

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

2021 MAY 26 PM 1:44

SUPERIOR COURT DIVISION

NO. 20 CVS 04181

WAKE CO., C.S.C.

STATE OF NORTH CAROLINA *ex rel.*)
 JOSHUA H. STEIN, Attorney General,)
)
 Plaintiff,)
)
 v.)
)
 ALPHA FINANCE COMPANY,)
)
 Defendant.)

**DEFAULT JUDGMENT
AND ORDER**

Pursuant to Rule 55 of the North Carolina Rules of Civil Procedure, the undersigned Judge, presiding over the May 23, 2021 civil session of Wake County Superior Court, grants the Motion for Judgment by Default of Plaintiff State of North Carolina, *ex rel.* Joshua H. Stein, Attorney General, against Defendant Alpha Finance Company. Based upon the Court’s review of the record and the arguments of counsel, the Court makes the following:

FINDINGS OF FACT

1. The Plaintiff in this case is the State of North Carolina (“the State”), acting through its Attorney General, Joshua H. Stein, pursuant to authority granted in Chapters 75 and 114 of the North Carolina General Statutes.
2. The Defendant in this case is Alpha Finance Company (“Defendant”).
3. The State filed its Complaint, with supporting exhibits, on March 23, 2020.
4. In its Complaint, the State alleged that Defendant engaged in trade and commerce affecting consumers within the meaning of the Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.* The State alleged that Defendant’s unlawful acts and practices included, but were not limited to, the following:

- (a) Refusing to accept payments from consumer borrowers on loans made under the Retail Installment Sales Act, N.C. Gen. Stat. § 25-1.1A, *et seq.*, causing borrowers' interest to continue to accrue and borrowers' loan balances to increase;
- (b) Failing to apply or properly apply borrowers' payments to borrowers' accounts;
- (c) Failing to provide borrowers with statements of account, and to otherwise maintain current and accurate account records;
- (d) Failing to forgive borrowers' loans or to take other measures to mitigate harm to borrowers, including selling or assigning the loans;
- (e) Failing to release Defendant's security interests in collateral taken, causing borrowers to be unable to obtain clear title to the collateral and sell or transfer the collateral; and
- (f) Through the above actions, negatively impacting borrowers' ability to obtain other credit.

5. The State alleged that Defendant's actions violated Defendant's loan agreements with borrowers, and that Defendant thereby violated the Retail Installment Sales Act, N.C. Gen. Stat. §§ 25A-22, 25A-27, and 25A-35.

6. The State further alleged that Defendant engaged in violations of North Carolina's Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*, as pursuant to N.C. Gen. Stat. § 25A-44(4), the knowing and willful violation of any provision of the Retail Installment Sales Act constitutes an unfair trade practice under N.C. Gen. Stat. § 75-1.1. The State sought a permanent injunction, civil penalties, and other equitable relief against Defendant.

7. Defendant failed to file an answer or other responsive pleading, or to otherwise appear. On November 12, 2020, pursuant to N.C. Rule of Civil Procedure 55(a), the Wake County Clerk of Court entered an Entry of Default against Defendant upon the State's Motion for Entry of Default.

8. On March 12, 2021, the State filed a Motion for Judgment by Default with this Court, moving that this Judgment by Default be granted, pursuant to Rule 55(b)(2) of the N.C. Rules of Civil Procedure. In support of its Motion for Judgment by Default, the State submitted a supporting affidavit and a documentary exhibit listing affected loans known to the State.

CONCLUSIONS OF LAW

9. This Court has jurisdiction over the parties and the subject matter of this action.

10. Defendant was properly served process in accordance with Rule 4 of the N.C. Rules of Civil Procedure and N.C. Gen. Stat. § 1-75.10(a)(2).

11. Defendant has failed to file an answer or other responsive pleading, or to otherwise appear; and, therefore, all of the allegations made by the State in its Complaint are deemed admitted.

12. The Complaint states claims upon which relief may be granted. The conduct alleged in the Complaint is in or affecting commerce.

13. From the record in this case, the State has made a sufficient showing that Defendant has engaged in violations of the Retail Installment Sales Act, N.C. Gen. Stat. § 25-1.1A, *et seq.*, and the Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*

14. Defendant is subject to a Judgment by Default as provided by Rule 55(b)(2) of the N.C. Rules of Civil Procedure. Defendant is liable to the State for the relief requested by reason of the facts shown in the Complaint filed in this action, together with the record in this action.

15. This Court finds that entry of this Judgment by Default is in the public interest in order to prevent further harm to affected consumers.

16. This Court concludes that good and sufficient cause exists for entry of this Judgment by Default, pursuant to N.C. Gen. Stat. §§ 25-1.1A, *et seq.*, and 75-1.1, *et seq.*, and N.C. Rule of Civil Procedure 55(b).

FINAL JUDGMENT ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. All of Defendant's outstanding loans made under the Retail Installment Sales Act, N.C. Gen. Stat. § 25-1.1A, *et seq.*, or other consumer loans, but not including loans made pursuant to authority under the Consumer Finance Act in Chapter 53 of the General Statutes, are hereby cancelled pursuant to Chapters 25A and 75 of the General Statutes. All of the foregoing outstanding loans are deemed satisfied and paid in full, and all balances are forgiven. Defendant, including any assignees or successors of Defendant, or any subsequent purchasers of Defendant's loans, if any, shall have no right to payment on, or to collect upon, the foregoing loans.

2. Defendant's security interest in collateral pledged on any Retail Installment Sales Act loan or other consumer loan, but not including any Consumer Finance Act loan made under Chapter 53, is hereby satisfied and discharged. Accordingly, liens placed by Defendant on borrowers' vehicle titles, including any liens recorded under any alternative spellings by Defendant, are hereby declared void and shall be cancelled; and new vehicle titles cancelling Defendant's liens shall be issued to borrowers who are in possession of their vehicle(s), request a new title, and are otherwise entitled to a new title.

3. Each loan identified in the Retail Installment Sales Act Loan List (“RISA Loan List”) attached as Exhibit A to the Affidavit of David C. Evers, submitted with the State’s Motion for Judgment by Default, is a Retail Installment Sales Act loan. The North Carolina Attorney General’s Office shall provide the unredacted RISA Loan List to the North Carolina Division of Motor Vehicles or other third parties, as necessary, to facilitate the release of Defendant’s liens on personal property pledged as collateral for Retail Installment Sales Act loans.

PERMANENT INJUNCTION

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, together with its owner(s), officers, agents, employees, representatives, successors and assigns, and any persons in active concert or participation with any of the foregoing, are permanently enjoined, under N.C. Gen. Stat. § 75-14, from:

- (a) Advertising, soliciting, offering, making, or arranging loans pursuant to the Retail Installment Sales Act, N.C. Gen. Stat. § 25-1.1A, *et seq.*, or other consumer loans—but not including Consumer Finance Act loans made pursuant to Chapter 53 of the General Statutes;
- (b) Taking any security interest in collateral, including the placement of liens on vehicles or vehicle titles, in connection with loans made by Defendant under the Retail Installment Sales Act, N.C. Gen. Stat. § 25-1.1A, *et seq.*, or other consumer loans—but not including Consumer Finance Act loans made pursuant to Chapter 53 of the General Statutes—or transferring any such security interest;
- (c) Collecting on any outstanding loan, including the repossession of any collateral securing such loan, made by Defendant under the Retail Installment Sales Act,

N.C. Gen. Stat. § 25-1.1A, *et seq.*, or other consumer loan—but not including
Consumer Finance Act loans made pursuant to Chapter 53 of the General
Statutes; and

(d) Selling or transferring loans made by Defendant under the Retail Installment
Sales Act, N.C. Gen. Stat. § 25-1.1A, *et seq.*, or other consumer loans—but not
including Consumer Finance Act loans made pursuant to Chapter 53 of the
General Statutes.

CIVIL PENALTIES

IT IS FURTHER ORDERED that Plaintiff State of North Carolina, pursuant to N.C.
Gen. Stat. §§ 75-1.1 and 75-15.2, shall have and recover of Defendant the sum of \$100,000 for
civil penalties.

SO ORDERED, this the 25th day of May, 2021 at 10:08.



Hon. Vince M. Rozier, Jr.
SUPERIOR COURT JUDGE