

10/4/84

STATE OF MAINE  
PENOBSCOT, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-

STATE OF MAINE, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 DAVID LAWLER d/b/a )  
 DAVE'S AUTO SALES, )  
 )  
 Defendant )

COMPLAINT AND REQUEST FOR  
PRELIMINARY AND PERMANENT  
INJUNCTION

INTRODUCTION

1. This is an action under the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1984), the Maine Used Car Information Act, 10 M.R.S.A. §§ 1471-1477 (1980 & Supp. 1984) and the Motor Vehicle Examinations and Inspections law, 10 M.R.S.A. §§ 2501-2525 (Supp. 1984), to preliminarily and permanently enjoin the Defendant from using unfair and deceptive acts in the sale of used motor vehicles. A

JURISDICTION

2. This Court has jurisdiction over this matter pursuant to the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 209 (Supp. 1984), 4 M.R.S.A. § 105 (Supp. 1984), Superior Court Jurisdiction and Powers and 14 M.R.S.A. § 6051 (1980), Equity Proceedings. A

PARTIES

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3. Plaintiff, STATE OF MAINE, is a sovereign State and commences this action through its Attorney General pursuant to the powers vested in him by the common law in 5 M.R.S.A. § 194 (1979) as the State's chief law enforcement officer and also pursuant to 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1984), the Maine Unfair Trade Practices Act, to protect the public by preventing and restraining the Defendant from practicing unfair and deceptive trade practices.

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4. Defendant, DAVID LAWLER d/b/a DAVE'S AUTO SALES, operates a used car dealership at 281 Hammond Street, Bangor, Maine 04401. The Defendant purchases, sells and services used motor vehicles and is licensed by the State as a Used Car Dealer.

STATUTORY BACKGROUND

5. Section 207 of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1984), prohibits unfair and deceptive acts and practices in the conduct of any trade or business in the State of Maine.

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6. Section 209 of the Maine Unfair Trade Practices Act authorizes the Attorney General to bring actions in the name of the State of Maine to enjoin unfair and deceptive acts or practices and to seek restitution of behalf of persons who have suffered loss as a result.

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7. The Motor Vehicle Examinations and Inspections law, 29 M.R.S.A. §§ 2502-2503 (Supp. 1984), establishes the <sup>D - applies</sup> inspection standards that motor vehicles used for <sup>only to motor</sup> transportation must meet in the State of Maine. <sup>vehicles</sup> <sup>registered in</sup> <sup>the State</sup>

8. 29 M.R.S.A. § 2507-A (Supp. 1984) prohibits a used car dealer from:

- A. selling a motor vehicle that does not meet the <sup>D;</sup> inspection standards of 29 M.R.S.A. §§ 2502-2503 <sup>only</sup> (Supp. 1984); or <sup>applies to</sup> <sup>cars sold</sup>
- B. selling a motor vehicle that does not have a <sup>for</sup> valid inspection sticker issued during the last thirty <sup>transportation</sup> days prior to the date the vehicle was sold.

Violation of this section constitutes a civil violation and shall be punished by a fine of not more than \$1,000 for each violation. In addition to this civil penalty, any violation of this section shall constitute a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1979 & Supp 1984).

9. The Used Car Information Act, at 10 M.R.S.A. § 1474 (1) (1980), also requires a dealer to warrant that a used motor vehicle sold for transportation has been inspected and meets the inspection standards of 29 M.R.S.A. §§ 2502-2503 (Supp. 1984). Pursuant to 10 M.R.S.A. § 1476 (2) (C) if a dealer sells a vehicle that does not meet these standards, he has breached this warranty. Further, 10 M.R.S.A. § 1474 (2) (1980) prohibits the dealer from excluding or limiting the consumer's warranty of inspectability.

10. The Used Car Information Act, at 10 M.R.S.A. § 1475 (1980 & Supp. 1984), also requires a used car dealer to affix to the vehicle a conspicuous written statement containing the ownership history of the vehicle, including notice of defects or damage that are known to the dealer.

11. Pursuant to 10 M.R.S.A. § 1477 (1) (1980), any violation of the Used Car Information Act, including the dealer's warranty that the car meets inspection standards and the dealer's disclosure requirement of the car's history, shall constitute a violation the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1984). In addition, pursuant to 10 M.R.S.A. § 1477 (2) (Supp. 1984), each violation of the Used Car Information Act constitutes a civil violation and the dealer can be fined up to \$1,000 for each intentional violation.

FACTS

12. The Defendant on a number of occasions has sold used motor vehicles for transportation that at the time of sale were not able to meet the inspection standards as established in 29 M.R.S.A. §§ 2502-2503 (Supp. 1984). For example, one consumer purchased a used car for \$830 that only travelled approximately ten miles from the Defendant's dealership before it broke down. Upon inspection, it was found to have multiple defects, including no brake lights or tail lights, in violation of the State inspection standards. In another example, one

consumer purchased from the Defendant for \$772.25 a vehicle that could not pass inspection. When the consumer returned to the Defendant to request the necessary repairs, the Defendant refused to make them. Instead, the Defendant offered to buy back the car from the consumer for approximately \$200.

13. The Defendant on a number of occasions has sold used motor vehicles for transportation that at the time of sale did not display a valid certificate of inspection as required by 29 M.R.S.A. § 2507-A (Supp. 1984). For example, one consumer purchased from the Defendant for approximately \$2,000 a vehicle without any inspection sticker. It finally cost the consumer approximately \$372 to make the repairs necessary for the vehicle to meet the State inspection standards.

14. The Defendant on a number of occasions has sold used motor vehicles without affixing to the vehicle the information statement describing the vehicle's history as required by 10 M.R.S.A. § 1475 (1980 & Supp. 1984).

15. Even though the Defendant knew or should have known that consumers were purchasing from him used motor vehicles for transportation, the Defendant then stamped the consumers' purchase contracts with the phrase "as is not for road use". For example, one consumer paid the Defendant \$2,057 for a vehicle to be used for transportation by his church. After the consumer signed the bill of sale, the Defendant stamped on the

bill "as is not for road use". Later, the consumer had to pay for extensive repairs to the vehicle.

16. Consumers have suffered financial loss as a result of these trade practices by the Defendant. D

FIRST CAUSE OF ACTION

Selling Vehicles That Cannot Pass Inspection

17. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 16.

18. The Defendant's practice of selling used motor vehicles for transportation which cannot meet the inspection standards of 29 M.R.S.A. §§ 2502-2503 (Supp. 1984) constitutes a violation of 29 M.R.S.A. § 2507-A (Supp. 1984) and 10 M.R.S.A. § 1474 (1) (1980) and 10 M.R.S.A. § 1476 (2) (C) (1980).

19. Pursuant to both 10 M.R.S.A. § 1477 (1) (1980) and 29 M.R.S.A. § 2507-A (3) (Supp. 1984), this practice constitutes an unfair and deceptive trade practice and is in violation of 5 M.R.S.A. § 207 (1979).

SECOND CAUSE OF ACTION

Failure to Display Valid Certificate of Inspection

20. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 19.

21. The Defendant's practice of selling used motor vehicles for transportation that do not properly display a valid certificate of inspection constitutes a violation of 29 M.R.S.A. § 2507-A (Supp. 1984).

22. Pursuant to 29 M.R.S.A. § 2507-A (3) (Supp. 1984), this practice also constitutes an unfair and deceptive trade practice in violation of 5 M.R.S.A. § 207 (1979).

THIRD CAUSE OF ACTION

Failure to Provide History of Vehicle Information

23. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 22.

24. The Defendant's practice of not providing written disclosure statements detailing the history of the used motor vehicles being sold by him for transportation constitutes a violation of 10 M.R.S.A. § 1475 (1980 & Supp. 1984).

25. Pursuant to 10 M.R.S.A. § 1477 (1) (1980), this practice also constitutes an unfair and deceptive trade practice in violation of 5 M.R.S.A. § 207 (1979).

FOURTH CAUSE OF ACTION

Exclusion of Warranty of Inspectability

26. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 25.

27. The Defendant's practice of stamping the sale agreements of consumers purchasing a used motor vehicle for purposes of transportation with the phrase "as is not for road use" constitutes an exclusion of the warranty of inspectability in violation of 10 M.R.S.A. § 1474 (2) (1980).

28. Pursuant to 10 M.R.S.A. § 1477 (1) (1980), this practice also constitutes an unfair and deceptive trade practice in violation of 5 M.R.S.A. § 207 (1979).

RELIEF REQUESTED

WHEREFORE, the Plaintiff respectfully requests that this Court:

1. Declare that the Defendant is engaging in unfair and deceptive trade practices in violation of 5 M.R.S.A. § 207 (1979).

2. Issue a preliminary and permanent injunction pursuant to 5 M.R.S.A. § 209 (Supp. 1984) enjoining the Defendant, its agents, employees, assigns or other persons acting for the Defendant or under his control from:

A. selling for transportation used motor vehicles that do not meet the inspection standards established in 29 M.R.S.A. §§ 2502-2503 (Supp. 1984);

B. failing to affix a valid certificate of inspection issued during the last thirty days prior to the date of a used motor vehicle sold for transportation as required by 29 M.R.S.A. § 2507-A (Supp. 1984);

C. failing to affix to a used motor vehicle a written disclosure statement describing the vehicle's history as required by 10 M.R.S.A. § 1475 (1980 & Supp. 1984); and

D. excluding the warranty of inspectability when selling used motor vehicles for transportation, as prohibited by 10 M.R.S.A. § 1474 (2) (1984).



3. Order restitution for the Defendant's customers who have suffered financial loss due to the unfair and deceptive trade practices of the Defendant.

4. Order the Defendant to pay the appropriate fines for each civil violation under 29 M.R.S.A. § 2507-A (Supp. 1984) and 10 M.R.S.A. § 1477 (2) (Supp. 1984).

5. Order the Defendant to pay the cost of this suit and of the investigation of the Defendant made by the Attorney General.

6. Grant such other relief as this Court deems just and proper.

Dated: October 4, 1984

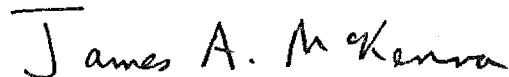
Respectfully submitted,

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