

STATE OF NORTH CAROLINA
COUNTY OF ALLEGHANY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 19 CVS 144

NORTH CAROLINA)
COMMISSIONER OF BANKS, RAY)
GRACE, *ex rel* STATE OF NORTH)
CAROLINA,)

Plaintiff,)

v.)

ALPHA FINANCE COMPANY,)

Defendant.)

**DEFAULT JUDGMENT
AND ORDER
(DEFJ-GW)**

FILED
2019 NOV 18 PM 3:20
CLERK OF SUPERIOR COURT

THIS MATTER was heard by the undersigned Superior Court Judge Presiding over the 18 November 2019, Civil Session of Wilkes County Superior Court, pursuant to Rule 7(b)(4) of the North Carolina Rules of Civil Procedure and Local Rule 6.4, upon the Plaintiff's Motion for Default Judgment filed herein on 30 September 2019. Based upon the Court's review of the pleadings, motions, and other papers filed, the evidence presented, if any, and arguments of counsel, the Court makes the following:

FINDINGS OF FACT

1. On 31 July 2019, this action was commenced by the filing of a verified complaint and a summons was issued to Defendant. The Complaint alleged that Defendant engaged in violations of the Consumer Finance Act ("CFA"), Article 15 of Chapter 53 of the North Carolina General Statutes.

2. The complaint alleged, among other things, that Defendant failed to comply with Plaintiff's Cease and Desist Order entered on 19 June 2019 ("Cease and Desist Order"). More specifically, Defendant did not have sufficient loanable assets, did not file its 2018 annual report, and did not pay its 2017 assessment.

3. The Cease and Desist Order remains in full force and effect and prohibits Defendant from originating new loans under the CFA, among other things.

4. The complaint also alleged that, at the time of the complaint's filing, Defendant had stopped accepting payments from customers.

5. On 31 July 2019, the Court entered a Temporary Restraining Order against Defendant which required, among other things, that it cease operations and origination of all CFA loans until such time as the Cease and Desist Order is modified or vacated. In addition, the Court ordered Defendant to appear on 6 August 2019 at 9:30 AM for further proceedings.

6. On 3 August 2019, Defendant was served with the summons and complaint.

7. On 6 August 2019, Defendant failed to appear and the Court entered a Preliminary Injunction which required, among other things, that Defendant stop accepting payments on CFA loans, that interest stop accruing on such loans, and that Defendant cease operations under the CFA until such time as the Cease and Desist Order is modified or vacated.

8. On 7 August 2019, Defendant was served with the Preliminary Injunction.

9. On 20 September 2019, Plaintiff filed a Motion for Entry of Default on the grounds that Defendant did not file an answer or plead otherwise and did not request an extension of time. Plaintiff's motion was granted on 20 September 2019.

10. On 30 September 2019, Plaintiff filed a Motion for Default Judgment and requested, among other things, that Defendant be ordered to surrender its consumer finance license to Plaintiff, that Defendant's consumer finance loans be declared void, and that all liens be released.

11. On 13 November 2019, Plaintiff served upon Defendant by email the Affidavit of Elizabeth F. Hammond, the Consumer Finance Manager for Plaintiff. Attached to the affidavit as Exhibit A is a list of open and outstanding CFA loans made by the Defendant ("Open Loan List"). Plaintiff made significant efforts to identify all open and outstanding CFA loans and to ensure the accuracy of the Open Loan List, based upon the records seized from the Defendant and data from its software vendor. Given that Plaintiff based the Open Loan List on Defendant's limited records and incomplete data sets, the Open Loan List may not contain all of Defendant's outstanding CFA loans.

12. Exhibit A does contain open and outstanding CFA loans, as well as paid-out CFA loans with collateral that has not been released by Defendant.

Based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

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

2. Defendant was properly served with process under Rule 4 of the North Carolina Rules of Civil Procedure.

3. Plaintiff is entitled to judgment as a matter of law under Rule 55 of the North Carolina Rules of Civil Procedure.

4. Defendant has engaged in multiple violations of the CFA including failure to originate any loans for a period of at least ninety days, failure to maintain sufficient loanable assets, failure to file its 2018 annual report, and failure to pay its 2017 assessment, as required by N.C. Gen. Stat. §§ 53-168(d), 53-167, and 53-171(a).

5. Defendant also failed to comply with the Cease and Desist Order, which remains in full force and effect pursuant to N.C. Gen. Stat. § 53-187 and the Preliminary Injunction referenced above.

6. Defendant has stopped accepting payments on its open CFA loans in violation of N.C. Gen. Stat. § 53-180(g).

7. Defendant's CFA loans are void as a matter of law pursuant to N.C. Gen. Stat. § 53-166(d).

8. Defendant is required as a matter of law to surrender its CFA license pursuant to N.C. Gen. Stat. § 53-171(a).

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff's Motion for Default Judgment is granted.

2. Plaintiff's Cease and Desist Order shall remain in full force and effect until it is modified or vacated by Plaintiff.

3. Defendant shall surrender its Consumer Finance License to the Plaintiff within ten days. If the Defendant fails to comply, Plaintiff's right to proceed administratively is reserved to Plaintiff.

4. All of Defendant's outstanding loans made under the CFA, including, but not limited to, charged-off loans, are hereby declared void, treated as satisfied and paid in full, and all balances are forgiven.

5. Defendant and its successors and/or assigns shall not collect or attempt to collect upon any loan made by Defendant under the CFA.

6. Consumers shall not have any further obligation to make any payments on CFA loans to Defendant.

7. The Open Loan List attached as Exhibit A to the Affidavit of Elizabeth F. Hammond is received and entered under seal pursuant to N.C. Gen. Stat. § 53C-2-7(b).

8. Each loan identified in the Open Loan List attached as Exhibit A to the Affidavit of Elizabeth F. Hammond is a CFA loan.

9. Defendant's security interest in collateral pledged on any CFA loan is hereby satisfied and discharged.

10. Plaintiff shall provide the Open Loan List to the North Carolina Division of Motor Vehicles or other third parties, as necessary and subject to N.C. Gen. Stat. § 53C-2-7(d), to facilitate the release of Defendant's liens on personal property pledged as collateral for CFA loans.

This the 18 day of November, 2019.

A handwritten signature in black ink, appearing to read "Michael D. Duncan", with a long horizontal flourish extending to the right.

Honorable Michael D. Duncan
Superior Court Judge Presiding


CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that he has this day served a copy of the foregoing Default Judgment and Order by placing a copy of the same in the United States Post Office at Raleigh, North Carolina, postage prepaid and addressed to:

Mac Wayne Billings, President
Alpha Finance Company
1613 Wynne Trace Ct.
Raleigh, NC 27603

This the 19 day of Nov, 2019.

JOSHUA H. STEIN
Attorney General



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