

IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

JACK BOWDEN,

Plaintiff

v.

Docket No. 2017-CV- 35

MARK A. SHUBERT, individually,  
MICHAEL G. SHUBERT, individually, and  
MARK A. SHUBERT, Registered Agent for  
SHUBERT MOTOR SALES, INC.

FILED  
TIME 2:23 AM/PM

MAR 01 2017

LISA NILES  
CIRCUIT COURT CLERK  
Kristina Ramsey D.C.

COMPLAINT

Comes now the plaintiff, Jack Bowden, by and through counsel, who would hereby show unto the court the following:

I. PARTIES

1. The plaintiff herein, Jack Bowden, is a resident of Loudon County, Tennessee.
2. Defendant Mark A. Shubert is a resident of Loudon County, Tennessee, who may be served with a copy of this complaint at 3000 Hirst Circle, Lenoir City, Tennessee 37771.
3. Defendant Mike Shubert is a resident of Loudon County, Tennessee, who may be served with a copy of this complaint at 200 Oak Chase Boulevard, Lenoir City, Tennessee 37771.
4. Defendant Mark A, Shubert, as Registered Agent for defendant Shubert Motor Sales, Inc., may be served with a copy of this complaint at 524 Highway 321 N, Lenoir City, Tennessee 37771.

## II. VENUE

5. Venue is proper in Loudon County as this is a business transaction at issue in this matter took place at a business located in Loudon County, Tennessee.

## III. FACTS

6. Plaintiff loaned defendants One Hundred Thousand and 00/100ths Dollars (\$100,000.00) on or about April 11, 2011. Defendants executed a promissory note in favor of plaintiff. (Copy of Promissory Note attached hereto as Exhibit A).
7. Pursuant to the promissory note defendants were to repay plaintiff "the sum of \$100,000.00 with interest from April 11, 2011 on the unpaid principal at the rate of 5% annually."
8. Pursuant to the promissory note, unpaid principal and interest were to be paid in monthly installments of interest only beginning April 11, 2011, and continuing until April 11, 2012 at which time the remaining principal and unpaid interest was to be paid in full.
9. During the original term of the loan, defendants consistently made interest only payments of Four Hundred Fifteen and 23/100ths Dollars (\$415.23) on the original loan amount. No payments against the original principal were made.
10. In marginal notations, plaintiff and defendants agreed by their respective signatures to "extend" the note to April 2014 and subsequently to April 2015, April 2016 and to April 11, 2017.
11. Defendants made no principal reduction payments on the original loan amount of \$100,000.00 during the extended loan periods though defendants have continued to make interest only payments since the inception of the note.

12. At the request of defendants and based upon verbal agreements, plaintiff subsequently made an additional series of loans to defendants in the amounts of Forty Thousand and 00/100ths Dollars (\$40,000.00), Thirty Thousand and 00/100ths Dollars (\$30,000.00), Twenty-Eight Thousand Five Hundred and 00/100ths Dollars (\$28,500.00) and Twenty Thousand and 00/100ths Dollars (\$20,000.00). The total of additional loans provided by plaintiff to defendants is One Hundred Eighteen Thousand Five Hundred and 00/100ths Dollars (\$118,500.00).
13. Defendants received credit from plaintiff in the amount of Twenty-Two Thousand Eight Hundred Eighty-Four and 00/100ths (\$22,884.00) for the purchase of a vehicle and for three payments made by defendants totaling Thirteen Thousand Five Hundred Dollars and 00/100ths (\$13,500.00).
14. Defendants owe plaintiff an outstanding loan balance of Ninety-Five Thousand Six Hundred Sixteen and 00/100ths (\$95,616.00) on the series of loans outlined in Paragraph 12 herein. This outstanding loan balance represents the total of the secondary loans (\$118,500.00) less the truck credit (\$22,884.00) less the payments made by defendants (\$13,500.00) or  $\$118,500.00 - \$22,884.00 - \$13,500.00 = \$82,116.00$ .
15. Defendants owe plaintiff a total of One Hundred Eighty-Two Thousand One Hundred Sixteen and 00/100ths Dollars (\$182,116.00), such total representing the original loan of \$100,000.00 plus the outstanding balance of \$82,116.00 on the subsequent loans.
16. Plaintiff held a check from defendants in the amount of Twenty-Eight Thousand Five Hundred and 00/100ths Dollars (\$28,500.00). Upon information and belief, said check is worthless. (Copy of held check attached hereto as Exhibit B).

#### **IV. BREACH OF CONTRACT**

17. All allegations in paragraphs 1 – 16 of this complaint are hereby incorporated and re-alleged by reference.
18. Pursuant to the written promissory note and verbal agreements among the parties, defendants were required to make interest payments to plaintiff and ultimately to reimburse plaintiff the original amount of principal.
19. The defendants' failure to make the agreed payments amounts to a breach of the contractual terms of the promissory note and the verbal contractual agreement between the parties, resulting in significant harm to the plaintiff.

#### **V. NEGLIGENT MISREPRESENTATION**

20. All allegations in paragraphs 1-19 of this complaint are hereby incorporated and re-alleged by reference.
21. Defendants failed to make payments in the manner and amount required by the promissory note and verbal agreements among the parties.
22. At the time the promissory note was executed by the parties and when the subsequent verbal agreements were reached among the parties, defendants were acting in the course of their business, profession or employment and in a transaction in which they had a pecuniary interest. The defendants supplied faulty information to the plaintiff by suggesting in word and deed that they were willing and able to abide upon the terms of the note and subsequent agreements. Defendants' representations, bolstered by their long-standing relationship with plaintiff, were meant to guide the plaintiff in the business transaction. The defendants failed to exercise reasonable care in making their

representations to plaintiff. Plaintiff reasonably and justifiably relied upon the misinformation provided by defendants causing the actual damages complained of herein.

23. For the foregoing reasons, defendants are guilty of negligent misrepresentation for which plaintiff has suffered significant financial harm.

#### **VI. INTENTIONAL MISREPRESENTATION**

24. All allegations in paragraphs 1-23 of this complaint are hereby incorporated and re-alleged by reference.
25. The defendants failed to timely repay any of the principal of the original loan and defendants have likewise failed to repay both principal and interest on the subsequent loans made to them by plaintiff.
26. Defendants intentionally and knowingly misrepresented material facts to plaintiff by suggesting to the plaintiff that they had the intent and the ability to abide by the terms of the original note, and most blatantly, to repay the later loans they received from plaintiff based upon the verbal agreement between the parties.
27. Plaintiff has suffered significant financial harm due to his reliance upon the intentional misrepresentations of defendants. At the time defendants made such representations to plaintiff, they had neither the intentions to fulfill the terms of the note and agreements nor the financial wherewithal to do so.

#### **VII. VIOLATIONS OF THE TENNESSE CONSUMER PROTECTION ACT**

28. All allegations in paragraphs 1-27 of this complaint are hereby incorporated and re-alleged by reference.

29. The defendants failed to make principal payments on the initial loan to plaintiff and failed to fully reimburse plaintiff for the subsequent loans made by plaintiff at defendants' request.
30. The defendants promised a rate of return of the loans to plaintiff in an amount that was not a reflection of the market rate in violation of the Tennessee Consumer Protection Act (TCPA) §47-18-104(b)(49). Upon information and belief, defendants engaged in a "Ponzi scheme," defined in the Tennessee Code as a fraudulent investment scheme in which money placed by later investors pays artificially high dividends to the original investor, thereby attracting even larger investments.
31. Plaintiff is an "elder person" as that term is defined at TCPA §47-18-125(d)(1). Relying upon their shared history with plaintiff and his long-standing affection for them, defendants targeted plaintiff for additional loans even when they were unable to repay plaintiff's earlier loans and other outstanding debts due to the promised high rates of return.

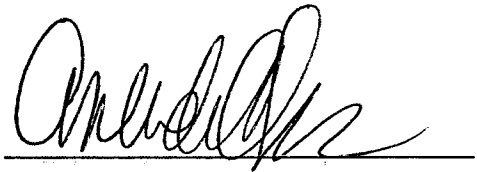
#### **VIII. CONVERSION**

32. All allegations in paragraphs 1-31 of this complaint are hereby incorporated and re-alleged by reference.
33. Defendants failed to make payments toward their greed upon debt with the plaintiff.
34. Defendants assumed control over and used plaintiff's personal property (\$182,116.00) in a manner that was inconsistent with the written and verbal agreements between plaintiff and defendants. Thus, the defendants are liable under a theory of conversion and plaintiff is entitled to damages in accordance with the legal theory of conversion.

WHEREFORE, plaintiff respectfully prays that the Court grant plaintiff the following relief:

1. Judgment in the amount of not less than \$182,116.00 for damages sustained and costs incurred by plaintiff in relation to defendants' breach of contract, negligent misrepresentation, intentional misrepresentation, violations of the Tennessee Consumer Protection Act and conversion.
2. Treble damages for defendants' violation of the Tennessee Consumer Protection Act.
3. Reasonable attorney's fees for violation of the Tennessee Consumer Protection Act.
4. An award reimbursing plaintiff for court costs and other discretionary costs.
5. Any other relief as the Court may consider appropriate.

Respectfully submitted this 1<sup>st</sup> day of March, 2017.



Amanda A. Smith

BPR# 20289

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