

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

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GATHY S. CATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT
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STATE OF WEST VIRGINIA
ex rel. PATRICK MORRISEY,
Attorney General,

Plaintiff,

Civil Action No. 15-C-905
Judge Tod J. Kaufman

v.

SIMPLE RECOVERY SOLUTIONS, LLC,
TODD WEST, and ALEXANDER SIMAO,

Defendants.

Final ORDER GRANTING SUMMARY JUDGMENT
AND IMPOSING PERMANENT INJUNCTION
AND CIVIL PENALTIES

This matter came before the Court on the motion of the State of West Virginia ex rel. Patrick Morrisey, Attorney General, to grant summary judgment in favor of the State and against Simple Recovery Solutions, LLC, Alexander Simao, and Todd West, (“Defendants”), and to permanently enjoin the Defendants from engaging in debt collection activities in West Virginia. The State’s motion is well taken, and summary judgment shall be granted and the Defendants shall be permanently enjoined from engaging in debt collection in West Virginia in accordance with the following.

FINDINGS OF FACT

In 2014, the Attorney General’s office commenced an investigation to determine if Defendants were violating the West Virginia Consumer Credit and Protection Act (the “Act”). W. Va. Code § 46A-1-101 *et seq.*

The State sued Defendants on May 26, 2015. Service of the summons and complaint were

made on each Defendant via the West Virginia Secretary of State in accordance with W. Va. Code § 56-3-33, W. Va. § 31D-15-1510, and W. Va. R. Civ. P. 4. Service of the Summons and Complaint was also made upon Simple Recovery Solutions, LLC's appointed agent, CT Corporation, locally in Charleston, West Virginia. The Defendants have not answered the State's complaint or otherwise responded to the complaint.

The State served its First Request for Admissions on Simple Recovery, Alexander Simao, and Todd West on September 30, 2015. Each party failed to answer within 30 days and has yet to respond. Failure to respond to a request for admissions under Rule 36 of the West Virginia Rules of Civil Procedure will be deemed to be an admission of the matters set forth in the request. Syl. pt. 2, *Checker Leasing, Inc. v. Sorbello*, 181 W. Va. 199, 382 S.E.2d 36 (1989).

On February 29, 2015, the State filed a Motion for Summary Judgment and Permanent Injunction against Defendants. On July 29, 2016, the Defendants did not appear for the hearing on the State's motion, and no one appeared on behalf of the Defendants.

B. Substantive Facts

Because the Defendants did not answer or otherwise respond to the Complaint or the Motion for Summary Judgment and Permanent Injunction, the Court takes the facts as presented by the State as true, since they have been uncontested.

Simple Recovery was a debt collection agency headquartered in Orlando, Florida that attempted to collect debts that were not owing from West Virginia consumers.

Beginning no later than June 2014, West Virginia consumers began receiving telephone calls and letters from Simple Recovery attempting to collect debts.

The Attorney General's office started receiving complaints about Simple Recovery in August

2014 and eventually received 13 written complaints.

Simple Recovery had given the Attorney General's office a list of 130 West Virginia consumer accounts that Simple Recovery was attempting to collect. After contacting a number of these consumers, each consumer disputed owing the debt and the vast majority did not know the original creditor of the debt.

Five complaints were received by the Attorney General before August 25, 2014, the date that Simple Recovery registered with the West Virginia Secretary of State and posted a \$5,000 bond required to collect debts in West Virginia.

Alexander Simao and Todd West are the owners and officers of Simple Recovery. They controlled the daily activities of Simple Recovery, including the ability to hire and fire employees, control financial expenditures, retain access to corporate assets, and design the company's debt collection practices.

Alexander Simao and Todd West personally engaged in deceptive, misleading and dishonest debt collection activities and allowed or directed Simple Recovery to do the same.

Alexander Simao and Todd West are not incarcerated convicts, infants, incompetent persons, or members of the Armed Forces of the United States on active duty.

CONCLUSIONS OF LAW

As set forth in more detail, the Court has personal jurisdiction over the Defendants pursuant to West Virginia's long-arm statute, W.Va. Code § 56-3-33, and because Defendants have had at least minimum contacts with West Virginia. Defendants contacted as many as 130 West Virginia individuals attempting to collect debts. Accordingly, the Defendants should have been expected to be haled into West Virginia courts for their illegitimate debt collection activities.

The State is entitled to summary judgment as a matter of law since the Defendants did not dispute any of the material facts and the material facts show that Defendants repeatedly violated the Consumer Credit and Protection Act. W. Va. Code § 46A-1-101 *et seq.* The Defendants attempted to collect debts from West Virginia consumers without registering and bonding with the West Virginia Secretary of State and the West Virginia Department of Tax and Revenue in violation of the Act, W. Va. Code § 46A-1-101 *et seq.* Defendants were engaged in unfair and deceptive acts and practices in their business in violation of the Act, W. Va. Code § 46A-1-101 *et seq.*

The Court is satisfied that Defendants were properly served with the summons and complaint in accordance with state law and the West Virginia Rules of Civil Procedure.

Defendants have all failed to respond to the summons and complaint in any manner within 30 days after service of the summons and complaint. The Defendants also failed to appear for the Court's hearing on the State's Motion for Summary Judgment and Permanent Injunction. The Court is satisfied that Defendants are aware of this civil action and the hearing on the State's Motion for Summary Judgment and Permanent Injunction and chose not to answer or otherwise appear to defend this matter.

Therefore, summary judgment is appropriate and shall be granted.

Summary judgment is appropriate when there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law. Syl. pt. 2, *Reed v. Orme*, 655 S.E.2d 83 (W. Va. 2007). If the record taken as a whole cannot lead a rational trier of fact to find for the nonmoving party, summary judgment must be granted. *Parker v. Estate of Bealer*, 656 S.E.2d 129, 132 (W. Va. 2007) (*quoting Williams v. Precision Coil, Inc.*, 459 S.E.2d 329, 338 (1995)(*quoting Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-8 (1986))).

Simple Recovery and its owners attempted to collect debts that were not owing, falsely representing to consumers that a balance was due. W. Va. Code § 46A-2-127(d).

Simple Recovery and its owners also attempted to collect debts before it was properly registered and bonded with the West Virginia Secretary of State required by the West Virginia Collection Agency Act, W. Va. Code § 47-16-1 *et seq.* In doing so, Simple Recovery misrepresented its ability to collect debts due to its failure to obtain a license before conducting debt collection activities in West Virginia. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(C).

Through attempting to collect debts that were not owed and without proper registration and bonding, Simple Recovery and its owners caused confusion and misunderstanding among consumers about the legitimacy of debts in violation of the Act. W. Va. Code § 46A-6-104 and W. Va. Code § 46A-6-102(7)(L) and (M). The debt collection activities of Simple Recovery and its owners also violated the West Virginia Collection Agency Act. W. Va. Code § 47-16-1 *et seq.*

B. Alexander Simao and Todd West Controlled the Activities of Simple Recovery and Should Be Held Personally Liable.

The owners of Simple Recovery, Alexander Simao and Todd West are also individually liable because they controlled the operations of Simple Recovery.

Under federal and state consumer protection laws, individual liability attaches when the State demonstrates the principal is a “controlling person.” The controlling person doctrine was first announced in *FTC v. Standard Educ. Soc.*, 302 U.S. 112, 120 (1937), which held that individuals could be included in a cease and desist order when the three officers “owned, dominated and managed” the business entity.

Individual liability is justified where an individual (1) was a corporate officer with the capacity to make decisions regarding the deceptive conduct, and (2) had or should have had knowledge of the deceptive practices. *FTC v. Ross*, 743 F.3d 886 (4th Cir. 2014); *Bowling v. Ansted*, 188 W. Va. 468, 425 S.E. 2d 144 (W. Va. 1992) (finding that individuals could be held liable for the unlawful acts of the corporation under certain circumstances).

The operations of Simple Recovery essentially consisted of the debt collection activities of Alexander Simao and Todd West. Alexander Simao and Todd West established, directed and personally benefitted from the debt collection activities of Simple Recovery. Both participated in, conspired, and controlled the debt collection activities of Simple Recovery.

C. Equitable Relief Is Appropriate.

The primary relief available in a suit by the Attorney General under the Act is equitable in nature. West Virginia Code § 46A-7-108 authorizes the Attorney General to bring a civil action “to restrain a person from violating [the Act] and for other appropriate relief.” Other equitable relief is available under the Act. *State ex rel. McGraw v. Imperial Marketing*, 506 S.E.2d 799 (W. Va. 1998).

Thus, the Court finds it appropriate to enjoin the Defendants from violating the West Virginia Consumer Credit and Protection Act and from engaging in any debt collection activities in the State of West Virginia.

D. Civil Penalties Are Appropriate.

The Court finds that Defendants have engaged in a course of repeated violations of the Act and that a million dollar penalty, or more, could be imposed by the Court under the Act. W. Va. Code § 46A-7-111(2). Counsel for the State suggests that a single penalty of \$5,000.00 per complaint received by the Office of the West Virginia Attorney General would be sufficient to sanction Defendants for their misconduct. The Court finds the suggestion is well taken and the civil

penalty is reasonable in light of the seriousness of the misconduct.

THEREFORE, in consideration of the pleadings, lack thereof, motions, supporting memoranda, submitted documents and affidavits, and arguments of counsel, the Court hereby grants the State's motion; and further

ORDERS that Defendants each are hereby permanently enjoined and restrained from engaging in debt collection activities within West Virginia; and further

ORDERS that Defendants each are permanently enjoined and restrained from engaging in unfair and deceptive acts or practices in violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 *et seq.*, and in violation of the West Virginia Collection Agency Act, W. Va. Code § 47-16-1 *et seq.*; and further

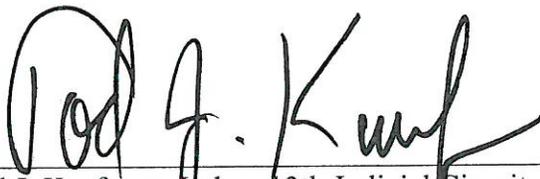
ORDERS that judgment is entered in favor of the State and against Defendants and each Defendant shall pay \$65,000.00 to the State in civil penalties for their willful and repeated violations of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-7-111(2); this amount represents one \$5,000.00 civil penalty for each of the 13 West Virginia consumer complaints received the Office of the West Virginia Attorney General.

The Clerk is hereby Ordered to send a certified copy of this Order to counsel of record and to the Defendants at their addresses as listed on the summonses.

This matter is hereby dismissed from the Court's active docket.

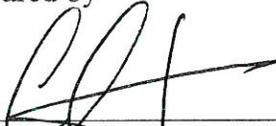
IT IS SO ORDERED

ENTERED 7/29/16



Tod J. Kaufman, Judge, 13th Judicial Circuit
Kanawha County Circuit Court

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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 1st
DAY OF August 2016
Cathy S. Gatson, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
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