

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
13th DIVISION

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

PLAINTIFF

vs.

CASE NO. CV 2008-4716

CAUDLE ENTERPRISES, LLP,
D/B/A PAWN EXCHANGE OF DEQUEEN,
PAWN EXCHANGE OF MENA, &
PAWN EXPRESS OF FOREMAN, AND
PHILLIP CAUDLE

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Pat O'Brien Pulaski Circuit Clerk
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DEFENDANTS

JUDGMENT

Now on this September 9, 2009, appears Charles Saunders on behalf of the State of Arkansas; the Defendants, Caudle Enterprises and Phillip Caudle, despite having been provided notice of this hearing do not appear; all other issues having been addressed by previous Order of this Court, the only remaining issues in the above matter are the State's claims for forfeiture, the imposition of Civil Penalties, and claims for Attorney's fees and costs. Having heard the arguments of counsel, reviewed the documentary evidence presented to the Court, as well as accompanying Motions, and for good grounds shown, this Court does hereby ORDER, ADJUDGE, and DECREE the following:

1. Previously, the Court found that Phillip Caudle and Caudle Enterprises destroyed all paper and electronic records in their possession pertaining to the payday lending transactions at issue in this litigation. As a result of the Defendants' actions and for failure to comply with this Court's Order compelling production, this Court granted the State's Motion to strike Defendants' Answer and to enter a Default Judgment pursuant to Rule 37 of the Ark. R. of Civ. Pro. See Order entered July, 6, 2009.

2. Defendants were engaged in the business of payday lending from 2003 through 2008. The payday lending as engaged in by the Defendants is a form of lending where a consumer presents a personal check as collateral for a loan and the lender agrees to hold the check as collateral. If the consumer does not pay the full amount of the loan plus interest when due, the lender purports to have the authority to either cash the consumer's check or electronically debit the amount owed from the consumer's bank account. The evidence shows that Caudle Enterprises and Phillip Caudle often charged consumers interest rates of 405.46%, 372.45%, and 434.48% on small loan transactions. All of Defendants' payday loan transactions had an interest rate of 168% per annum or greater.

3. The Payday Lending Transactions engaged in by Phillip Caudle and Caudle Enterprises, LLP constitute deceptive and unconscionable trade practices prohibited by the Arkansas Deceptive Trade Practices Act. The Court finds that Defendants have charged and collected unconscionable rates of interest on all of their short term lending transactions from 2003 through 2008. The practice of charging ultra-high and usurious rates of interest is unconscionable. See *Mcghee v Arkansas Board of Collection Agencies and American Manufactures Mutual Insurance Company*, No. 08-164 (AR S. Ct. Nov. 6, 2008), *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), and *State of Ark. v R & A Investment Co., Inc.*, 336 Ark. 289, 785 S.W 2d 299 (1999).

4. In a typical lending transaction involving usury, the lending contract is produced as evidence of damages. In this case, Phillip Caudle is responsible for destroying not only the contracts at issue, but also for deleting all of Defendants' computer files related to the payday lending contracts at issue. Defendants' actions make traditional methods of proving damages in a usury case unavailable to the Plaintiff. Additionally, Plaintiff is unable to identify all of the affected consumers.

5. The Plaintiff has produced Phillip Caudle's Federal Tax Returns for the years 2003 through 2006. These records were obtained by the Plaintiff from Phillip Caudle. Returns were not produced for 2007 or 2008. These records show that his three stores, Pawn Exchange of Mena, Pawn Exchange of DeQueen, and Pawn Express of Foreman, grossed \$9,742,954.00 from 2003 through 2006. Payday lending was a primary, though not sole, function of Caudle's businesses and a large part of this gross amount is attributable to payday lending.

6. The Plaintiff has also produced copies of Defendants' financial statements for the months of January, February, and March of 2008. These records were obtained from Phillip Caudle and Caudle Enterprises. These records show that Defendants collected \$22,926.00 in illegal interest and fees from consumers for these three months.

7. Defendants also admitted to the collection of \$5,000.00 in both principle and interest following the Attorney General's March 18, 2008 demand that Defendants cease making illegal loans and stop collections on those loans.

8. In considering the evidence of damages presented by the State, the Court finds that the State has met its burden of proof as to the forfeiture of funds and the assessment of Civil Penalties.

9. Pursuant to Ark. Code Ann. § 4-88-113(a)(2), this Court has the authority to enter such Orders or Judgments as may be necessary to restore to any consumer who has suffered ascertainable damages as a result of practices prohibited by the Arkansas Deceptive Trade Practices Act (DTPA).

10. Additionally, the Arkansas Constitution, Article 19, Section 13, provides two separate penalties for lenders that have engaged in usury:

"A person who has paid interest in excess of the maximum lawful rate may recover, within the time provided by law, twice the amount of interest paid."
Article 19, Section 13, (a)(ii)

"All contracts for consumer loans and credit sales having a greater rate of interest than seventeen percent per annum shall be void as to principal and interest and the General Assembly shall prohibit the same."
Article 19, Section 13, (b)

11. In the Motion filed by the State requesting the imposition of a monetary judgment against the Defendants, and in its brief in support of the Motion, the State has argued that at least 10% of the gross receipts for the 2003 to 2006 period of operation is attributable to Defendants' payday lending activities. This Motion was served upon Defendants. Defendants filed no responsive pleading; nor did they appear at the hearing to rebut the State's argument. The Court finds that the evidence, uncontested by the Defendants, supports the State's claim and judgment is entered for the forfeiture of \$975,294.40, which is 10% of the gross receipts for the period from 2003 to 2006. Not only did Defendants fail to rebut the State's claim, but since Defendants destroyed the records of the payday loan transactions Defendants are estopped from rebutting the State's claim. Had the records of these transactions been produced it is likely that the damages would have been greater.

12. Additionally, the Court orders the forfeiture of the \$5,000.00 in principal and interest collected from Arkansas consumers after March 18, 2008. The Court imposes the penalty for usury prescribed by the Arkansas Constitution, Article 19, Section 13 (b), requiring the forfeiture of principal and interest. All of the contracts in question grossly exceeded 17% per annum.

13. Finally, the Court orders the forfeiture of the \$22,926.00 in illegal interest and fees collected in the first three months of 2008. The Court finds that all of this money is illegal interest in violation of the Arkansas Constitution and imposes the penalty prescribed by Article 19, Section 13 (a)(ii), allowing the Court to impose a penalty of two times the interest paid. Thus, judgment in the amount of \$48,852.00 is entered.

14. Based on Ark. Code Ann. § 4-88-113(a)(2) and Article 19, Section 13 of the Arkansas Constitution, the Court finds that Phillip Caudle and Caudle Enterprises should forfeit to the State of Arkansas the total sum of \$1,025,147.40. This sum reflects a portion of the principal and interest collected from Arkansas consumers as a result of Defendants' unconscionable and usurious transactions from 2003 through 2008.

15. Defendants provided the names of fifty consumers that took out payday loans from the Defendants. Each of these transactions shall be considered a separate violation of the DTPA. Pursuant to Ark. Code Ann. § 4-88-113(c), this Court has the authority to impose civil penalties of up to \$10,000.00 per violation. The Defendants has committed an unknown number of unconscionable and grossly usurious transactions with an unknown number of Arkansas consumers. Defendants have additionally engaged in the spoliation of evidence. Under these circumstances, the Court will assess the

maximum penalty of \$10,000.00 for each of the 50 violations of the DTPA before the Court. Judgment in the amount of \$500,000.00 in civil penalties is entered in favor of the State.

16. Pursuant to Ark. Code Ann. § 4-88-113(e), this Court has the authority to compensate the Attorney General for all expenses reasonably incurred as a result of this action, such expenses include attorney's fees and costs. The Attorney General's Office has submitted an affidavit stating that they have expended at least 50 hours of work in this matter. The Court finds this to be reasonable. Accordingly, judgment in the total amount of \$ 7,500.00 shall be entered in favor of the State.

17. Phillip Caudle is a "controlling person" as defined by Ark. Code Ann. § 4-88-113(d) and is responsible for his companies actions as well as his own. Phillip Caudle and Caudle Enterprises, LLP are jointly liable for the entirety of this Judgment.

18. Any money received from the Defendants shall first be applied to the forfeiture award before being considered for civil penalties or attorney's fees and costs. The Attorney General shall use reasonable efforts to locate any affected consumers and distribute money from the forfeited funds collected from the Defendants to such consumers at the discretion of the Attorney General. Any funds remaining after the completion of the State's good faith efforts to distribute money to affected consumers shall be deposited in the Attorney General's Consumer Education and Enforcement Fund to be held in trust for uses directly related to the Attorney General's continued consumer protection efforts.

19. Pursuant to Ark. Code Ann. § 16-66-221, Phillip Caudle shall prepare a schedule, verified by affidavit, of all property, both real and personal, including moneys,

bank accounts, rights, credits, and choses in action held by himself and/or Caudle Enterprises. This schedule shall be filed within forty-five (45) days of entry of the final judgment. Failure to comply with this Order could result in a Contempt ruling from the Court.

20. This Court retains jurisdiction over the parties to ensure compliance with the Orders of this Court.

SO ORDERED on this _____ day of SEP 21 2009, 2009.



HONORABLE COLLINS KILGORE
Circuit Judge, 13th Division