

STATE OF NORTH CAROLINA
COUNTY OF WAKE

2017 FEB 23

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: 16 CV 005373

STATE OF NORTH CAROLINA,
ex rel. Josh Stein, Attorney General,

VS

Plaintiff,

v.

LIQUIDATION, LLC;
LOAN SERVICING SOLUTION, LLC;
SERVICING COMPANY DE, LLC;
WILLIAM WALTER MCKIBBIN, III;
KEVIN LEE CRONIN;
MARK EDWARD WEINER; and
BOBBY JOE MCKIBBIN; individually
and collectively d/b/a AUTOLOANS, LLC;
CAR LOAN, LLC; and SOVEREIGN
LENDING SOLUTIONS, LLC; and
Other unnamed individuals and entities;

**DEFAULT JUDGMENT AND
PERMANENT INJUNCTION ORDER AS
TO DEFENDANTS LIQUIDATION, LLC,
LOAN SERVICING SOLUTION, LLC,
SERVICING COMPANY DE, LLC,
WILLIAM WALTER MCKIBBIN, III,
and BOBBY JOE MCKIBBIN**

Defendants;

And

NORTH CAROLINA DIVISION OF
MOTOR VEHICLES;

Nominal Defendant only, named
solely for purposes of injunctive
relief.

THIS CAUSE came on to be heard before the undersigned judge on Plaintiff's, the State

of North Carolina, *ex rel.* Attorney General Josh Stein, motion for a final judgment and a default
judgment and permanent injunction order against Defendants Liquidation, LLC, Loan Servicing
Solution, LLC, Servicing Company DE, LLC, William Walter McKibbin, III, and Bobby Joe
McKibbin, individually and collectively doing business as AutoLoans, LLC, Car Loan, LLC, and

Sovereign Lending Solutions, LLC (hereafter, “Default Defendants”). Default Defendants did not appear and were not represented by counsel. From the record herein and argument of counsel, the Court finds as follows:

FINDINGS OF FACT

1. The State filed its *Complaint* and a *Motion for a Temporary Restraining Order and Preliminary Injunction*, which included seven supporting affidavits with documentary exhibits, on April 25, 2016.

2. In its Complaint, the State alleged that Default Defendants, acting in concert with the other named Defendants,¹ engaged in an illegal lending scheme in North Carolina by soliciting, extending, and collecting on usurious vehicle title loans made to North Carolina consumers that grossly exceeded allowable interest rate limits, and without being duly licensed, in violation of the Consumer Finance Act, N.C. Gen. Stat. § 53-164, *et seq.*, Chapter 24 of the General Statutes, and the Pawnbrokers and Cash Converters Modernization Act, N.C. Gen. Stat. § 66-385, *et seq.*; and engaged in unfair and deceptive practices by, among other practices, repossessing consumers’ vehicles that secured such illegal loans, in violation of N.C. Gen. Stat. § 75-1.1.

3. Since about 2014, through solicitations on the Internet and by telephone, Default Defendants have made and collected on more than 700 loans issued to North Carolina consumer borrowers, which Default Defendants secured by obtaining and recording liens upon consumers’ car titles. Default Defendants have loaned amounts to North Carolina borrowers ranging from a low of \$800.00 to an approximate high of \$7,000.00, with the majority of borrowers receiving

¹ As explained in paragraph 7. below, “Defendants” does not include NC-DMV, which is a nominal defendant only, and was named by the State solely to effectuate complete relief with regard to vehicle titles.

loan amounts ranging from \$1,000.00 to \$2,500.00. The annual percentage rate of interest (“APR”) on the loans range from a low of 161% to a high of 571%, and the average APR on the loans is 257%. The majority of the loans made to North Carolina borrowers require borrowers to make monthly payments for a period of 11 months, and then contain a final balloon payment due in the twelfth month, in an amount that often exceeds the original loan amount.

4. Default Defendants’ consumer loan agreements purport to be “pawn” transactions, and are styled as a “Pawn Ticket and Agreement.” In fact, Default Defendants’ transactions with North Carolina borrowers constitute consumer loans and are not pawn transactions, as at all times, consumers retained possession of their vehicles, unless and until Default Defendants seized them through repossession.

5. On April 28, 2016, this Court entered a Temporary Restraining Order, which was extended by orders entered by this Court on May 9, 2016 and on May 16, 2016. Among other provisions, the Temporary Restraining Order ordered Defendants to produce records identifying all loans made to North Carolina consumer borrowers by Defendants and account records for each such loan. Defendants failed to comply and produced no records to the State. On May 23, 2016, this Court entered a Preliminary Injunction Order which enjoined Defendants from soliciting, making, or collecting on any consumer loans to North Carolina borrowers and from placing or transferring liens on North Carolina consumers’ vehicle titles, except to return them to consumers.

6. Default Defendants failed to file an answer or other responsive pleading, and an entry of default was entered against all Default Defendants on November 28, 2016.²

² Entries of default were also entered against individual Defendants Kevin Lee Cronin (“Cronin”) and Mark Edward Weiner (“Weiner”). On or about March 13, 2017, Defendants Cronin and Weiner retained counsel who notified counsel for the State that they were represented. Consent

7. Nominal Defendant, the North Carolina Division of Motor Vehicles (“NC-DMV”) is a division of the North Carolina Department of Transportation, an administrative agency of the State of North Carolina, which is responsible for generating and maintaining records of motor vehicle titles and recording and releasing any associated liens that may be recorded on motor vehicle titles. NC-DMV has no relationship to Default Defendants or any other Defendant. NC-DMV was named as a defendant solely for the purpose of effectuating injunctive relief, including restraining Defendants’ placement of liens on North Carolina consumers’ vehicle titles and Defendants’ transfer of such titles; and to effect the cancellation of Defendants’ liens. The State asserts no claims against, and seeks no monetary relief from NC-DMV.

8. NC-DMV has appeared in the action through counsel and filed an answer on May 26, 2016. Due to the fact that NC-DMV was included as a party solely for jurisdictional and equitable purposes regarding any orders of the Court affecting automobile titles and associated liens recorded and maintained as a governmental function of NC-DMV, the terms “Defendant,” “Defendants,” and “Default Defendants” do not include NC-DMV; and NC-DMV is separately identified as “NC-DMV” where applicable. Counsel for NC-DMV has reviewed this Final Judgment and has no objection to its entry.

CONCLUSIONS OF LAW

9. The Court has jurisdiction over the parties and the subject matter of this action.
10. Default Defendants were properly served process under N.C.R. Civ. P. 4.
11. The usury laws of North Carolina iterate that the protection of North Carolina borrowers from illegal, usurious loans is a “paramount public policy” of the State, as N.C. Gen.

Judgments are being entered with regard to them as of today’s date.

Stat. § 24-2.1(g) provides: “It is the paramount public policy of North Carolina to protect North Carolina resident borrowers through the application of North Carolina interest laws.”

12. The Consumer Finance Act, N.C. Gen. Stat. § 53-166(a), requires that any person engaged in the business of lending cannot “directly or indirectly” contract for or receive consideration greater than that allowed by Chapter 24 of the North Carolina General Statutes without being licensed by the North Carolina Commissioner of Banks as a consumer finance lender.

13. The maximum rate allowed by Chapter 24, N.C. Gen. Stat. § 24-1.1, on contract loans of \$25,000 or less, is 16% per annum.

14. The Consumer Finance Act provides an exception to the 16% cap on interest rates set forth by Chapter 24, and allows consumer finance lenders licensed by the Commissioner of Banks to make consumer loans of up to \$15,000 at interest rates permitted by the Act.

15. For loans made on or after July 1, 2013,³ pursuant to N.C. Gen. Stat. § 53-176, the maximum interest rate that may be charged by licensed lenders to North Carolina consumer borrowers is 30% per annum.

16. For loans made prior to July 1, 2013, pursuant to former N.C. Gen. Stat. § 53-173, the maximum interest rate that may be charged by licensed lenders to North Carolina consumer borrowers is 36% per annum.

17. In an effort to address “illicit lending schemes” devised by lenders seeking to evade state usury laws, the North Carolina General Assembly amended the Consumer Finance

³ Session Law 2013-162 (SB 489), which became effective on July 1, 2013, made amendments to the Consumer Finance Act, which included increasing the maximum loan amount permitted under the Act from \$10,000 to \$15,000; altering the brackets governing the blended interest rates authorized by the Act; and reducing the maximum interest rate from 36% per annum to 30% per annum.

Act in 2006 to add a new provision, N.C. Gen. Stat. § 53-166(b), which expressly provides that the prohibitions of N.C. Gen. Stat. § 53-166(a) “apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.”

18. Default Defendants have engaged in the business of lending and are therefore subject to the provisions of the Consumer Finance Act, including N.C. Gen. Stat. § 53-166. None of the Default Defendants nor any other Defendant is or has ever been licensed as a consumer finance lender by the Commissioner of Banks.

19. Default Defendants have regularly made consumer loans to North Carolina borrowers at rates far in excess of the allowable limits in the Consumer Finance Act.

20. The Consumer Finance Act, N.C. Gen. Stat. § 53-166(d), expressly provides that loans made in violation of the Act are “void,” and further provides that “any party in violation shall not collect, receive, or retain any principal or charges whatsoever with respect to the [illegal] loan.”

21. Pursuant to N.C. Gen. Stat. § 53-190(a), loans made to North Carolina borrowers in violation of the Consumer Finance Act are unenforceable.

22. N.C. Gen. Stat. § 53-180(g) prohibits deceptive acts or practices both with regard to the making of loans and collecting or attempting to collect money alleged to be due under loans subject to the Act.

From the affidavits and record in this case, the State has made a sufficient showing to support its allegations, and the entry of this judgment.

BASED ON THE FOREGOING and the record herein, the Court concludes that good and sufficient cause exists for the entry of this *Final Judgment, and Default Judgment and Permanent Injunction Order as to Defendants Liquidation, LLC, Loan Servicing Solution, LLC,*

Servicing Company DE, LLC, William Walter McKibbin, III, and Bobby Joe McKibbin (hereafter “Final Judgment”) pursuant to N.C. Gen. Stat. §§ 53-166, 24-1.1, 24-2, 24-2.1, 75-14, 75-15, and 75-15.1.

FINAL JUDGMENT ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

A. All consumer loans made by Default Defendants to North Carolina consumer borrowers, including but not limited to transactions styled as pawns, are deemed void, and are hereby cancelled pursuant to Chapters 24, 53 and 75 of the General Statutes. Default Defendants, including any assignees or successors of Default Defendants, or any subsequent purchasers of Default Defendants’ loans to North Carolina consumer borrowers, shall have no right to payment on, or to collect upon, such loans.

B. Liens placed by Default Defendants on North Carolina borrowers’ vehicle titles, including any liens recorded under any aliases, alternative spellings, or variations of the names of the Default Defendants or any affiliated entities, are hereby declared void and shall be cancelled; and new vehicle titles cancelling Default Defendants’ liens shall be issued to North Carolina borrowers who are in possession of their vehicle(s), request a new title, and are otherwise entitled to a new title.

C. All funds of the corporate Default Defendants frozen by this Court’s Preliminary Injunction Order entered on April 28, 2016, and held in the name(s) of Liquidation, LLC; Loan Servicing Solution, LLC; or Servicing Company DE, LLC; or any other name used by Default Defendants, including but not limited to: Loan Servicing Solutions, LLC; Sovereign Lending Solutions, LLC; Management Company, LLC; AutoLoans, LLC; Car Loan, LLC; and/or Buy, Rent, Sell, LLC, hereby shall be released to the North Carolina Department of Justice for use for

consumer restitution and consumer protection purposes, in the discretion of the North Carolina Attorney General. More specifically, in accordance with this provision, all funds held in the following specified accounts at the financial institutions named below shall be transferred by the financial institution to the North Carolina Department of Justice within five (5) business days of the financial institution's receipt of a copy of this Final Judgment, Default Judgment and Permanent Injunction Order:

- (1) Account of Loan Servicing Solution, LLC – Account number ending in 9009 at Citibank, N.A.;
- (2) Account of Servicing Company DE, LLC – Account number ending in 0317 at Fifth Third Bank;
- (3) Account of Servicing Company DE, LLC – Account number ending in 3222 at First Internet Bank;
- (4) Account of Buy, Rent, Sell, LLC – Account number ending in 0200 at Wells Fargo Bank, N.A.; and
- (5) Account of Loan Servicing Solution, LLC – Merchant Account held at Offspring Financial, LLC.

PERMANENT INJUNCTION PROVISIONS

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Default Defendants Liquidation, LLC; Loan Servicing Solution, LLC; Servicing Company DE, LLC; William Walter McKibbin, III; and Bobby Joe McKibbin, individually and collectively doing business as AutoLoans, LLC; Car Loan, LLC; and Sovereign Lending Solutions, LLC, together with their officers, agents, employees, attorneys, and all persons in active or future concert or participation with them, are hereby permanently enjoined as follows:

A. Default Defendants shall not assign, transfer, or sell, or attempt to assign, transfer, or sell any existing consumer loans made to North Carolina borrowers to any person or entity; and if any such loans have been assigned, transferred, or sold, Default Defendants shall notify all

assignee(s) or purchaser(s) that such loans are void and have been cancelled pursuant to this Final Judgment, and that the assignee or purchaser has no right to collect on the loans.

B. Default Defendants shall not engage, participate, or facilitate, directly or indirectly, in soliciting, offering, making, arranging, or collecting on any consumer loans, including loans styled as pawns, to North Carolina borrowers;.

C. Default Defendants shall not engage, participate, or facilitate, directly or indirectly, in the placement of liens on vehicles or vehicle titles of North Carolina consumers or repossess any vehicle owned by a North Carolina consumer borrower, or located in the State of North Carolina.

D. “Consumer loan” as used in this Final Judgment, Default Judgment and Permanent Injunction Order shall include any transaction, the purpose of which, taken as a whole, is to advance funds to a North Carolina consumer, or to a North Carolina sole proprietor where the funds are actually used for a personal, family or household purpose, with the expectation of repayment, whether the transaction is styled as a loan, pawn, lease, or other transaction.

CIVIL PENALTIES

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the State, pursuant to N.C. Gen. Stat. §§ 75-1.1 and 75-15.2, shall have and recover of Default Defendants Liquidation, LLC; Loan Servicing Solution, LLC; Servicing Company DE, LLC; William Walter McKibbin, III; and Bobby Joe McKibbin; jointly and severally, the sum of three million and five hundred thousand dollars (\$3,500,000.00) for civil penalties. To the extent loan account information becomes available to the State from which the State may determine restitution owed

by Default Defendants to North Carolina consumers, the State may move to amend this judgment to include a money judgment for such amount.

This the 8~~th~~ day of May, 2017, at 11:52 Am.

By: *Robert H. Apperson*
Superior Court Judge Presiding

From Article at GetOutOfDebt.org