

IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

DARRELL D. KIRBY and  
WANDA S. KIRBY  
Plaintiffs

COPY

v.

Docket No. 2017-CV- 51

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

FILED  
TIME 9:23 AM/PM

APR 04 2017

LISA NILES  
CIRCUIT COURT CLERK  
*Kusha Ramsay D.C.*

COMPLAINT

Come now the plaintiffs, Darrell D. Kirby and Wanda S. Kirby, by and through counsel, who would hereby show unto the court the following:

**I. PARTIES**

1. Darrell D. Kirby and wife, Wanda S. Kirby, collectively referred to as the "plaintiffs" herein, are residents 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.
5. Mark A. Shubert, individually, Michael G. Shubert and Mark A. Shubert, Registered Agent for Shubert Motor Sales, Inc., shall be collectively referred to as “defendants” herein.

## II. VENUE

6. Venue is proper in Loudon County as the issue at bar is a series of business transactions that took place at Shubert Motor Sales, Inc., a business located at 524 Highway 321 N, Lenoir City, Loudon County, Tennessee.

## III. FACTS

7. Beginning on or about April 28, 2016, in a series of three notes, plaintiffs loaned defendants a total of One Hundred Thousand and 00/100ths Dollars (\$100,000.00). Defendants executed a series of promissory notes in favor of plaintiffs. (Copy of Promissory Notes attached hereto as Exhibit A).
8. The first two promissory notes indicated a rate of return of Ten Percent (10%) for plaintiffs for a thirty-day period of the loan.
9. The most recent note, dated August 16, 2016, indicated that the loan money totaling One Hundred Thousand and 00/100ths Dollars (\$100,000.00) was for “automobile sales” and was on letterhead titled “SHUBERT MOTOR SALES, INC., 524 HWY 321 N., LENOIR CITY, TN 37771” and included the telephone number at the defendant dealership, Shubert Motor Sales, Inc.

10. Pursuant to the promissory note dated August 16, 2016, defendants were to repay plaintiff “the sum of \$10,000.00 per month in profits from the use of the money for automobile sales.” There is no information regarding when the principal would be satisfied or what, if any, interest was to have been paid.
11. A portion of the final note includes Twenty Thousand and 00/100ths Dollars (\$20,000.00) indebtedness for a 2014 Honda Accord EXL originally intended by the plaintiffs to be used as a trade-in vehicle.
12. The 2014 Honda Accord EXL was subsequently located by plaintiffs at a Knoxville dealership. Upon information and belief, said 2014 Honda Accord EXL was purchased by the Knoxville dealership from defendant Shubert Motor Sales, Inc., based upon a title with the forged signature of plaintiff Darrell D. Kirby.
13. Defendants made no principal reduction payments on the loan amount of \$100,000.00 nor have defendants produced plaintiffs’ 2014 Honda Accord EXL.
14. Defendants are indebted to plaintiffs in the total amount of One Hundred Thousand and 00/100ths Dollars (\$100,000.00).
15. Defendants did seek additional financing from plaintiffs but were refused by plaintiffs.
16. On or about October 21, 2016, defendants provided plaintiffs with a check in the amount of Ten Thousand and 00/100ths Dollars (\$10,000.00). Said check was worthless. (Copy of NSF 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 notes and verbal agreements among the parties, defendants were required to make interest payments to plaintiffs and ultimately to reimburse plaintiffs 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 plaintiffs.

**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 notes were 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 plaintiffs by suggesting in word and deed that they were willing and able to abide upon the terms of the notes and subsequent agreements. Defendants' representations, bolstered by their long-standing relationship with plaintiffs, were meant to guide the plaintiffs in the business transaction. The defendants failed to exercise reasonable care in making their representations to plaintiffs. Plaintiffs 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 plaintiffs have 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 loan nor have they returned plaintiffs' vehicle referenced herein.

26. Defendants intentionally and knowingly misrepresented material facts to plaintiffs by suggesting to the plaintiff that they had the intent and the ability to abide by the terms of the notes, and most blatantly, to repay the later loans they received from plaintiffs based upon the verbal agreement between the parties.

27. Plaintiffs have suffered significant financial harm due to their 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 TENNESSEE 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 to plaintiffs on the initial loan and to fully reimburse plaintiffs for the subsequent loans made by plaintiffs at defendants' request.

30. The defendants promised a rate of return of the loans to plaintiffs 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. Plaintiffs meet the definition of an “elder person” as that term is defined at TCPA §47-18-125(d)(1). Relying upon their shared history with plaintiffs and their long-standing affection for them, defendants targeted plaintiffs for additional loans even when they were unable to repay plaintiffs’ 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 agreed upon debt with the plaintiffs and similarly failed to return plaintiffs’ vehicle.

34. Defendants assumed control over and used plaintiffs’ personal property (\$100,000.00) in a manner that was inconsistent with the written and verbal agreements between plaintiffs and defendants. Thus, the defendants are liable under a theory of conversion and plaintiffs are entitled to damages in accordance with the legal theory of conversion.

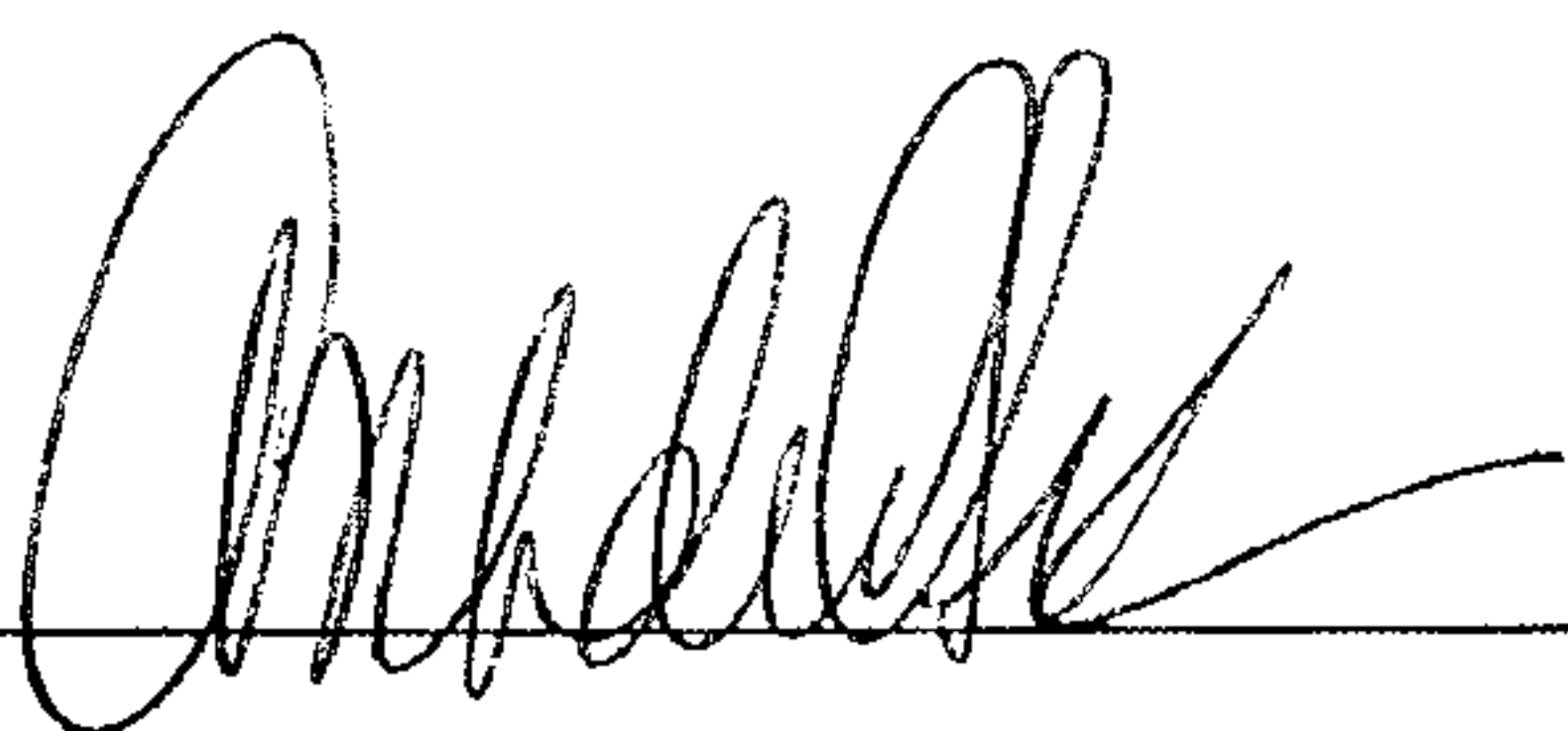
WHEREFORE, plaintiffs respectfully pray that the Court grant plaintiff the following relief:

1. Judgment in the amount of not less than \$100,000.00 for damages sustained and costs incurred by plaintiffs in relation to defendants’ breach of contract, negligent

misrepresentation, intentional misrepresentation, violations of the Tennessee Consumer Protection Act and conversion.

2. A restraining order preventing defendants from selling the real property located at 524 Highway 321 N., Lenoir City, Tennessee, 37771, as that property is an asset of the defendants in this matter and should rightfully be used to satisfy defendants' debt plaintiffs.
3. Treble damages for defendants' violation of the Tennessee Consumer Protection Act.
4. Reasonable attorney's fees for violation of the Tennessee Consumer Protection Act.
5. An award reimbursing plaintiff for court costs and other discretionary costs.
6. Any other relief as the Court may consider appropriate.

Respectfully submitted this <sup>4th</sup> 3d day of April, 2017.



Amanda A. Smith

BPR# 20289

Amanda A. Smith  
110 Kingston Street  
Lenoir City, Tennessee 37771  
Attorney for Plaintiff  
865-986-9959

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been furnished to Mark Shubert, individually, Michael Shubert, individually and Mark Shubert, Registered Agent for Shubert Motor Sales, Inc., in this cause by placing a copy of the same in the U.S. Mail, postage prepaid, address as follows:

Mark Shubert

3000 Hirst Circle

Lenoir City, Tennessee 37772

Michael Shubert

200 Oak Chase Boulevard

Lenoir City, Tennessee 37772

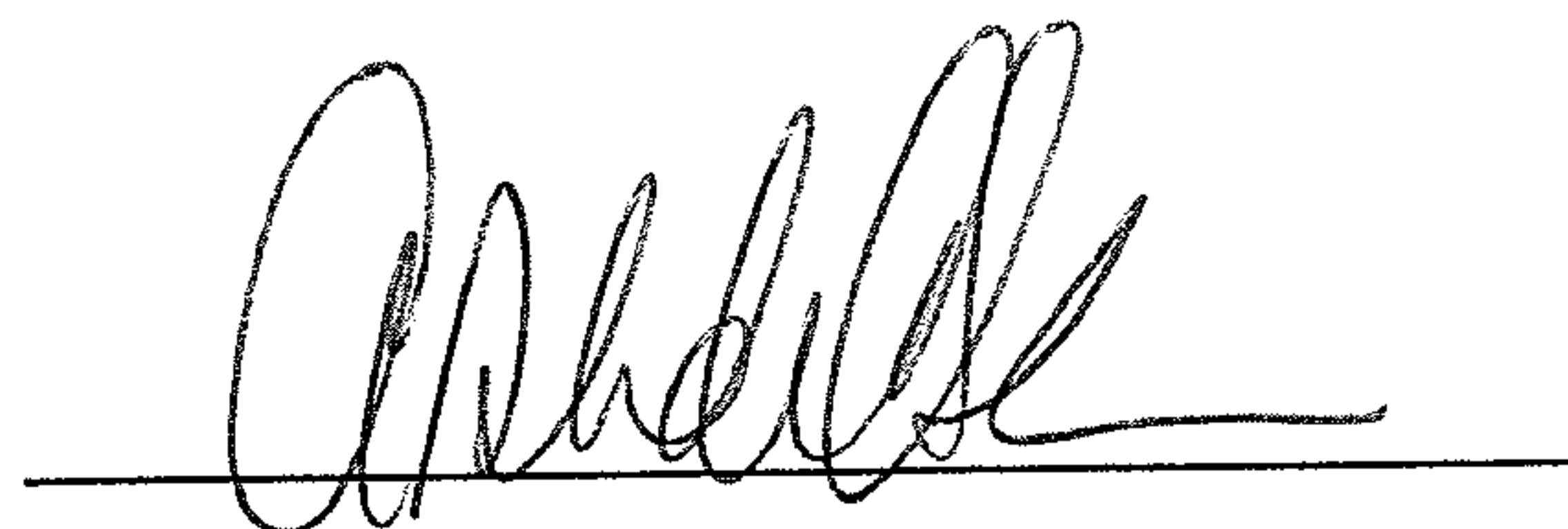
Mark Shubert, Registered Agent

Shubert Motor Sales, Inc.

524 Highway 321 North

Lenoir City, Tennessee 37771-6540

<sup>4th</sup>  
This ~~3~~ day of April, 2017.

A handwritten signature in black ink, appearing to read 'Amanda A. Smith', is written over a horizontal line.

Amanda A. Smith

BPR# 20289



EXHIBIT A

SHUBERT MOTOR SALES INC.


524 HWY 321 N.

LENOIR CITY, TN. 37771

(865) 986-6587

08/16/2016

We have entered into an agreement with Darrell and Wanda Kirby. In consideration of \$100,000.00 we agree to pay the sum of \$10,000.00 per month in profits from the use of the money for automobile sales.

Mark A Shubert  


SHUBERT MOTOR SALES INC.

524 HWY 321 N.

LENOIR CITY, TN. 37771

(865) 986-6587

07/14/16

We have entered into an agreement with Daryl Kirby and Wanda Kirby. In consideration of \$50000.00 we agree to pay in return \$55000.00 on August 14, 2016.

*Mark A. Shubert*  
*Wanda Kirby*

SHUBERT MOTOR SALES INC.

524 HWY 321 N.

LENOIR CITY, TN. 37771

(865) 986-6587

04/28/16

We Have entered into an agreement with Daryl Kirby. In consideration of \$30000.00 We agree to pay \$33000.00 in return in 30 days from date above.

*Mark A Shubert*  
*Will H Shubert*