

FILED

STATE OF NORTH CAROLINA

2020 JAN 24 PM 4:28

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

WAKE CO., C.S.C.

NO. 19 CV 006382

STATE OF NORTH CAROLINA *ex rel.*
JOSHUA H. STEIN, Attorney General,

Plaintiff,

v.

APPROVED FINANCIAL, INC.,

Defendant;

CONSENT JUDGMENT

And

NORTH CAROLINA DIVISION OF MOTOR
VEHICLES;

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

THIS CAUSE came on to be heard and was heard before the undersigned Wake County Superior Court Judge for entry of a Consent Judgment between Plaintiff, State of North Carolina, by and through its Attorney General ("the State"), and Defendant Approved Financial, Inc. ("Defendant"). All parties are represented by counsel. The Court finds that the parties have resolved the matters in controversy between them and have agreed to the entry of this Consent Judgment by the Court without trial or adjudication of any issue of fact or law.

I. FINDINGS OF FACT

1.1 Plaintiff State of North Carolina is acting through its Attorney General, Joshua H. Stein, pursuant to authority granted in Chapters 75 and 114 of the North Carolina General Statutes.

1.2 Defendant is a Wyoming corporation, with its principal place of business at 175 S.W. 7th Street, Suite 1925, Miami, Florida 33130.

1.3 The State filed this action on May 15, 2019. The State alleged that Defendant was engaged in the business of making unlicensed, usurious consumer loans in violation of North Carolina law. More specifically, the State alleged that Defendant was engaged in making consumer loans over the Internet to North Carolina consumers that were secured by consumers' vehicle titles, and that exceeded the interest rates permitted by North Carolina law, in violation of the Consumer Finance Act, N.C. Gen. Stat. §§ 53-164, *et seq.*, Chapter 24 of the North Carolina General Statutes, and N.C. Gen. Stat. § 75-1.1.

1.4 This Court entered a Consent Temporary Restraining Order ("TRO") on May 20, 2019, restraining Defendant, *inter alia*, from soliciting, offering or making loans to North Carolina consumers; from collecting on loans made to North Carolina consumer borrowers; and from repossessing or selling any North Carolina consumer borrower's vehicle. Since that time, the TRO has been extended in effect by consent of the parties pending further hearing or order of the Court.

1.5 Defendant does not admit to any violations of law in the conduct of its business; however, Defendant wishes to resolve this controversy without further proceedings and is therefore willing to agree to the entry of this Consent Judgment.

II. CONCLUSIONS OF LAW

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

2.2 Venue is proper in Wake County.

2.3 For purposes of this Consent Judgment, Defendant does not contest that North Carolina's laws against usury, N.C. Gen. Stat. §§ 53-164, *et seq.*, and Chapter 24

of the North Carolina General Statutes; and against unfair and deceptive trade practices, N.C. Gen. Stat. § 75-1.1, govern the alleged business practices of Defendant that gave rise to this controversy.

2.4 The North Carolina Attorney General is the proper party to commence these proceedings under the authority of N.C. Gen. Stat. §§ 75-14 and -15, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of North Carolina.

2.5 This Consent Judgment shall be governed by the laws of the State of North Carolina.

2.6 This Consent Judgment shall apply to loans made to North Carolina consumer borrowers of Defendant, namely, borrowers who resided in North Carolina at the time the borrower applied for a loan from Defendant and whose loan application listed a North Carolina address. Defendant represents that all borrowers were required to provide an address at the time of loan application, and that its loan underwriting verified the borrower's actual address matched the address on the application.

2.7 Entry of this Consent Judgment is just and proper and in the public interest.

2.8 The State's Complaint states a cause of action against Defendant upon which relief may be granted; and the Court finds good and sufficient cause to adopt this agreement of the parties, and these findings of fact and conclusions of law, as the Court's determination of the parties' respective rights and obligations, and for entry of this Consent Judgment.

2.9 The parties have agreed to resolve their differences, and the agreement of the parties is just and reasonable with respect to all parties.

2.10 The Court approves the terms of the parties' agreement and adopts them as its own determination of the parties' respective rights and obligations.

III. PERMANENT INJUNCTIVE RELIEF

Based on the foregoing findings of fact and conclusions of law, **IT IS ORDERED, ADJUDGED, AND DECREED** that:

3.1 Defendant, its owner(s), subsidiaries, affiliates, officers, agents, servants, employees, successors, assigns, attorneys, and any others acting in concert or under the actual direction or control of Defendant, are hereby permanently restrained and enjoined from:

- (A) Soliciting, offering, arranging, or making any consumer loans, including vehicle title loans, to North Carolina consumers;
- (B) Collecting any payments on any loan(s) made to any North Carolina consumer borrower by Defendant;
- (C) Repossessing or selling any vehicle owned or previously owned by a North Carolina consumer borrower of Defendant;
- (D) Placing liens on vehicles or vehicle titles of North Carolina consumers, and from transferring any such titles, except to transfer a title back to the North Carolina consumer, and except as needed to transfer title for a vehicle loan originally made to a resident of another state who thereafter moves to North Carolina; and
- (E) Engaging in any unfair or deceptive practices in the conduct, directly or indirectly, of any consumer lending activities in North Carolina or involving a North Carolina borrower, in violation of N.C. Gen. Stat. § 75-1.1.

3.2 All loans made by Defendant to North Carolina borrowers shall be deemed forgiven, and all outstanding balances on those loans are hereby discharged and cancelled. Defendant shall have no further right to payment on, or to collect upon, such loan accounts, including their associated fees, charges, and interest. Defendant represents that the cancelled loan

accounts, in aggregate, have an amount of no less than three hundred and one thousand, six hundred and sixty-five dollars (\$301,665.00), including outstanding principal, interest, fees, and charges.

3.3 Within ten (10) days of the entry of this Consent Judgment, Defendant shall release all existing liens placed by Defendant on North Carolina borrowers' vehicles with the NC-DMV, and if a North Carolina borrower's vehicle has been repossessed but not yet sold, Defendant shall release the vehicle to the borrower. Within five (5) days of releasing its liens, Defendant shall send email notifications, read receipt requested, to all affected North Carolina borrowers informing such borrowers that Defendant's lien has been released, and that the borrower's loan has been deemed satisfied and paid in full, and where appropriate, that the borrower can retrieve his or her vehicle. If Defendant does not receive a read receipt for any such borrower within fourteen (14) days or does not otherwise receive confirmation that the borrower received the notification required by this section, then Defendant shall send the notification by U.S. Mail to the borrower's last known address not later than ten (10) days after the read receipt confirmation period expires. Defendant shall provide a complete list of all affected borrowers to the Attorney General's Office ("AGO") at or before the time of releasing the liens.

3.4 Prior to issuing the written notifications required by Paragraph 3.3, Defendant shall provide a draft template to undersigned counsel at the AGO for the AGO's review and prior approval; and Defendant shall accommodate reasonable requests by the AGO for any edits or modifications to the written notification.

3.5 The Defendant shall fully cooperate with the AGO in good faith in providing information and assistance reasonably requested by the AGO in responding to consumer inquiries; facilitating the issuance of new vehicle titles to consumers; removing any adverse credit history

related to the affected loans; and any other activities related to implementing this Consent Judgment.

3.6 This Permanent Injunction shall not apply to loans made by Defendant, its owners or affiliates, whether existing or hereafter made, to borrowers who were or are not residents of North Carolina at the time the loan was or is made.

3.7 This Permanent Injunction shall not preclude Defendant, its owners or affiliates, from hereafter seeking proper licensure to make loans in the State of North Carolina to North Carolina consumers, so long as all licensure requirements are satisfied and Defendant complies with all federal and state laws governing such loans, nor shall this Permanent Injunction preclude the foregoing from making loans on terms and at rates that fully comply with North Carolina law, including without limitation, the Consumer Finance Act, N.C. Gen. Stat. §§ 53-164, *et seq.*, Chapter 24 of the North Carolina General Statutes, and N.C. Gen. Stat. § 75-1.1.

IV. MONETARY RELIEF

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

4.1. Consumer Restitution. On or before January 31, 2020, Defendant shall pay the sum of four hundred and eighty-one thousand, four hundred and three dollars (\$481,403.00) to the Attorney General as consumer restitution, to be distributed by the Attorney General. The Defendant shall fully cooperate with the Attorney General in the Attorney General's administration and issuance of such refunds, including responding to reasonable requests by the Attorney General for customer information in Defendant's possession or any other information reasonably necessary to effectuate the refund process.

4.2 Other Monetary Relief. On or before January 31, 2020, Defendant shall pay the sum of thirty thousand dollars (\$30,000.00) to the Attorney General to be used for attorney's fees,

investigative costs, consumer education, enforcement, and/or other consumer protection purposes, at the discretion of the Attorney General.

4.3 Method of Payment. Defendant shall pay the above sums to the Attorney General by cashier's check or other certified funds made payable to the North Carolina Department of Justice.

4.4 No Other Monetary Terms. This Consent Judgment provides for all monetary compensation sought by the Attorney General in connection with the resolution of the factual allegations and legal claims alleged in his Complaint.

V. GENERAL PROVISIONS

5.1 Other State Governmental Entities. This Consent Judgment shall not bind any other offices, boards, commissions, or agencies of the State of North Carolina, and nothing in this Consent Judgment shall in any way preclude any investigation or enforcement under any legal authority granted to the State, for transactions not subject to this action.

5.2 Retention of Jurisdiction. The Court retains jurisdiction over this action to take any further action deemed necessary to enforce this Consent Judgment, including imposition of penalties, and to award the State judgments for any costs, including attorney's fees, it incurs in the event of noncompliance by Defendant.

5.3 No Sanction of Business Practices. Defendant shall not represent directly or indirectly or in any way whatsoever that the Court or the Attorney General has sanctioned, condoned, or approved any part or aspect of Defendant's business operations.

5.4 Release of Claims. This Consent Judgment fully resolves all legal claims and issues raised in the State's Complaint against Defendant, including claims the State may have against Defendant, for its activities that are the subject of the Complaint up to the date of this Consent

Judgment. The State's entry into this Consent Judgment is premised on the documents previously produced by Defendant to the State represented by Defendant as accurately summarizing all loan transactions entered into by Defendant with North Carolina borrowers. Defendant acknowledges that the documents produced and representations made to the State are a material part of the consideration for the Attorney General to enter into this Consent Judgment. If it is discovered that any of the documents or representations are false, the State will be entitled to seek appropriate remedies from the Court, including but not limited to restitution, disgorgement, civil penalties, attorneys' fees, and any other relief allowed by law.

5.5 No Admission of Violation of Law. This Consent Judgment shall not be construed as, or be evidence of, admissions by Defendant, nor shall it be construed as a finding by this Court of any violation of North Carolina law, or any other law.

5.6 Private Right of Action. Nothing in this Consent Judgment shall be construed to affect any private right of action that a consumer, person, entity, or any governmental entity may hold against the Defendant.

5.7 Regulation of Other Conduct. Nothing in this Consent Judgment is intended to relieve Defendant of its responsibility to comply with all applicable North Carolina laws.

SO ORDERED.

This the 24 day of January, 2020.



Superior Court Judge

THE UNDERSIGNED PARTIES HEREBY CONSENT TO THE TERMS AND
CONDITIONS OF THIS CONSENT JUDGMENT AS SET FORTH ABOVE, AND
HEREBY CONSENT TO ENTRY THEREOF:

PLAINTIFF:

STATE OF NORTH CAROLINA, *ex rel.*
JOSHUA H. STEIN, ATTORNEY GENERAL


M. Lynne Weaver
Special Deputy Attorney General

Date: 1/10/2020

DEFENDANT:

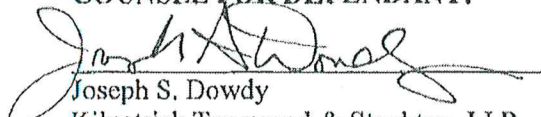

Approved Financial, Inc.

Date: 1/10/2020

BY: R. Tolay

TITLE: Director

COUNSEL FOR DEFENDANT:


Joseph S. Dowdy
Kilpatrick Townsend & Stockton, LLP

Date: 1/10/2020