

L.3.1 Sample Complaint

COMMONWEALTH OF KENTUCKY
MODEL CIRCUIT COURT

GARY CONSUMER
AND
JANET CONSUMER PLAINTIFFS

v.

JOHN SMITH D/B/A ZZZ CHECK EXCHANGE, LLP,
DEFENDANT
C.A. NO. 97-CI-_____
DIVISION NO. _____

SERVE:

- | | |
|--|--|
| 1. ZZZ Check Exchange, LLP
_____ Street
Mytown, Kentucky 41702 | John Smith
_____ Street
Mytown, Kentucky 41702 |
| 2. Hon. Ben Chandler
Attorney General
State Capitol
Frankfort, Kentucky 40601 | |

VERIFIED COMPLAINT

This Complaint is filed pursuant to the Consumer Protection Act and states causes of action pursuant to the Act and other applicable law. Counsel, therefore, requests that pursuant to K.R.S. 367.220(2), the clerk mail a copy of the Complaint to the Attorney General. Plaintiffs, Gary Consumer and Janet Consumer, by and through counsel, for their cause of action, state as follows:

Parties

1. The Plaintiffs, Gary Consumer and Janet Consumer, are natural persons; former residents of _____ County, Kentucky; and current residents of _____ County, Kentucky.

2. Defendant, ZZZ Check Exchange, LLP has a principal operating address of _____ Street, Mytown, Kentucky 41702. It transacts business at _____ Road in

_____ville, _____ County, Kentucky. John Smith is the owner and managing agent of ZZZ Check Exchange.

Jurisdiction and Venue

3. The amount sought in this complaint exceeds \$4,000, and this Court has jurisdiction over this action. Venue is proper pursuant to K.R.S. 452.450, 452.460, and 367.220, because the financial transactions occurred in _____ County.

Factual Allegations

4. Plaintiffs began doing business with Defendant ZZZ Check Exchange in _____ville, Kentucky on or about August 22, 1996 and engaged in financial transactions with Defendant on numerous occasions thereafter.

5. Plaintiffs engaged in two types of transactions with Defendant: check cashing transactions and deferral transactions.

6. In the “check cashing” transactions, Defendant advanced Plaintiffs credit as follows: Plaintiffs gave Defendant a document in the form of a check which was solicited by Defendant in exchange for cash. Defendant agreed to hold the “check” for two weeks before presenting it for payment or before requiring Plaintiffs to “pick up” the check by payment of the face amount.

7. As its charge for cashing and holding the check for two weeks, Defendant charged Plaintiffs 20% of the sum advanced. Defendant obtained its fee by requiring Plaintiffs to write a check 20% in excess of the sum advanced to Plaintiffs.

8. The charges described in paragraph 7 were wholly or in significant portion consideration for allowing Plaintiffs to delay payment on the check.

9. Defendant knew or reasonably should have known that at the time of each check cashing transaction, Plaintiffs were borrowing money to be repaid in two weeks and were paying a charge on the borrowed funds of 20% of the cash paid Plaintiffs by Defendant because Plaintiffs needed cash and did not have sufficient funds in the bank to cover the check on the date it was written.

10. In the deferral transactions, Defendant, from time to time, upon the expiration of two weeks, allowed Plaintiffs to defer presentment or pick-up of a check. For such deferrals, Defendant charged 10% of the sum originally advanced for each scheduled week of deferral. In all deferral transactions, upon Plaintiffs’ payment of 20%, Defendant gave Plaintiffs an additional two weeks before presentment or before requiring Plaintiffs to pick up the check by payment of the face amount.

11. The deferral fees described in paragraph 10 were consideration for allowing Plaintiffs to defer payment on the original check.

12. Defendant knew or reasonably should have known that at the time of each deferral, Plaintiffs were borrowing money to be repaid in two weeks and were paying a charge of 20% on the borrowed funds because Plaintiffs did not have sufficient funds in the bank to cover the check on the date scheduled for pick-up.

13. The Plaintiffs deferred presentment or pick-up in this manner until approximately May 1, 1997.

14. At all times relevant, Defendant failed to furnish Plaintiffs the disclosures required by the Truth in Lending Act in the clear and conspicuous manner required by the Act. Among the disclosures the Defendant failed to furnish were the annual percentage rate, which was 520%; the finance charge, using that term; and the amount financed, using that term. Similarly, Defendant failed to disclose any finance charge or interest or other charges in connection with the furnishing of credit as required by applicable state law.

15. Had Plaintiffs known they were being charged finance charges at an annual percentage rate of 520% per year, Plaintiffs would have engaged in no check cashing or deferral transactions with Defendant.

16. At all times relevant, Plaintiffs incurred debt to Defendant for Plaintiffs' personal, family, and household use.

17. To enforce payment of the checks, Defendant tacitly and expressly threatened that in the event Plaintiffs' check did not clear on presentment for payment, or Plaintiffs failed to pick up their check or failed to pay the deferral fee for an additional deferral, Defendant would prosecute Plaintiffs for violation of Kentucky's bad check law, K.R.S. 514.040.

18. When Defendant made these threats, Defendant knew or reasonably should have known that the "checks" were not at the time of their writing payable on demand, were not backed by funds in the bank, and were not checks as defined by the Uniform Commercial Code, K.R.S. 355.3-104, and furthermore that Plaintiffs were not subject to criminal prosecution for writing bad checks under the provisions of K.R.S. 514.040 (theft by deception).

19. Defendant made these threats for the sole purpose of compelling Plaintiff to pay the charges described in paragraphs 7 and 10 for the extension of credit.

20. As a result of these threats, Plaintiffs paid the fees as described above to their damage.

21. Defendant contacted Plaintiff Janet Consumer at work, demanding payment and threatening criminal action against her and her husband, Plaintiff Gary Consumer.

22. Defendant ZZZ contacted the _____ County Attorney's office on or about June 4, 1997 in an attempt to scare the Plaintiffs into continuing to pay the charges described above.

23. During the preceding calendar year, for a fee, ZZZ cashed and held for delayed presentment or drawer pick-up more than twenty five checks.

Kentucky Usury Statute, K.R.S. 360.010 and 360.020

24. Plaintiffs incorporate by reference all previous allegations herein.

25. The check cashing charges described in paragraph 7 above were all, or in substantial portion, consideration for the right to defer payment on the check for a two week period.

26. The deferral charges described in paragraph 10 above were in their entirety consideration for deferred payment on the check.

27. Regardless of the terminology used to describe the charges, the check cashing and deferral charges were interest within the meaning of K.R.S. 360.010.

28. At all times relevant, Defendant charged interest at 520% per annum, in excess of that permitted by K.R.S. 360.010, and these charges were knowingly done within the meaning of K.R.S. 360.020.

29. Pursuant to K.R.S. 360.020(1), Defendant is liable to Plaintiffs in a sum of twice the interest charged, and Defendant must forfeit all unpaid interest.

Kentucky Consumer Loan Act, K.R.S. Ch. 288

30. Plaintiffs incorporate by reference all previous allegations.

31. At all times relevant, Defendant has been in the business of making consumer loans to Plaintiffs and others similarly situated without holding a license as required by K.R.S. 288.420.

32. The interest, charges, and fees charged by Defendant on the transactions were 520% per annum and exceed the limitations of K.R.S. ch. 288.

33. Pursuant to K.R.S. 288.991, the transactions described in this Complaint are void; Defendant has no right to collect any principal, charges, or recompense whatsoever; and Defendant is liable to Plaintiffs for all such sums as have been paid to Defendant.

Federal RICO: 18 U.S.C. § 1961 et seq.

34. Plaintiffs incorporate by reference all previous allegations.

35. At all times relevant, Defendant was an entity capable of holding a legal or beneficial interest in property.

36. Defendant engaged in collection of unlawful debt by lending money at a usurious rate under Kentucky law, which usurious rate was more than twice the enforceable rate.

37. Defendant received income from this unlawful debt collection (based on a usurious rate more than twice the enforceable rate under Kentucky law) and used the income to operate an enterprise engaged in or with activities affecting interstate commerce, including ZZZ Check Exchange, LLP, in violation of 18 U.S.C. § 1962(a).

38. Through its collection of unlawful debt (based on a usurious rate more than twice the enforceable rate under Kentucky law), Defendant maintained an interest in or control of enterprises engaged in activities affecting interstate commerce, including ZZZ Check Exchange, LLP, in violation of 18 U.S.C. § 1962(b).

39. Defendant was associated with, or an employee of, an enterprise that engaged in activities that affect interstate commerce, and Defendant conducted such enterprise's affairs, and obtained income for such enterprise, through a pattern of collection of unlawful debt (based on a usurious rate more than twice the enforceable rate under Kentucky law), in violation of 18 U.S.C. § 1962(c).

40. As a result of the foregoing actions, Defendant injured Plaintiffs in their property by forcing Plaintiffs to pay interest to Defendants at usurious rates.

41. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to triple damages from Defendant.

Federal Truth In Lending Act

42. Plaintiffs incorporate by reference all previous allegations.

43. Each check cashing transaction and each deferral transaction was a separate transaction within the meaning of the Truth In Lending Act, 15 U.S.C. § 1640 et seq.

44. The 10% per week charge (20% for a two week period) whether for check cashing or deferral of presentment or pick up, was a finance charge within the meaning of the Truth In Lending Act.

45. For each transaction in which Defendant failed to disclose the Annual Percentage Rate, Finance Charge, or Amount Financed in the manner required by the Truth In Lending Act, Defendant is liable to Plaintiffs for statutory damages pursuant to 15 U.S.C. § 1640 in the sum of twice the finance charge (the 10% per week charge), but not less than \$100 per transaction and not more than \$1,000 per transaction. In addition, Defendant is liable to Plaintiffs for any actual damages caused by Defendant's disclosure violations.

Disclosure Violations of K.R.S. § 360 et seq.

46. Plaintiffs incorporate by reference all previous allegations.

47. The transactions between Plaintiffs and Defendant were governed by the disclosure requirements of K.R.S. 360.210 et seq.

48. The check cashing fee and deferral fees that Defendant charged with respect to each transaction between Plaintiffs and Defendant were finance charges within the meaning of K.R.S. 360.215.

49. In each transaction with Plaintiffs, Defendant failed to furnish the disclosures required by K.R.S. 360.220, including without limitation the "percent per annum rate disclosure," and these failures were willful.

50. Plaintiffs are therefore entitled to recover all finance charges and other charges incurred in connection with the transactions and to an order barring recovery of any unpaid finance charges.

Fraud, Deceit, and Misrepresentation

51. Plaintiffs incorporate by reference all previous allegations.

52. Defendants engaged in a fraudulent scheme, artifice and device with the purpose of extracting usurious, illegal, and exorbitant charges from Plaintiffs. Defendant made the

following false statements, knowing them to be false or acting recklessly with regard to the falsity, and with the intent that Plaintiffs act on the statements:

(a) that the documents that Plaintiffs executed were “checks” when, in fact, Defendant knew that the document was not payable on demand at the time of its writing, was not at the time of its writing backed by funds in the drawee bank, and thus did not constitute a check within the meaning of the Uniform Commercial Code or within the meaning of the “bad check law”;

(b) that Defendant’s charges on the financial transactions with Plaintiffs did not constitute interest; and

(c) that Defendant could utilize Kentucky’s “bad check law” for the collection of monies for the Plaintiffs.

53. These statements were material to Plaintiffs in their decision to transact business with Defendant.

54. Plaintiffs relied upon the Defendant’s misrepresentations and were injured as a result.

55. Defendant’s actions were intended to cause Plaintiffs financial and other injury and constituted “fraud” and “malice” within the meaning of K.R.S. 411.186, thereby entitling Plaintiffs to punitive damages, in addition to actual damages.

Kentucky Consumer Protection Act, K.R.S. 367.170 et seq.

56. Plaintiffs incorporate by reference all previous allegations.

57. Defendant engaged in unfair, deceptive, false, misleading, and unconscionable acts and practices within the meaning of the Kentucky Consumer Protection Act, K.R.S. 361.110, by disguising their consumer loan business as a check cashing operation; failing to disclose their interest rates, finance charges, and annual percentage rates; and threatening criminal prosecution for writing bad checks in the event Plaintiffs failed to pay back the funds including the usurious interest charges of not less than 520% per annum.

58. Plaintiffs have suffered loss of money or property as a result of Defendant’s actions and are entitled, pursuant to K.R.S. 367.220, to actual damages, equitable relief, and punitive damages.

WHEREFORE, Plaintiffs request the following relief:

1. That pursuant to Kentucky’s Interest and Usury Statute, K.R.S. 360.010 and 360.020, Plaintiffs be awarded the sum of twice the interest paid and Defendant forfeit all unpaid interest.

2. That pursuant to the Kentucky Consumer Loan Act, K.R.S. 288.991, the transactions between Plaintiffs and Defendant be declared void and Plaintiffs be awarded all sums paid to Defendant, including but not limited to principal, interest, and fees for each and every transaction.

3. That pursuant to RICO, 18 U.S.C. § 1964(c), Plaintiffs receive triple their damages and costs.

4. That pursuant to the federal Truth in Lending Act, 15 U.S.C. § 1640 et seq., and Regulation Z, Plaintiffs be awarded statutory damages of twice the finance charges, but not less than \$100.00 per transaction and not more than \$1,000.00 per transaction, and such actual damages as they may prove at trial.

5. That pursuant to the Kentucky Disclosure of Financing Charges Statute, K.R.S. 360.220, Plaintiffs be awarded a recovery of all finance charges and other charges paid in connection with the transactions and be granted an order barring recovery of finance charges.

6. That pursuant to their common law claims for fraud, deceit, and misrepresentation, Plaintiffs be awarded such actual damages as they may prove at trial, plus punitive damages.

7. That pursuant to the Kentucky Consumer Protection Act, K.R.S. 367.220, Plaintiffs be awarded such actual damages as they may prove at trial, appropriate equitable relief, and punitive damages.

8. That Plaintiffs be awarded pre-judgment and post-judgment interest.

9. That Defendant be ordered to cease its effort to collect monies from Plaintiffs through threats of criminal prosecution.

10. That Plaintiffs be granted trial by jury.

11. That Plaintiffs recover their costs, as well as attorney fees for services provided by attorneys other than those employed by or receiving compensation from Appalachian Research and Defense Fund, Inc.

12. That Plaintiffs be granted any other relief to which they may be entitled.

Respectfully submitted this _____ day of _____ 1997.

STEPHEN A. SANDERS
DEBORAH A. SCHMEDEMANN
Attorneys for Plaintiffs
Appalachian Research & Defense Fund
28 North Front Street
Prestonsburg KY 41653
Telephone Number
Fax Number

Attorney for Plaintiffs
Law Firm
Address
Telephone Number

ADDISON PARKER
Attorney for Plaintiffs
Appalachian Research & Defense Fund
P.O. Box 567
Richmond KY 40476-0567
Telephone Number
Fax Number