative equity adjustment, to wit: On December 22, 2009 Defendants sold a 1993 Chevrolet Geo Prism, vehicle identification number 1Y1SK5385PZ036690, to Ohio consumer John Valentine for a total purchase price of Two Thousand Eighty Eight Dollars and 47/100 (\$2,088.47), which price included a Two Hundred Dollar (\$200.00) documentary service fee. The price the buyer was required to pay pursuant to the contract, excluding tax, title and registration fees, and any negative equity was One Thousand Six Hundred Ninety and 00/100 (\$1,690.00). The maximum permissible documentary service fee was therefore One Hundred Sixty Nine and 00/100 (\$169.00).

15. Defendants failed to file an application for certificate of title within thirty days after the assignment or delivery of a motor vehicle, to wit: On January 28, 2010, Defendants sold a 1998 Dodge Neon vehicle identification number 1B3ES47Y1WD511738 to Ohio consumer Shrun Phillipott for a total purchase price of Two Thousand Nine Hundred Fifty Dollars and 47/100 (\$2,950.47). To date, Defendants have failed to make application for a certificate of title in the consumer's name.
16. Defendants failed to send a notice setting forth specifically circumstances constituting a default within five days after repossessing a consumer's motor vehicle, to wit: On January 28, 2010, Defendants sold a 1998 Dodge Neon vehicle identification number 1B3ES47Y1WD511738 to Ohio consumer Shrun Phillipott for a total purchase price of Two Thousand Nine Hundred Fifty Dollars and 47/100 (\$2,950.47). On or about March 27, 2010, Defendants repossessed the vehicle and failed to provide consumer notice of the circumstances constituting the default.
17. Defendants failed to dispose of a consumer's vehicle after repossession in a commercially reasonable manner, and failed to provide a notice to the consumer at least ten 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, to wit: On January 28, 2010, Defendants sold a 1998 Dodge Neon vehicle identification number 1B3ES47Y1WD511738 to Ohio consumer Shrun Phillipott for a total purchase price of Two Thousand Nine Hundred Fifty Dollars and 47/100 (\$2,950.47). On or about March 27, 2010,

Defendants repossessed the vehicle. On July 21, 2010, Defendants applied for a certificate of title in the name of consumer Abeni Dennis. Defendants did not send a notice to debtor at least ten days prior to such sale.

18. Defendants represented that a consumer transaction involved a warranty and then failed to fulfill its obligations under the stated warranty, to wit: On December 18, 2009, Defendants agreed to repair brakes on a 1998 Chevrolet Malibu for Ohio consumer Virginia Robinson. The repair order indicated a one year warranty on the work performed. In February 2010 Ms. Robinson attempted to contact Defendants in order to obtain warranty service on the brakes that were installed. Defendants refused to honor its written warranty on the brakes.
19. Defendants continue to engage in consumer transactions while having unsatisfied judgments against them arising out of previous consumer transactions.

PLAINTIFF'S CAUSES OF ACTION

COUNT ONE

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. Defendants have committed unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act R.C. 1345.02 and Ohio Administrative Code 109:4-3-07 by accepting a deposit from a consumer without obligating the Defendants to refrain for a specified period of time from offering for sale to any other person the goods; and by failing to provide at the time of the initial deposit a dated written receipt stating clearly and conspicuously the cash selling price and the amount of the deposit, and whether the deposit was refundable and under what conditions.

22. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT TWO

23. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Nineteen (1-19) of this Complaint.
24. Defendants engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02 and Ohio Administrative Code 109:4-3-16(B)(16) by failing to immediately make available a refund of a consumer's deposit when the consumer's offer was not accepted within four working days of delivery of such deposit.
25. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT THREE

26. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Nineteen (1-19) of this Complaint.
27. 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 an application for certificate of title within thirty days after the assignment or delivery of a motor vehicle.
28. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FOUR

29. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Nineteen (1-19) of this Complaint.
30. Defendants engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02 and R.C. 4517.261 by charging a documentary service fee in a motor vehicle transaction that exceeded ten percent of the amount the buyer was required to pay pursuant to the contract, excluding tax, title and registration fees, and any negative equity adjustment.
31. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FIVE

32. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Nineteen (1-19) of this Complaint.
33. Defendants engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02 and R.C. 1317.12 by failing to send a notice setting forth specifically circumstances constituting a default within five days after repossessing a consumer's motor vehicle.
34. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT SIX

35. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Nineteen (1-19) of this Complaint.

36. Defendants engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02 and R.C. 1317.16 by failing to dispose of a consumer's vehicle after repossession in a commercially reasonable manner, and failing to provide a notice to the consumer at least ten 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.
37. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT SEVEN

38. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Nineteen (1-19) of this Complaint.
39. Defendants engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02 by representing that a consumer transaction involved a warranty and then failing to fulfill its obligations under the stated warranty.
40. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT SEVEN

41. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Nineteen (1-19) of this Complaint.
42. Defendants engaged in unfair, deceptive, and unconscionable acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02 and 1345.03, by

engaging in consumer transactions while having unsatisfied judgments against Defendants arising out of previous consumer transactions.

43. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- 1) ISSUE a permanent injunction, pursuant to R.C. 1345.07(A)(2), enjoining Defendants, their agents, servants, representatives, salesmen, employees, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, from engaging in the acts and practices of which Plaintiff complains.
- 2) GRANT A JUDGMENT against Defendants Express Cars Ltd. and Thomas Sullivan, for joint and several liability, in an amount sufficient to reimburse all consumers found to have been damaged by the Defendants' unfair and deceptive acts and practices, including, but not limited to, making restitution to consumers who entered into contracts with Defendants and against whom the acts described in this complaint were committed.
- 3) ISSUE a declaratory judgment, pursuant to R.C. 1345.07(A)(1), declaring that each and every act or practice complained of herein violates the Ohio Consumer Sales Practices Act in the manner set forth in this Complaint.
- 4) ASSESS, FINE and IMPOSE upon each Defendant, pursuant to R.C. 1345.07, a civil penalty of Twenty Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein.

- 5) ENJOIN Defendants from engaging as a supplier in any consumer transaction in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder.
- 6) GRANT Plaintiff all costs incurred in bringing this action.
- 7) GRANT such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,
MIKE DEWINE
Attorney General



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