

IN THE COURT OF COMMON PLEAS  
OTTAWA COUNTY, OHIO

GARY A. KOHLI  
CLERK OF COURTS  
OTTAWA COUNTY, OHIO

2018 SEP 24 A 10: 26

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

Plaintiff,

v.

TOM'S TOYS, Inc. et al.,

Defendants.

) CASE NO. 2018 CV H 143

) JUDGE BRUCE WINTERS

) CONSENT JUDGMENT AND  
) AGREED ENTRY AND ORDER  
) WITH DEFENDANTS  
) TOM'S TOYS INC. AND  
) THOMAS E. OWENS

PREAMBLE

This matter came upon the filing of a complaint by Plaintiff, State of Ohio, charging Defendants Tom's Toys, Inc. and Thomas E. Owens ("Defendants") with violations of 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.* Plaintiff and Defendants have agreed to settle and resolve all matters alleged in that complaint. By signing this Consent Judgment and Agreed Entry and Order ("Consent Judgment"), Defendants waive service of process of the summons and complaint, and/or any defects therein, submit to the personal jurisdiction of this Court, consent to the entry of this Judgment pursuant to R.C. 1345.07(F), to the imposition of this Consent Judgment, and to the rights of Plaintiff to enforce this Consent Judgment.

FINDINGS OF FACT

1. Defendant Tom's Toys ("Tom's") is an Ohio corporation last operating at 250 Southeast Catawba Road, Port Clinton, Ohio 43452 (Ottawa Cty.).
2. Defendant Tom's also had locations at 4815 Urbana Road, Springfield, Ohio 45502 (Clark Cty.) and 2445 Columbus Lancaster Road Northwest, Lancaster, Ohio 43130

(Fairfield Cty.).

3. Defendant Thomas E. Owens ("Owens") is an individual whose address is 2307 South Harbor Bay, Marblehead, Ohio 43440.
4. Defendant Owens had an ownership interest in and operated Defendant Tom's, dominated, controlled and directed the business activities and sales conduct of Tom's, exercised the authority to establish, implement or alter the policies of Tom's, and committed, allowed, directed, ratified or otherwise caused the following unlawful acts to occur.
5. 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 locations in Port Clinton, Springfield, and Lancaster, to consumers residing in Ottawa, Clark, Fairfield, and other Ohio counties as well as consumers in other states.
6. Defendants, operating under the name Tom's Toys, solicited individual consumers to enter into consumer transactions, specifically for the sale of both new and used motor vehicles.
7. At all relevant times hereto, Defendants held license #ND003813 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 at 250 Southeast Catawba Road, Port Clinton, Ohio 43452.
8. At all relevant times hereto, Defendants held license #ND003796 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 at 4815 Urbana Rd., Springfield, Ohio

45502.

9. At all relevant times hereto, Defendants held license #ND003961 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 at 2445 Columbus Lancaster Rd. N.W., Lancaster, OH 43130.
10. At all relevant times hereto, the Defendants were displaying or selling used motor vehicles at the Tom's locations in Port Clinton, Springfield, and Lancaster.
11. The Defendants failed to file applications for certificates of title within Thirty (30) days after the assignment or delivery of motor vehicles.
12. The Defendants failed to obtain certificates of title on or before the Fortieth (40th) day after the sale of motor vehicles.
13. The Title Defect Recision ("TDR") Fund, which is administered by the Ohio Attorney General's Office, paid \$20,090.36 in consumer claims because the Defendants failed to obtain certificates of title within Forty (40) days of the sale of motor vehicles.
14. The Defendants continued to operate after failing to post a bond after the Attorney General paid retail purchasers of the Defendants from the TDR Fund due to Defendants failure to deliver titles to the purchasers.

#### CONCLUSIONS OF LAW

1. The Attorney General is the proper party to commence these proceedings under the authority vested in him by the R.C. 1345.07 of the CSPA, and the Certificate of Motor Vehicle Title Act, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of Ohio.

2. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
3. This Court has venue to hear this case, pursuant to Civ.R. 3(B)(1)-(3), because Defendant Owens resides in, Defendants operated their business from, and Defendants engaged in the complained of transactions in Ottawa County.
4. Defendants were "suppliers," as that term is defined in R.C. 1345.01(C), because they engaged in the business of effecting or soliciting "consumer transactions," as that term is defined in R.C. 1345.01(A).
5. 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 of R.C. 1345.01(A) and (D).
6. Defendants committed unfair and deceptive acts or 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).
7. 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 the sale of the motor vehicles as required by R.C. 4505.181(B)(1).
8. The Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by continuing to operate after failing to post a bond after the Attorney General paid retail purchasers of the Defendants from the TDR Fund due to Defendants' failure to deliver titles to the purchasers as required by R.C. 4505.181(A)(2).

9. The actions, as set forth above, are in violation of the CSPA and the Certificate of Motor Vehicle Title Act.
10. 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).

#### ORDER

- A. The court hereby DECLARES that the acts and practices described above violate the CSPA and the Certificate of Motor Vehicle Title Act in the manner set forth herein.
- B. Defendants, doing business under the name Tom's Toys, Inc. or any other name, their officers, agents, representatives, salespersons, employees, successors, or assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership or association, are hereby PERMANENTLY ENJOINED from engaging in unfair, deceptive, or unconscionable acts or practices that violate the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, 109:4-3-01 *et seq.*, or the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.*, including, without limitation, violations of the specific statutes described in this Consent Judgment.
- C. IT IS FURTHER ORDERED that the Defendants, jointly and severally, shall reimburse the TDR Fund, which is administered by the Ohio Attorney General, in the amount of Twenty Thousand Ninety Dollars and Thirty-Six Cents (\$20,090.36). A payment of One Thousand Dollars (\$1,000.00) shall be made at or before the filing of this Consent Judgment. The remainder due the TDR Fund shall be paid in the amount of Five Hundred Dollars (\$500.00) monthly for 37 consecutive months, and a final payment of Five Hundred Seventy-Five Dollars and Thirty-Six Cents (\$575.36). The first payment is

due September 1, 2018 and thereafter on or before the 1<sup>st</sup> of each month until paid in full. Payment shall be made to the Ohio Attorney General Finance Specialist, 30 E. Broad St., 14th Floor, Columbus, Ohio 43215.

- D. Pursuant to R.C. 1345.07(D), Defendants, jointly and severally, shall pay a civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00). Seventeen Thousand Five Hundred Dollars (\$17,500.00) of the civil penalty is suspended so long as the Defendants are in compliance with all of the provisions of the Consent Judgment. Payment of the unsuspended Two Thousand Five Hundred Dollar (\$2,500.00) civil penalty shall be paid at the rate of Five Hundred Dollars per month for five months. Payments shall begin on the 1<sup>st</sup> of the month following the last payment made to pursuant to Paragraph C. Payment shall be made to the Ohio Attorney General Finance Specialist, 30 E. Broad St., 14th Floor, Columbus, Ohio 43215.
- E. Defendants shall obtain and post with Plaintiff, a bond in favor of the State of Ohio from a surety company authorized to do business in this State, in an amount of not less than Twenty-Five Thousand Dollars (\$25,000.00), to be used solely for the purpose of compensating retail purchasers of motor vehicles, manufactured homes, or mobile homes who suffer damages due to the failure of Defendants to transfer title as required by R.C. 4505.181(A)(2). This surety shall remain in effect for a period of three years from the date of its issuance.
- F. IT IS FURTHER ORDERED that if the Defendants fail to deliver any payment due hereunder in accordance with the payment schedule herein, all remaining payments shall immediately become due and payable hereunder.

- G. IT IS FURTHER ORDERED that the acceptance of any payment by the Plaintiff subsequent to the time it is due pursuant to Paragraphs C-D or the failure of the Plaintiff to insist on strict performance of any order contained within this Consent Judgment including, but not limited to, the obligation created by the acceleration provision in Paragraph F of this Consent Judgment, shall not be construed as a waiver of any of the obligations created by this Consent Judgment.
- H. IT IS FURTHER ORDERED that Defendant Owens shall be prohibited from applying for or obtaining an auto dealer or salesperson license under Chapter 4517 of the Revised Code if he is not in compliance with all of the provisions of this Consent Judgment.
- I. Defendants shall not represent, directly or indirectly, that the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of their business operations.
- J. IT IS FURTHER ORDERED that, in the event that the Ohio Attorney General must initiate legal action or otherwise incur any costs to compel Defendants to abide by this Consent Judgment, and the Attorney General should prevail in that action, then Defendants, jointly and severally, shall be liable to the Ohio Attorney General for all related enforcement costs, including but not limited to, a reasonable sum for attorney fees and investigative costs.
- K. Defendants, jointly and severally, shall pay all court costs associated with this action.

**IT IS SO ORDERED**

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DATE

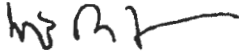
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JUDGE

*Bruce Winters*  
09/24/2018

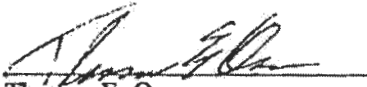


Agreed to by:

MICHAEL DEWINE  
Attorney General



Rosemary E. Rupert (0042389)  
Assistant Attorney General  
Title Defect Recision Unit Director  
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*Counsel for Plaintiff*



Thomas E. Owens  
2307 South Harbor Bay  
Marblehead, Ohio 43440  
*Defendant*



Tom's Toys, Inc.  
By: Thomas E. Owens  
*Defendant*