

**1<sup>st</sup> CHOICE AUTO SALES, INC.**  
**2592 HWY 9 E**  
**LITTLE RIVER, SC 29566**  
**843-390-3500 / FAX 843-390-4550**

DATE: 8.26.14

TO: Ella

FROM: Timothy B Williams

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803-734-1496



Culbertson's Order is not sufficient to strike the Defendants' Answers, I hereby grant the Plaintiff's motion that the Defendant's answer be stricken and the Defendants are in default.

Notice of the damages hearing was given to the Defendants Ellis and Elite attorney by the Clerk of Court's office. Plaintiff's counsel provided an unsigned return receipt sent to 1<sup>st</sup> Choice and Mr. Williams showing that someone had placed the date of March 10, 2014 on it. On March 13, 2014, Mr. Moskos faxed 1<sup>st</sup> Choice and Mr. Williams a copy of the letter which had been sent certified mail. Mr. Moskos then represented that he had not attempted to serve Jerry Little as he assumed that Mr. Williams would inform Mr. Little of the hearing.

I find that Mr. Ellis, Elite, 1st Choice and Mr. Williams were given proper notice of this hearing. I find that Mr. Little was not given proper notice of today's hearing. Therefore, the terms of this Order apply to all the Defendants except Mr. Little.

The undisputed facts are that Ms. Karesh attempted to buy an undamaged 2006 Chevy Equinox from Elite. Mr. Ellis, individually and as Elite's agent, represented that the Equinox was a 2006 model, that it was in great shape and undamaged. Ms. Karesh agreed to purchase the Equinox in exchange for \$4,500.00 cash and her Toyota Camry. Ms. Karesh paid Elite \$4,500.00. Mr. Ellis informed Ms. Karesh that the vehicle was not ready to be delivered, but, that it would be ready shortly.

Eventually, Ms. Karesh returned to Myrtle Beach to acquire her vehicle. She met with Mr. Ellis, tendered her Camry, and drove home in the Equinox. Mr. Ellis stated he would have all of the paperwork and the title sent to Ms. Karesh in Charleston.

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South Carolina Code §56-3-210 requires owners to register their vehicles within 45 days of purchase. As the 45 day deadline approached, Ms. Karesh became nervous as she had not received any paperwork for Mr. Ellis, had not received her tags for the vehicle, had not registered the vehicle, and could not get in touch with Mr. Ellis.

During this period, Ms. Karesh learned that her car was a 2005 Chevy Equinox not a 2006 Chevy Equinox and that the car had been involved in a prior wreck. Ms. Karesh then contacted the South Carolina Department of Motor Vehicles (SCDMV) for assistance.

During the SCDMV investigation, Mr. Ellis admitted that he violated South Carolina law by selling a car in a retail capacity when he only had a wholesaler's license. Mr. Ellis informed Mr. Shelley that he would deliver the Equinox' title to Ms. Karesh that same day. As a result of Mr. Ellis' and Elite's violation of the law, the South Carolina DMV placed six points against Elite's license.

Mr. Shelley followed up with this matter to see if the title had been transferred to Ms. Karesh. While the title had been transferred to Ms. Karesh, he noticed that 1st Choice had submitted paperwork to the SCDMV showing it had sold the car to Ms. Karesh. The paper trail indicated that the vehicle had been sold by Elite to 1st Choice which then transferred the vehicle to Ms. Karesh. Mr. Shelley then interviewed Tim Williams, the owner of 1<sup>st</sup> Choice, and Jerry Little, the finance manager at 1<sup>st</sup> Choice. They admitted that Mr. Ellis had approached them about preparing a paper trail to show Ms. Karesh purchased the Equinox from a retail dealership. Mr. Williams stated that had he known the SCDMV had gotten involved in this transaction, he would have

refused to participate. Mr. Little admitted that he forged Ms. Karesh's signature on the State mandated Form 400 and the Affidavit in Notification of Sale of Motor Vehicle. Mr. Shelley then charged 1st Choice with violation of South Carolina law.

At the conclusion of the testimony, Plaintiff withdrew her revocation of acceptance, breach of contract and constructive fraud causes of action.

*and based upon the evidence presented to the court*  
Since the Defendants are in default, <sup>they</sup> are liable under Ms. Karesh's negligent *defendants* misrepresentation, fraud, Unfair Trade Practices Act, Dealers Act and civil conspiracy claims. Based on the testimony, I find the Defendants' actions to be willful, intentional, arbitrary, in bad faith and unconscionable.

Ms. Karesh's injuries include the difference in value of the vehicle as represented and as delivered. The testimony shows that the difference is approximately \$9,350.00. Furthermore, Ms. Karesh was without the use of her car for approximately 45 days from the time she was required by law to have a valid registration and tag for her car and when the Defendants Ellis and Elite provided her the title to the vehicle. Furthermore, she spent about \$200.00 on gas traveling to and from Myrtle Beach trying to resolve this matter. As a result of the testimony, I find Ms. Karesh's damages to be ten thousand dollars (\$10,000.00).

I find the Defendant Ellis, Elite, 1<sup>st</sup> Choice and Williams committed fraud, made fraudulent representations and were involved in fraudulent activity in connection with the sale or transfer of a motor vehicle by a licensed dealer and/or wholesaler. At the time, Mr. Ellis and Mr. Williams were agents acting for the dealer and/or wholesaler and within the scope of their employment and Ms. Karesh was damaged by reason of the

Defendants' violation of South Carolina law. Therefore, I find this is an appropriate case for punitive damages and require the Defendants to pay an additional one hundred thousand dollars (\$100,000.00) as punitive damages.

A punitive damage award must satisfy due process requirements. A trial court must evaluate a punitive damage award using the following three part test: (1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. Mitchell v. Fortis Ins. Co., 385 S.C. 570, 686 S.E.2d 176 (S.C. 2009).

In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. Id. quoting State Farm v. Campbell, 538 U.S. 408, 416, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003).

This case involves economic harm. The Defendants' actions clearly show they were completely indifferent to Ms. Karesh's health and safety as they lied to her about the age of the car which could have an impact on the various components of the car through wear and tear. Furthermore, they lied about the condition of the car. Ms. Karesh testified she was a single woman with little automotive mechanical knowledge.

There was no testimony regarding the repairs actually done to the vehicle as the Defendants did not cooperate in discovery. There was no way for Ms. Karesh to know what repairs were done or whether the repairs were done properly. Ms. Karesh was a financially vulnerable customer. The ~~Defendants' conduct~~ <sup>wild and rampant</sup> shows that this activity has happened before. Particularly bothersome is that Mr. Ellis and Elite were caught violating the law and then continued the same conduct with other customers. The State's punishment has not deterred Mr. Ellis' and Elite's wrongful conduct. <sup>and continuing.</sup> As stated above, I find the actions of the Defendants intentional ~~and part of a plan.~~ The Defendants went further by showing malice towards Ms. Karesh when they lied to her and forged her signature.

As for the ratio prong, the US Supreme Court has made clear that "there are no rigid benchmarks that a punitive damages award may not surpass," so long as "the measurement of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and the general damages recovered." The court may consider: the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay. Mitchell, 385 S.C. 588.

A court need not always compare the punitive damages award to the actual damages awarded, but in certain cases may compare it to the potential harm suffered by the plaintiff. Here Ms. Karesh suffered actual harm. She also stands to be hurt again when she tries to sell this vehicle with the prior wreck damage. <sup>and on the weekend present</sup> There is also a strong likelihood that she will have to spend money on repairs to fix the poor quality of

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the prior repair work. The ratio is appropriate in light of the significant intentional violations of law, the forgeries committed by the Defendants and the current and future monetary harm to Ms. Karesh.

When identifying "comparable cases" a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant. Mitchell, 385 S.C. 588, 589. The South Carolina Supreme Court in Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (S.C. 2010) ruled that Krysa v. Payne, 176 S.W.3d 150 (Mo.Ct.App.2005), affirming a 27 to 1 ratio and Parrott v. Carr Chevrolet, Inc., 331 Or. 537, 17 P.3d 473 (2001) affirming an 86.9 to 1 ratio were appropriate cases to compare to Austin's case where the actual damages were \$26,371.10 and the punitive damages were \$215,600.00, an 8.21 to 1 ratio. Another similar case is Grabinski Blue Springs Ford Sales, Inc., 203 F.3d 1024 (8th Cir. 2000) affirming ratios of 99:1 for the wholesaler, 55:1 for the retailer, 16:1 for Mr. Isom, 11:1 for Mr. Dudley, and 5:1 for Mr. Graham. The ratio of the collective punitive damages to the collective actual damages is approximately 27:1. I find the ten to one ratio in this case appropriate and measured.

A significant punitive damages award is needed in this case. The Defendants' deception, forgery and continuing illegal activity over several months instead of a few hours is much more intentional and heinous than that in Austin. The illegal conduct by these Defendants continued even after they were caught by the SCDMV. The SCDMV

can only issue points against a dealer's license. It cannot fine a dealer, bring criminal charges against a dealer nor can it make a dealer compensate an injured person. According to Mr. Shelley, the attorney general's office and local law enforcement do not prosecute these cases as they do not have the resources to do so. The only punishment available to the community to combat the Defendants' practices is a substantial award of punitive damages.

The UTPA at SC Code §39-5-140 and the Dealers Act at SC Code §56-1-110 mandate the award of attorney's fees to a prevailing plaintiff. In awarding reasonable attorney's fees, there are six factors to be considered. Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling. The six factors are: 1) the nature, extent, and difficulty of the legal services rendered; 2) the time and labor devoted to the case; 3) the professional standing of counsel; 4) the contingency of compensation; 5) the fee customarily charged in the locality for similar services; and 6) the beneficial results obtained. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

While this case was not particularly difficult as the Defendants were placed in default, the proof required in a fraud type case is usually difficult to come by. In this case, the Plaintiff produced Mr. Shelley who testified to the Defendants' admissions of wrong doing. The time and labor devoted to the case appears reasonable in light of the Defendants' failure to cooperate in the litigation. I find that Plaintiff's counsel is one of the few attorneys willing to take these kinds of cases and has a reputation in the legal community for handling them well. Compensation for Plaintiff's counsel is based

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on a recovery from the Defendants. Mr. Moskos has not been paid any money for approximately a year and nine months. If the Court does not provide an attorney with an adequate fee after working hard on a case for months if not years, then many attorneys may decline to take such cases. Wrongdoers would then get away with their bad acts to the detriment of all. I find the fee of \$390.00 per hour to be within the range of fees charged for similar cases. Ms. Karesh's counsel's efforts have been beneficial as she has prevailed on all counts, received all of the actual damages requested and received a substantial punitive damages award.

Therefore, it is

**ORDERED**, that the Defendants Ellis' and Elite's answer is stricken and the Defendants are hereby placed in default. It is further,

**ORDERED**, that the Defendants Ellis, Elite, Williams and 1<sup>st</sup> Choice pay to Ms. Karesh ten thousand dollars (\$10,000.00) for her actual damages under her negligent misrepresentation, fraud, Unfair Trade Practices Act and civil conspiracy causes of action. It is further,

**ORDERED**, that the Defendants Ellis, Elite, Williams and 1<sup>st</sup> Choice pay to Ms. Karesh ten thousand dollars (\$10,000.00) for her actual damages under her Dealers Act cause of action. This amount is automatically doubled to twenty thousand dollars (\$20,000.00) under the Act. It is further,

**ORDERED**, that the Defendants Ellis, Elite, Williams and 1<sup>st</sup> Choice pay to Ms. Karesh one hundred thousand dollars (\$100,000.00) in punitive damages under her negligent misrepresentation, fraud, and civil conspiracy causes of action. It is further,

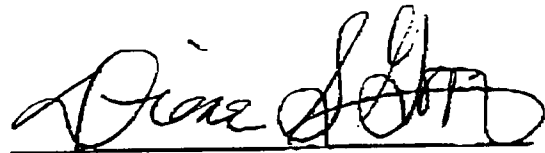
**ORDERED**, that the Defendants Ellis, Elite, Williams and 1<sup>st</sup> Choice pay to Ms. Karesh twenty thousand dollars (\$20,000.00) in punitive damages under her Unfair Trade Practices Act cause of action. It is further,

**ORDERED**, that the Defendants Ellis, Elite, Williams and 1<sup>st</sup> Choice pay to Ms. Karesh thirty thousand dollars (\$30,000.00) in punitive damages under her Dealers Act cause of action. It is further,

**ORDERED**, that the Plaintiff is to elect which cause of action under which she wishes to recover her actual damages and which cause of action under which she wishes to recover her punitive damages. It is further,

**ORDERED**, that under Ms. Karesh's Unfair Trade Practices Act and Dealers Act cause of action the Defendants Ellis, Elite, Williams and 1<sup>st</sup> Choice pay to Ms. Karesh dollars (\$24,603.45) towards her attorney's fees and costs. The attorney's fee award is in addition to the Plaintiff's actual and punitive damages award regardless of which cause of action she elects to receive.

AND IT IS SO ORDERED.



Diane Goodstein  
Judge Fifteenth Judicial Circuit

*St George*  
Conway, South Carolina  
April 29, 2014  
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