

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
16th DIVISION

STATE OF ARKANSAS *ex rel.*
DUSTIN MCDANIEL, ATTORNEY GENERAL

PLAINTIFF

vs.

CASE NO. CV 2008-4715

MSC SELF STORAGE, LLC,
D/B/A MERRILL CHECK CASHING,
MCC SELF STORAGE, LLC,
D/B/A MERRILL CHECK CASHING,
RAYMOND MERRILL, AND
J.T. COMPTON
DEFENDANTS

FILED 06/16/2009 10:53:58
Pat O'Brien Pulaski Circuit Clerk
024_____

CONSENT JUDGMENT

The State of Arkansas *ex rel.*, Dustin McDaniel, Attorney General, filed this action pursuant to the Arkansas Deceptive Trade Practices Act, ARK. CODE ANN. §§ 4-88-101, *et seq.* The Attorney General and the Defendants wish to resolve this action. The Attorney General and the Defendants recognize that this Consent Judgment has been negotiated by the parties in good faith, and that this Consent Judgment is fair, reasonable, and in the public interest. Based upon the facts and matters before this Court, and with the consent of the parties to this Judgment, it is hereby ORDERED, ADJUDGED, and DECREED:

I. Definitions

1. Unless otherwise indicated, the terms used herein shall carry those definitions provided by the Arkansas Deceptive Trade Practices Act, ARK. CODE ANN. §§ 4-88-101, *et seq.*
2. Unless otherwise indicated, any reference to "Defendants" includes MSC Self Storage, LLC, MCC Self Storage, LLC, Raymond Merrill, and J.T. Compton.

II. Jurisdiction

3. The Attorney General brought this enforcement action pursuant to the Arkansas Deceptive Trade Practices Act. This Court has jurisdiction over this matter, and the parties hereto pursuant to Ark. Code Ann. § 4-88-104, and the common law of the State of Arkansas. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, § 4-88-112, and the common law of the State of Arkansas. The Defendants have transacted business in the State of Arkansas.

4. For purposes of this Consent Judgment, the Attorney General and the Defendants waive all objections and defenses that they may have to the jurisdiction or venue of the Circuit Court of Pulaski County, Arkansas, and shall not challenge the Court's jurisdiction in any subsequent action to enforce the terms of this Consent Judgment.

III. Parties Bound

5. This Consent Judgment applies to and is binding upon the Attorney General, MSC Self Storage, LLC, MCC Self Storage, LLC, Raymond Merrill, and J.T. Compton.

6. Any change in ownership or status of a party, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such parties' responsibilities under this Consent Judgment.

IV. The Attorney General's Position

7. Defendants have operated what are commonly known as "payday loan" businesses in Arkansas under the name Merrill Check Cashing.

8. Defendants offered and made short term, high interest loans. Funds were advanced to Arkansas consumers secured by the consumers' personal checks. The amount of each advance was less than the face value of the check presented. The loans were structured as short term (usually 14 to 30 day) single payment transactions with principal and interest due in one payment, although the Defendants commonly allowed the borrowers to "roll over" the loan by paying only the interest due, or by executing a new loan immediately after the payoff on the previous loan. Such activities or transactions may hereafter be identified as a "Payday Lending Transaction(s)," or "Payday Loan(s)."

9. Defendants have charged interest at annual percentage rates ranging from approximately 173% to 868%, depending on the terms of each Payday Lending Transaction.

10. Defendants held licenses issued by the Arkansas State Board of Collections Agencies. The Arkansas State Board of Collections Agencies formerly issued licenses to payday lenders pursuant to the Arkansas Check Cashers Act, ARK. CODE ANN. § 23-52-100, *et seq.*, which was found unconstitutional. See *McGhee v. Arkansas Board of Collection Agencies and American Manufactures Mutual Insurance Company*, No. 08-164 (AR S. Ct. Nov. 6, 2008). At no time did the Check Cashers Act authorize or condone unconscionable lending transactions that violated the Arkansas Constitution and the Deceptive Trade Practices Act. See *Arkansas Board of Collection Agencies and Old Republic Surety Company v. McGhee, et al.*, 372 Ark. 136, ___ S.W.3d ___ (2008); *Staton v Arkansas Board of Collection Agencies and American Manufactures Mutual Insurance Company*, 372 Ark. 387, ___ S.W.3d ___, (2008).

11. The Payday Lending Transactions engaged in by the Defendants constitute deceptive and unconscionable trade practices prohibited by the Arkansas Deceptive Trade Practices Act. The prohibited Payday Lending Transactions engaged in by the Defendants include, but likely are not limited to, violations of Arkansas Code Ann. §§ 4-88-107(a)(10). More specifically, the Defendants have violated the Deceptive Trade Practices Act by charging and collecting unconscionable rates of interest on short term Payday Lending Transactions. The practice of charging ultra-high usurious rates of interest is unconscionable as a matter of law.

12. The Attorney General specifically denies the assertions of the Defendants set forth in the Defendants' position in this Consent Judgment.

V. THE DEFENDANTS' POSITION

13. The legislature passed the Arkansas Check Casher's Act (the "Act") in 1999, and from that date the Arkansas State Board of Collection Agencies regulated and approved Defendant's contracts, fees, signage and virtually every single aspect of the business operations. That Act has now been declared unconstitutional.

Defendants were participants in a highly regulated entity that Arkansas expressly authorized them to enter into the transactions and charge the fees now claimed unlawful. Defendants relied in good faith on the State's actions in continuing to do business pursuant to the requirements of the Act.

Common law, constitutional due process and the basic precepts of fairness and justice require that Defendants should not be penalized retroactively for complying with a state statute and state regulations that were presumably valid.

To violate Arkansas's usury law, there must be evidence that the lender intended to take or receive more than legal interest. Defendants did not have the requisite intent. Their strict compliance with the law, rules and regulations as a highly regulated entity licensed by the Arkansas State Board of Collection Agencies precludes a finding of usurious intent. Further, where there is no intentional and deliberate violation of the usury provisions of the Arkansas Constitution, there can be no violation of the Arkansas Deceptive Trade Practices Act.

The Defendants specifically deny the assertions of the Attorney General set forth in the Attorney General's position in this Consent Judgment.

VI. Relief

14. This Consent Judgment is intended to preclude the Defendants from engaging in any type or form of Payday Lending Transactions in violation of the Arkansas Constitution and current Arkansas law. For the purposes of this injunction, the definition of a payday loan includes, but is not limited to, deferred presentment transactions where a consumer presents a personal check as collateral for the present payment of funds and the lender agrees to hold the check. Both the Attorney General and the Defendants acknowledge that there are other methods and models of payday lending; accordingly, the Defendants shall hereafter be permanently restrained and enjoined from engaging or entering into any type, shape or form of Payday Lending in the State of Arkansas. Specifically, Defendants are enjoined from charging or collecting any payments on any Payday Lending transactions, or variation of such transaction, in the State of Arkansas where the interest charged is in excess of that allowed by the Arkansas

Constitution, Article 19, § 13 and the Arkansas Deceptive Trade Practices Act, ARK.

CODE ANN. §§ 4-88-101, *et seq.*

15. More specifically, Defendants are permanently restrained and enjoined from using any plan, device, model, mechanism, or other sham, to avoid the terms of this Consent Judgment. Prohibited practices include, but are not limited to, internet based lending with residents of the State of Arkansas, regardless of the location from which the Defendants or their agents may claim they are operating.

16. All outstanding contracts for Defendants' Payday Lending Transactions which were entered into with residents of the State of Arkansas are hereafter cancelled. Furthermore, the Defendants shall take no action, formal or informal, to attempt to enforce any such obligation to which any Arkansas resident may arguably be subject pursuant to any Payday Lending contracts. Specifically, the Defendants shall take no action to enforce such contracts, nor to collect any sums which might arguably be due pursuant to such contracts. Defendants shall not contract with any third party debt collectors regarding these Payday Lending Transactions, nor sell any obligations arguably due from these transactions. Defendants shall make no negative reports to any credit bureau, check clearing house, or other related service with respect to any of these Payday Lending Transactions.

17. Prior to the entry of this Judgment, the Defendants have, collectively, paid the sum of \$25,000.00 to the Attorney General, and the Attorney General hereby acknowledges the receipt of said sum. On or before November 1, 2009, the Defendants shall pay an additional sum of \$25,000.00 to the Attorney General. All monies shall be delivered to the Chief Financial Officer of the Attorney General's office and shall be

made payable to the Office of the Attorney General. A copy of all checks shall be delivered to Charles Saunders, Assistant Attorney General. All checks may be delivered to Office of the Attorney General, 323 Center Street, suite 200, Little Rock, AR 72201. Both sums shall be held in trust by the Attorney General for purposes directly related to the Attorney General's consumer education and enforcement efforts.

18. In addition to the \$50,000.00 payment, the Defendants agree to be contingently liable for the payment of an additional \$50,000.00. However, the imposition of the additional \$50,000.00 sum will be suspended for a period of five years. The payment of said additional sum shall be contingent upon the following conditions: 1) failure to make the November 1, 2009 payment in a timely fashion shall result in the imposition of the additional \$50,000 liability; 2) upon a specific finding by this Court that any one of the Defendants has materially breached a substantive term of this agreement within said five year period commencing on the date this Consent Judgment is entered. A violation of either provision shall cause the sum to be immediately due and payable. After the expiration of five years from the entry of this Judgment, this contingent liability shall expire and the contingent payment of \$50,000.00 shall no longer be collectable by the Attorney General. However, neither the suspension of such payment nor the expiration of such contingency shall prevent the Attorney General from pursuing any and all actions and claims available to the Attorney General for any conduct occurring after the entry of this Consent Judgment.

19. Defendants are jointly and severally liable for all sums to be paid under the terms of this Consent Judgment, including the contingent sum of \$50,0000.00.

20. This Consent Judgment constitutes the entire agreement of the parties.

The undersigned acknowledge that there are no communications or oral understandings contrary, different, or which in any way restrict this Consent Judgment and that any and all prior agreements or understandings within the subject matter of this Consent Judgment are, upon the effective date of the Consent Judgment, superseded, null and void.

21. This Consent Judgment resolves and releases all civil claims, causes of action, or proceedings which were or could have been asserted by the Attorney General against Defendants for those practices alleged within its Original Complaint. Nothing within this Consent Judgment, however, precludes the Attorney General from instituting any cause of action against any party not a party to this Consent Judgment. Nor shall this release or in any way limit the authority of the Attorney General to conduct such investigations as he deems advisable or to bring any enforcement action regarding potential violations of law unrelated to its Original Complaint or those occurring after the date of this Consent Judgment. The Attorney General is empowered to investigate potential violations of this consent judgment as well as to seek enforcement of any and all sections of this Consent Judgment by appropriate petition to this Court.

22. Nothing in this Consent Judgment shall be construed to deprive any person or entity not a signatory hereto of any private right of action of any kind whatsoever, nor shall this Consent Judgment be construed to create any private right of action for any person or entity not a signatory hereto.

23. Nothing herein shall be construed as the endorsement of or acquiescence in, any trade practices of the Defendants, past, current, or future; and, the Defendants shall make no representations to the contrary.

24. This consent judgment is not an admission of liability on the part of Defendants, but rather represents the settlement of disputed issues. The payment of any sums hereunder does not constitute the payment of any fines or penalties.

25. This Consent Judgment will be construed and enforced under the laws of the State of Arkansas.

VII. Signatories

26. Each undersigned representative of a party certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and legally bind such parties to its terms.

27. This Consent Judgment is made and entered into by and between the parties hereto and on this 9th day of June, 2009.

Charles Saunders
Charles Saunders
Assistant Attorney General

Claire Hancock
Claire Hancock
Attorney for the Defendants

See attached duplicate
Raymond Merrill

J. T. Compton
J. T. Compton

SO ORDERED:

Dated: JUN 15 2009, 2009.

Ellen B. Brantley
The Honorable Ellen Brantley
Circuit Judge, 16th Division

Judge Ellen B. Brantley
16th Division Circuit Court
Date 6-15-09
Jury Trial
Bench Trial
Non-Trial

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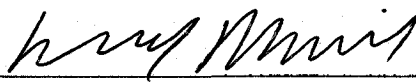
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Charles Saunders
Assistant Attorney General

Claire Hancock
Attorney for the Defendants

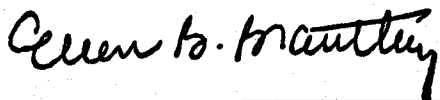


Raymond Merrill

J.T. Compton

SO ORDERED:

Dated: 6-15, 2009.



The Honorable Ellen Brantley
Circuit Judge, 16th Division