

**IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
CIVIL DIVISION**

STATE OF OHIO, ex rel. :  
MICHAEL DEWINE :  
ATTORNEY :  
GENERAL OF OHIO :

**RECEIVED**  
ATTORNEY GENERAL OF OHIO

AUG 29 2016

Plaintiff, :

Case No. 15CV2843

CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

-v- :

JUDGE WOODS

TCB AUTOMOTIVE GROUP, :  
LLC, et al. :

Defendants. :

**ENTRY GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**  
**FILED MARCH 18, 2016**

This matter is before the Court on the Motion for Summary filed by Plaintiff, State of Ohio, on April 1, 2016 seeking summary judgment in its favor against Defendant Andrew Karabinos. Defendant Karabinos did not file a response. The matter is ripe for decision.

**I. STATEMENT OF THE CASE**

On April 1, 2015, Plaintiff filed this action against Defendant TCB Automotive Group, LLC, ("TCB") and Defendant Andrew Karabinos. Plaintiff's two Causes of Action stated in paragraphs 19-20 of the Complaint asserts that Defendants violated the Consumer Sales Practice Act ("CSPA"). First, Plaintiff alleges that Defendants violated R.C. 1345.02 by failing to file applications for certificates of title within thirty days after the assignment of delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b). (Compl. at ¶ 19.) Second, Plaintiff alleges that Defendants committed unfair and deceptive acts or practices in violation of CSPA, R.C. 1345.02(A), by selling motor vehicles to consumers in the ordinary course of business, and failing to obtain certificates of title on or before the 40<sup>th</sup> day of sale of the motor vehicles as

required by R.C. 4505.181(B)(1). (Compl. at ¶ 20.) Plaintiff seeks declaratory judgment, permanent injunctive relief, civil penalties, restitution, along with additional statutory fines and relief. (*Id.* at Prayer.)

Plaintiff failed to commence this action against Defendant TCB by obtaining service within one year as required by Civil Rule 3(A). Therefore, Defendant TCB is not a proper party to this action. However, Plaintiff alleged joint and several liability as to TCB and Defendant Karabinos and that he operated Defendant TCB and dominated, controlled and directed the activities of TCB. Service was obtained on Defendant Karabinos by ordinary mail on July 30, 2015.

On October 16, 2015, Defendant Karabinos filed a Notice of Bankruptcy Filing and Suggestion of Stay. As a result, this case was automatically stayed. Thereafter, on December 21, 2015, Plaintiff filed a motion to reinstate the case pursuant to the State of Ohio's police and regulatory power. 11 U.S.C. § 362(b)(4). Defendant Karabinos did not respond to Plaintiff's motion and on January 14, 2016 the Court granted the motion and reactivated this case.

On February 29, 2016, Plaintiff filed a Motion for Default Judgment against Defendant Karabinos. On March 18, 2016, Defendant Karabinos sought leave to file an Answer out of rule *instantly*, which the Court granted. Defendant's Answer entered a general denial as to Plaintiff's Complaint. On April 1, 2016, Plaintiff filed a Motion for Summary Judgment on its claim against Defendant Karabinos as to liability only. In support of Plaintiff's motion, Plaintiff relied on the deposition testimony of Defendant Karabinos. Defendant Karabinos did not file a response.

## **II. STANDARD OF REVIEW.**

Civ. R. 56(C) states, in part,

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written

stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

A motion for summary judgment is properly granted in favor of the moving party, if the Court, upon viewing the evidence in a light most favorable to the party against whom the motion is made, determines: "(1) [T]hat there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor." *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978).

After the movant satisfies its initial burden, the nonmoving party must go beyond the allegations or denials contained in his pleadings and affirmatively demonstrate the existence of a genuine issue of material fact in order to prevent the granting of a motion for summary judgment. See *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798 (1988). A nonmoving party cannot rest upon the allegations of the pleadings but must respond with affidavits or similar evidentiary materials demonstrating that a genuine issue of material fact exists for trial. *Dresher v. Burt* (1996), 75 Ohio St. 3d 280, 293, 662 N.E.2d 264, citing Civ.R. 53(E).

### III. DISCUSSION

The essence of Plaintiff's Complaint is that Defendant Karabinos violated CSPA through his control of TCB by (1) failing to file applications for certificates of title within thirty (30) days after the assignment of delivery of motor vehicles in violation of R.C. 1345.02 and R.C. 4505.06(A)(5)(b); and (2) 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).

Ohio law provides that a "corporate officer may be held personally liable for actions of the company if the officers take part in the commission of the act or if they specifically directed the particular act to be done, or participated or cooperated therein." *Mohme v. Deaton*, 12th Dist. No. CA 2005-12-133, 2006-Ohio-7042; *Young v. Featherstone Motors Inc.* (1954), 97 Ohio App. 158 and *State ex. rel. Fisher v. American Courts, Inc.* (1994), 96 Ohio App. 3d 297. This prevents an individual from doing injury and then escaping the consequences by shielding his responsibility behind a corporate entity. *Id.* at 11-12. A corporate officer will not be held personally liable for the acts of the corporation by mere virtue of his status as a corporate officer. To meet its initial burden, Plaintiff must demonstrate that no issue of material fact exists for trial. *Harless*, supra.

Plaintiff has provided sufficient Civ. R. 56 evidence that establishes that Defendant Karabinos exercised control over the corporation in such a manner as to commit the CSPA violations alleged in Plaintiff's Complaint. In support of its Motion, Plaintiff refers to the deposition testimony of Defendant Karabinos. Defendant was the sole owner of the corporation from February 2013 through April 2014. (Karabinos Dep. pp. 31, 41-42.) During this time, Defendant sold cars through the dealership to consumers, including the used cars sold to consumers James Bishop (*Id.*, p. 55), Christopher Brewer (*Id.*), Erika Bruner (*Id.*, p. 60), Christopher Henderson (*Id.*), Rashawn Jones (*Id.*, p. 64), Chester Miller (*Id.*, p. 65), Mahogani Sydnor (*Id.*, p. 67), and Malik Willoughby. (*Id.*) Defendant admitted that he dominated, controlled, and directed the business activities of Defendant TCB from February 2013 through April 2014 (*Id.*, p. 45), and that the "buck stopped with" him. (*Id.*, p. 41) Defendant controlled

every aspect of TCB, received the proceeds of the transactions, and does not deny that he personally engaged in conduct in violation of CSPA. Defendant admitted that “there was negligence and a lot of this was my fault”. (*Id.*, p. 71). Defendant Karabinos admitted that he failed to file applications for certificates of titles after the assignment of delivery of motor vehicles to consumers (*Id.* pp. 68-70), and admitted that he failed to obtain certificates of titles on or before the Fortieth (40<sup>th</sup>) day of sale of the motor vehicles as required by R.C. 4504.181(B)(1) (*Id.* at 70).

The Court finds that Plaintiff has met its initial burden demonstrating that no genuine issues of fact exist for trial concerning liability. Defendant has failed to meet its reciprocal burden. Accordingly, Plaintiff is entitled to summary judgment as to liability only. A bench trial as to damages and other relief for which Plaintiff may be entitled to is scheduled for November 10, 2016 at 9:00 a.m.

**IT IS SO ORDERED.**

*Copies to all counsel via electronic filing system.*

Franklin County Court of Common Pleas

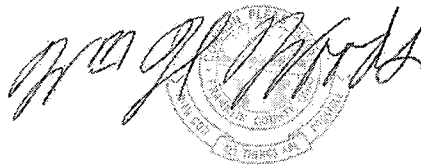
**Date:** 08-26-2016

**Case Title:** OHIO STATE ATTORNEY GENERAL -VS- TCB AUTOMOTIVE  
GROUP LLC ET AL

**Case Number:** 15CV002843

**Type:** ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "W. H. Woods", is written over a circular official seal. The seal contains the text "CLERK OF COURTS OF THE COMMON PLEAS" and "FRANKLIN COUNTY, OHIO".

/s/ Judge William H. Woods