

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

60CV-21- _____

STATE OF ARKANSAS, *ex rel.*
LESLIE RUTLEDGE, ATTORNEY GENERAL

PLAINTIFF

v.

ACCESSIBILITY SPECIALTIES, INC.,
RUSSELL MASHBURN, and
BILLY RICE

DEFENDANTS

COMPLAINT

The State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General (“the State” or “the Attorney General”), for its Complaint against Accessibility Specialties, Inc. (“ASI”), a corporation, Russell Mashburn, an individual, and Billy Rice, an individual (collectively, “Defendants”), states:

I. INTRODUCTION

1. This is a consumer protection action brought to redress and restrain violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 through 115 (“ADTPA”).

2. Defendants Russell Mashburn and Billy Rice, individually and through the operation of their business, ASI, orchestrated a business scheme that has deceived and damaged Arkansas consumers.

3. Defendants are retail sellers of equipment for mobility and accessibility for disabled individuals and provide disability-accessible vehicle modifications and conversions.

4. On at least one occasion, Defendants were hired to convert and modify a consumer's van to be disability-accessible, but Defendants sold the vehicle to third-parties, retaining all proceeds of the sales, without the owner's knowledge or authorization.

5. On at least two occasions, Defendants engaged in a consignment sale but failed to deliver any of the proceeds to the vehicle owner.

6. As outlined herein, the acts and practices undertaken by the Defendants were deceptive and unconscionable in violation of state law.

7. The State seeks an injunction, an order imposing civil penalties, restitution for affected consumers, and other relief against Defendants.

II. PARTIES

8. Plaintiff is the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General. Attorney General Rutledge is the chief legal officer of the State. Pursuant to Ark. Code Ann. § 4-88-104 and 4-88-113, the State may seek civil enforcement of the ADTPA.

9. Defendant Accessibility Specialties, Inc. ("ASI") is an Arkansas for-profit Corporation that registered with the Arkansas Secretary of State on August 23, 1996, and with its principal place of business in Little Rock, Arkansas.

10. Defendant Russell Mashburn is an adult resident of Pulaski County, Arkansas and is the co-owner, president, and registered agent of ASI.

File No.: 2020-0436

11. Defendant Billy Rice is an adult resident of Pulaski County, Arkansas and is the co-owner and vice president of ASI.

III. JURISDICTION

12. At all times relevant to this lawsuit, Defendants systematically and continually did business and availed themselves of the privileges of conducting activities within the State of Arkansas.

13. This Court has jurisdiction over subject matter and persons in this cause of action pursuant to Ark. Code Ann. § 4-88-104, § 4-88-113, §16-4-101, and the common law of the State of Arkansas.

14. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, § 4-88-112 and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

15. Defendants began business operations on or about August 23, 1996.

16. Defendants' business includes the retail sales of equipment for mobility and accessibility for disabled individuals, such as stair lifts, elevators, ramps, power wheelchairs, scooters, custom seating; offering disability-accessible van rentals; providing specialized services to make disability-accessible modifications and conversions to consumers' vehicles. Defendants also possess a used car dealer license and sell used disability-accessible vehicles.

17. Upon receiving information from consumers that Defendants had engaged in alleged deceptive practices, Investigator Melissa Gladden conducted an investigation into Defendants' business practices and determined, as set out more

specifically below, that Defendants have deceptively sold vehicles without the owners' authorization and conducted deceptive consignment sales of vehicles and other items. See Affidavit of Investigator Melissa Gladden, attached hereto and incorporated by reference herein as EXHIBIT A.

A. Deceptive Vehicle Sale without the Owner's Authorization

18. On or about September 25, 2020, Investigator Melissa Gladden talked by telephone with Tracy Tisdale, a consumer, who alleged that Defendants had deceptively sold Mr. Tisdale's vehicle without authorization. On or about August 1, 2020, Mr. Tisdale hired Defendants to convert his 2004 Toyota Sienna van so that the vehicle would be disability-accessible for transportation for his teen-aged son who is disabled. At some point, Defendants informed Mr. Tisdale that a third-party, Glenn and Barbara Greenwell, had expressed interest in buying the van, to which Mr. Tisdale responded that Defendants should tell the Greenwells to contact him (Mr. Tisdale) directly. A few weeks thereafter, because Mr. Tisdale had not heard from Defendants, he went to Defendants' business where he learned that Defendants had sold his van to the Greenwells for \$49,500 without his knowledge or authorization and had kept all the proceeds of the sale. See the Statement of Tracy Tisdale taken via phone by Inv. Melissa Gladden attached hereto and incorporated by reference herein as EXHIBIT B.

19. According to the complaint filed in *Greenwell, et al. v. Mashburn, et al.*, Pulaski County Court Case No.: 60CV-20-7023, the Greenwells obtained a loan for \$49,500 to purchase the van for their disabled child from Defendants. The

Greenwells believed that Defendants were authorized to sell the van. Upon learning of Defendants' deception, the Greenwells took out a second loan and paid an additional \$49,500 directly to Mr. Tisdale in order to eliminate any question of clear title and possession of the van, which resulted in the Greenwells paying a total of \$99,000 for the van. A copy of said Complaint is attached hereto and incorporated by reference herein as EXHIBIT C.

B. Deceptive Consignment Sales

20. Since at least April 2019, Defendants have also marketed and sold disability-accessible vehicles and other equipment pursuant to consignment agreements with the current owners of the vehicles.

21. In a typical consignment agreement, the vehicle or equipment owner delivers possession of the vehicle or equipment to Defendants and authorizes Defendants to sell the vehicle or equipment with Defendants retaining a percentage of the sale price and accounting for, and remitting to the owner the remainder of the purchase price.

22. On at least two occasions, Defendants have deceptively entered into consignment agreements to sell vehicles or equipment on behalf of the current owners and failed to deliver any of the proceeds to the individual owners.

23. According to the complaint filed in *Henry v. Mashburn, et al.*, Pulaski County Circuit Court Case No.: 60CV-19-7579, in April 2019, Mary T. Henry entered into an agreement with Defendants Mashburn and ASI to sell her 2004 Dodge disability-accessible van on consignment. In May 2019, Defendant

Mashburn informed Ms. Henry that the van had sold for approximately \$11,000 and that he would remit the proceeds to her, less his commission. Ms. Henry never received the funds from Defendants. A copy of said Complaint is attached hereto and incorporated by reference herein as EXHIBIT D.

24. On January 2, 2020, a default judgment was entered against Defendants Mashburn and ASI. A copy of said Default Judgment is attached hereto and incorporated by reference herein as EXHIBIT E.

25. According to the complaint filed in *Martin v. Accessibility Specialties, Inc., et al.*, Pulaski County Circuit Court Case No.: 60CV-20-2146, on or about April 25, 2019, Scott Martin entered into an agreement with Defendants ASI and Mashburn to sell a disability-accessible van and a wheel chair on consignment. Thereafter, Defendant Mashburn informed Mr. Martin that the van and the wheel chair had sold and that Mr. Martin was to receive \$23,000. Mr. Martin never received the funds from Defendants. A copy of said Complaint is attached hereto and incorporated by reference herein as EXHIBIT F.

26. On May 18, 2020, a default judgment was entered against Defendants ASI and Mashburn. A copy of said Default Judgment is attached hereto and incorporated by reference herein as EXHIBIT G.

27. Thereafter, Mr. Martin garnished Defendant Mashburn's bank accounts and recovered all amounts ordered by the default judgment. On December 7, 2020, Mr. Martin filed a Satisfaction of Judgment. A copy of said Satisfaction of Judgment is attached hereto and incorporated by reference herein as EXHIBIT H.

C. Concluding factual allegations

28. The foregoing allegations demonstrate a pattern and practice of deceptive, egregious, and unconscionable conduct by Defendants to take advantage of vulnerable Arkansas consumers, specifically individuals with disabilities and their caregivers.

29. Defendant Mashburn, personally and as co-owner and president of ASI, formulated, directed, controlled, supervised, managed, participated in, had knowledge of, and acquiesced in the business practices described below to the extent that he is personally, jointly, and severally liable for the unconscionable, deceptive, and otherwise unlawful acts and practices described below. Defendant Mashburn is a “controlling person” within the meaning of Ark. Code Ann. § 4-88-113(d). As such, he is personally liable for not only his personal acts which violated Arkansas law, but also for the individual and collective acts of all Defendants.

30. Defendant Rice personally and as co-owner and vice-president of ASI, formulated, directed, controlled, supervised, managed, participated in, had knowledge of, and acquiesced in the business practices described below to the extent that he is personally, jointly, and severally liable for the unconscionable, deceptive, and otherwise unlawful acts and practices described below. Defendant Rice is a “controlling person” within the meaning of Ark. Code Ann. § 4-88-113(d). As such, he is personally liable for not only his personal acts which violated Arkansas law, but also for the individual and collective acts of all Defendants.

31. Upon information and belief, other persons who have not yet been named as Defendants in this Complaint may have participated in the activities described herein, and additional violations which are not presently known to the State may be discovered and added to this Complaint.

32. Discovery is ongoing, and the State reserves the right to amend this Complaint and to plead further.

V. VIOLATIONS OF LAW

33. The State re-alleges and incorporates paragraphs one through 32 as if set forth word for word.

34. The ADTPA sets forth the Attorney General's statutory authority to bring enforcement actions against persons engaging in deceptive and unconscionable trade practices.

35. Each Defendant is a "person" as defined by Ark. Code Ann. § 4-88-102(5).

36. The business practices of Defendants constitute the sale of "goods" or "services" as defined by Ark. Code Ann. § 4-88-102(4) and (7).

37. The same business practices constitute business, commerce, or trade under Ark. Code Ann. § 4-88-107.

38. Ark. Code Ann. § 4-88-108(a)(1) prohibits the "act, use, or employment of any deception, fraud, or false pretense" in connection with the sale of any goods or services. Defendants engaged in prohibited conduct by:

- i. Using deception, fraud, and false pretenses to sell Mr. Tisdale's converted van without authorization instead of returning the van to Mr. Tisdale after its conversion as agreed, as alleged in Section A above.
- ii. Using deception, fraud, and false pretenses to not pay Ms. Henry the proceeds of the consignment sale of her vehicle as agreed and promised, as alleged in Section B above.
- iii. Using deception, fraud, and false pretenses to not pay Mr. Martin the proceeds of the consignment sale of his vehicle and wheelchair as agreed and promised, as alleged in Section B above.

39. Ark. Code Ann. § 4-88-108(a)(1) prohibits the "concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission" in connection with the sale of any goods or services. Defendants engaged in prohibited conduct by:

- i. The concealment, suppression, and omission of the material fact when Defendants informed Mr. Tisdale about a potential buyer for his van, while Defendants intention was to actually sell Mr. Tisdale's van themselves and keep all of the sale proceeds, which Defendants did, with the intent that Mr. Tisdale rely on Defendants' omission, concealment and suppression, as alleged in Section A above.
- ii. The omission, concealment and suppression of the material fact when Defendants sold the van to the Greenwells while Defendants knew

that they were not authorized by the owner to sell the van but did so any way with the intent that the Greenwells rely on Defendants' concealment, suppression, and omission to buy the van, which they did.

40. Ark. Code Ann. § 4-88-107(a)(10) prohibits the engagement in unconscionable, false, or deceptive acts or practices in business, commerce, or trade. "An act is unconscionable if it affronts the sense of justice, decency, and reasonableness." *GulfCo of Louisiana, Inc. v. Brantley*, 2013 Ark. 367, 430 S.W.3d 7 (2013). Defendants' prohibited conduct alleged in Sections A and B above was sheer deception, falsity, and an affront to any sense of justice, decency, and reasonableness as it was perpetrated upon individuals, and families of individuals, with physical disabilities who had relied and trusted Defendants to provide the agreed upon services.

PRAYER FOR RELIEF

41. Pursuant to Ark. Code Ann. § 4-88-113(a)(1), the Attorney General may bring a civil action to seek to prevent persons from engaging in the use or employment of prohibited practices.

42. Likewise, pursuant to Ark. Code Ann. § 4-88-113(a)(2)(A), the Attorney General may bring a civil action to seek to restore to any purchaser who has suffered any ascertainable loss by reason of the use or employment of the prohibited practices any moneys or real or personal property which may have been

acquired by means of any practices declared to be unlawful, together with other damages sustained.

43. Pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), the Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice.

44. Pursuant to Ark. Code Ann. § 4-88-113(a)(3), any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to \$10,000 per violation.

45. Upon petition of the Attorney General, the court may order the suspension or forfeiture of franchises, corporate charters, or other licenses or permits or authorization to do business in this state.

46. In addition, pursuant to Ark. Code Ann. § 4-88-113(e), any person who violates the provisions of the ADTPA shall be liable to the Office of the Attorney General for all costs and fees, including but not limited to, expert witness fees and attorney's fees, incurred by the Office of the Attorney General in the prosecution of such actions.

47. The State will exercise its right to a trial by jury.

WHEREFORE, the above premises considered, the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General, respectfully requests that this Court enter an order and judgment in favor of the State and:

- a. Finding that Defendants are persons as defined by the ADTPA and Defendants and Defendants' acts and practices alleged herein are subject to, and liable under, the ADTPA;
- b. Finding that Defendants' acts and practices described herein are violations of the ADTPA;
- c. Enjoining and prohibiting Defendants, pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), from using or employing any of the unlawful and deceptive acts and practices described herein;
- d. Requiring Defendants, pursuant to Ark. Code Ann. § 4-88-113(a)(2)(A), to pay consumer restitution to those Arkansas consumers affected by the activities outlined herein that has not been otherwise recovered; in addition, or in the alternative, requiring Defendants to remit to affected consumers all sums obtained from Arkansas consumers by methods prohibited by Arkansas law that have not been otherwise recovered;
- e. Imposing civil penalties, pursuant to Ark. Code Ann. § 4-88-113(b), to be paid to the State by the Defendants in the amount of \$10,000 for each violation of the ADTPA proved at a trial of this matter, the full amount of which will exceed the amount necessary to establish federal diversity jurisdiction;
- f. Suspending Defendants' authorization to do business in this state, pursuant to Ark. Code Ann. § 4-88-113(b), including the suspension or

forfeiture of all of Defendants' corporate charters and all business licenses and permits, including Defendants' used car dealer license.

- g. Requiring Defendants to pay the State's costs in this investigation and litigation, including, but not limited to, attorneys' fees and costs, pursuant to Ark. Code Ann. § 4-88-113(e); and
- h. For all other just and proper relief to which the State may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE
ATTORNEY GENERAL

By: /s/ David McCoy
David A.F. McCoy, Ark. Bar No. 2006100
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
(501) 682-7506
David.McCoy@ArkansasAG.gov

By: /s/ Shannon Halijan
Shannon Halijan, Ark. Bar No. 2005136
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
(501) 683-1509
Shannon.Halijan@ArkansasAG.gov

EXHIBIT A

Affidavit of Investigator

Melissa Gladden



ATTORNEY GENERAL
LESLIE RUTLEDGE
ARKANSASAG.GOV

AFFIDAVIT OF INVESTIGATOR

My name is Melissa Gladden. I am over the age of 18, of sound mind and capable of making this affidavit. I am an Investigator with the Arkansas Attorney General's Office, and I hereby declare that I am fluent in Spanish and English and the facts and allegations stated in this affidavit are within my personal knowledge and are true and correct.

1. I am an investigator in the Consumer Protection Department of the Attorney General's Office.
2. I have been employed with the Attorney General's Office since August of 2019. Before my employment with the Attorney General's Office I worked as a private investigator in the private sector. Prior to that I was employed with the Arkansas Crime Information Center as a Field Agent for approximately 6 years. My employment prior to this position was as a certified law enforcement officer for approximately 13 years.
3. On 9-22-2020 our office was contacted by consumer Tracy Tisdale concerning the sale of his vehicle by Accessibility Specialties, Inc., which will be referred to as ASI for the remainder of this affidavit. The vehicle was specifically designated for handicap assistance, and the matter was assigned to me. On 9-25-2020 I made contact with Mr. Tisdale via phone. *See the attached Consumer Complaint Statement of Tracy Tisdale.*
4. After an initial review, I determined that the circumstances surrounding the sale of the vehicle warranted further review for possible violations of the Arkansas Deceptive Trade Practices Act (ADTPA), Ark. Code Ann. § 4-88-101 *et seq.*
5. Upon further investigation, I determined that ASI is a business located in Little Rock, Arkansas that is owned and operated by Russell Mashburn and Billy Rice.
6. ASI is a retail seller of equipment for handicap mobility and accessibility, such as stair lifts, elevators, ramps, power wheelchairs, scooters, custom seating; offering handicap-accessible van rentals; providing specialized services to make handicap-accessible modifications and conversions to consumers' vehicles. ASI also possesses a used car dealer license and sells used handicap-accessible vehicles. ASI also offers to conduct consignment sales for consumers who wish to sell their handicap-accessible vehicles.
7. During my investigation I determined that several Arkansas consumers were affected by ASI's deceptive practices in regard to the sale of the consumers' vehicles, namely Tracy Tisdale, Glenn and Barbara Greenwell, Mary Henry, and Scott Martin, which are discussed below.
8. On September 28, 2020, I contacted the complainant, Tracy Tisdale, via phone.

9. Mr. Tisdale stated he purchased a van, a 2004 Toyota Sienna, on or about June 5, 2020 from a private party. He took the van to Accessibility Specialties, Inc. ("ASI") on August 1, 2020 for the conversion repairs needed to make the vehicle handicap accessible.
10. Mr. Tisdale stated that a short time later, Russell Mashburn, owner of ASI, told him that someone was interested in purchasing the van. Mr. Tisdale learned a few days later that Mashburn had in fact sold the van to the interested buyers for \$49,500. Mr. Tisdale stated he did not authorize Mashburn to sell the van and had not received proceeds from the sale.
11. Mr. Tisdale stated that after several phone calls and visits to the ASI business, Mr. Tisdale stated that it was evident that Mashburn or ASI would not return the van or pay Tisdale the money from the sale of his van. Mr. Tisdale stated that he then contacted Little Rock Police, who initiated a report and began an investigation.
12. Mr. Tisdale stated that the police found the vehicle was located in Texarkana, Arkansas in the possession of Glenn and Barbara Greenwell, who were the parties that had purchased the vehicle from Mashburn.
13. Mr. Tisdale stated that he received \$49,500 directly from Mr. and Mrs. Greenwell for the purchase of the van.
14. Mr. Tisdale further stated that to his knowledge, Mr. and Mrs. Greenwell had obtained financing initially to purchase the van and at the time of purchase they believed Mr. Mashburn was authorized to sell the van.
15. Mr. Tisdale also stated the to his knowledge the Greenwell's had obtained additional financing to pay him for the van upon learning that Mr. Mashburn was not authorized to sell the vehicle and had not paid Mr. Tisdale the proceeds of the sale.
16. Upon further investigation, I found two additional consumers who had filed private law suits against ASI and Russell Mashburn for deceptive sales of vehicles and equipment.
17. According to the complaint filed in *Henry v. Mashburn, et al.*, 60DV-19-7579, Pulaski County Circuit Court, in April of 2019, Mary Henry contracted Mashburn to sell her 2004 Dodge Van on consignment. After Mashburn sold the van, he informed Ms. Henry that it had sold for approximately \$11,000 and promised that he would remit the proceeds to her, withholding his commission. Ms. Henry was never provided the proceeds of this sale. On January 2, 2020, a default judgment was entered against Mashburn and ASI in favor of Ms. Henry's estate. *See the attached Complaint and Default Judgment.*

18. According to the complaint filed in *Martin v. Accessibility Specialties, Inc., et al.*, 60CV-20-2146, Pulaski County Circuit Court, on or about April 25, 2019, Scott Martin entered into an agreement with Mashburn regarding the consignment sale of a handicap-accessible van and a wheel chair. Mashburn sold both items for \$23,000. However, Mr. Martin was never provided with the proceeds of this sale. A default judgment was entered against ASI and Masburn on May 18, 2020. In or about July 2020, Mr. Martin received the funds ordered in the judgment plus interest, attorneys' fees and costs by garnishing Mashburn's bank accounts. *See the attached Complaint, Default Judgment, and Order to Disburse Funds.*
19. Upon further investigation a criminal information containing an Arrest Disposition Report and Bond Document were located, see the attached documents *State v. Russell Mashburn*, 60CR-20-4282 Pulaski County Circuit Court filed December 7, 2020. The arrest Disposition Report indicated Mr. Mashburn was charged with 1 count of Theft of Entrusted Property (5-36-115) a class B felony, this arrest occurred on October 19, 2020. The arresting officers were Little Rock Police Department Detectives T. Evans and J. Phillips. The associated bond sheet indicated that Mr. Mashburn was released from Pulaski County Regional Detention Center on October 20, 2020. The bond amount was noted to be 5,000.00. Mr. Mashburn was given a court appearance date of December 18, 2020 in Pulaski County District Court.
20. In addition to the criminal information documents an additional lawsuit was also located see attached documents, *Greenwell v. Accessibility Specialties, Inc., et al.*, 60CV-20-7023, Pulaski County Circuit Court, filed on December 11, 2020. On or about August 15, 2020, Russell Mashburn contacted Mr. Tracy Tisdale to inquire if he would be willing to sell his van, as Russell Mashburn had found a potential buyer. The buyers were Glenn and Barbara Greenwell who were looking for a vehicle to accommodate their handicap adult daughter. Mr. Tisdale instructed Mr. Mashburn to give his contact information to the Greenwell's so they could discuss arrangements for the sale of the vehicle. This information was never relayed to the Greenwell's as Mr. Tisdale requested. Mr. Tisdale was not aware that Mr. Mashburn had been in contact with the Greenwell's since mid-July concerning the vehicle. The Greenwell's were not aware that Mr. Mashburn was not communicating with Mr. Tisdale concerning the sale of the vehicle. Russell Mashburn presented the Greenwell's with a purchase price of \$49,500.00 and the Greenwell's agreed to this price. On or about August 22, 2020, Glenn Greenwell obtained a cashier's check in the amount of \$49,500.00, payable to ASI, Inc., at the request of Russell Mashburn. Once the Greenwell family had a chance to test drive the vehicle at ASI in Little Rock, they completed what they believed to be a legitimate purchase and received a bill of sale from Mr. Mashburn. Upon discovering the vehicle had been sold, Tracy Tisdale contacted the Little Rock Police Department to report Russell Mashburn for the fraudulent sale of his vehicle. As a result of this fraudulent sale it was necessary for the for the Greenwell's to take out a second loan in the amount of \$49,500.00 to pay to Tracy Tisdale so they would have clear titled to the vehicle.

21. From my investigation, I determined the financial losses to the consumers my investigation identified are as follows:

- a. Tisdale lost \$49,500 for the unauthorized sale of his van;
- b. Greenways lost \$49,500 paid to ASI/Mashburn for the purchase of Tisdale's van, plus an additional \$49,500 paid directly to Tisdale as reimbursement for the unauthorized sale of the van;
- c. Henry lost \$11,000, plus interest, attorneys' fees and costs awarded by the court;
- d. Martin lost \$23,000, plus interest, attorneys' fees and costs awarded by the court;
- e. Based on the foregoing the total consumer losses equal \$182,500;
 - i. Tisdale recovered his losses of \$49,500 from Greenway;
 - ii. Martin recovered his losses of \$26,131.45 from the garnishment of Mashburn's bank accounts;
- f. Based on the foregoing, at this time, the total unrecovered consumer losses are approximately \$106,868.55.

I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING REPRESENTATIONS ARE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

NAME:

Melissa Gladden

DATE: February 9, 2021

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF Arkansas)

COUNTY OF Pulaski)

Before me, Jamie Matilda-Ann Benson, the undersigned notary, personally appeared Melissa Gladden, satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal this 9th day of February, 2021.

Notary Signature

Jamie Matilda Ann Benson

Notary Printed Jamie Matilda-Ann Benson

My Commission Expires: 04-04-2030

County of Residence: LONOKE



EXHIBIT B

Statement of Tracy Tisdale taken via telephone by Investigator Melissa Gladden

9-25-2020 - Statement of Tracy Tisdale taken via phone by Inv. Melissa Gladden

Mr. Tisdale states he purchased the van, a 2004 Toyota Sienna, on or about June 5, 2020 from Dewanna May of Redfield, Arkansas. Mr. Tisdale had taken out a loan against his home to purchase the van with Bank of Ozk. However, he had an agreement with the bank that once he retained the vehicle the repayment of this loan would be taken from his sons special needs trust account.

The van was taken to ASI (Accessibility Specialties, Inc.) on August 1, 2020 for the conversion repairs needed to make the vehicle handicap accessible. A short time following this Russell Mashburn, owner of ASI, advised Mr. Tisdale that someone was interested in purchasing the van.

After several phone calls and visits to the ASI business Mr. Tisdale stated that it was evident he would not get the money for his van. He then contacted Little Rock Police who initiated a report and began an investigation. Det. Tim Evans is currently the assigned investigator and had Mirandized and interviewed Mr. Mashburn concerning this incident.

According to Mr. Tisdale, Det. Evans obtained bank information in which the 49,500.00 from the van sale was tracked from an account associated with ASI. On the same day the transaction was deposited a forced debit occurred from the account for 23,000.00. Mr. Mashburn had told Mr. Tisdale that the money was seized by the IRS. Det. Evans suggested to Mr. Mashburn that he give the remainder of the money to Mr. Tisdale. However, Mr. Mashburn told the detective her could not as only 14k of the funds remained. Mr. Tisdale is not clear what happened to the remaining funds.

Mr. Tisdale stated he located the family who purchased the van, Glenn and Barbara Greenwell, in their area of residence Texarkana, Arkansas. He was also able to locate the van and make contact with the Greenwell's and their attorney Matt Keil, also of Texarkana, Arkansas. According to Mr. Tisdale the Greenwell's also have a handicapped adult child and have obtained a loan against their residence for the van.

At the time of this statement Mr. Tisdale does not have the vehicle in his possession and it appears to still remain with the Greenwell's in Texarkana, Arkansas. Currently this case has been referred by Det. Evans to the Pulaski County Prosecutor for review for potential criminal charges. The assigned prosecutor is Cameron Coker.

EXHIBIT C

Complaint

Greenwell v. Accessibility Specialties

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

GLENN GREENWELL and	§	
BARBARA GREENWELL,	§	
	§	
PLAINTIFFS	§	NO. _____
	§	
v.	§	
	§	
RUSSELL MASHBURN and	§	
ACCESSIBILITY SPECIALITES, INC.	§	
	§	
DEFENDANTS.	§	

PLAINTIFF’S ORIGINAL COMPLAINT

COME now the Plaintiffs, Glenn Greenwell and Barbara Greenwell (“Plaintiffs”) and for their Complaint against Defendants, Russell Mashburn and Accessibility Specialties, Inc., (“Defendants”), allege and state as follows:

I. THE PARTIES

1. Plaintiffs, Glenn and Barbara Greenwell, are citizens and residents of Miller County, Arkansas and were at the time of the transaction giving rise to this Complaint.

2. Defendant Russell Mashburn is and was a citizen of Pulaski County, Arkansas at the time of the transaction giving rise to this Complaint. Mashburn may be served with Summons and Complaint at 1920 John Barrow Road, Little Rock, Arkansas 72204 or at 3200 S. Shackleford, STE 4, Little Rock, Arkansas 72204.

3. Defendant Accessibility Specialties, Inc, is an Arkansas For Profit Corporation, authorized to transact business in the state of Arkansas. Accessibility Specialties, Inc., has its principal place of business in Little Rock, Arkansas and may be served with Summons and Complaint upon its registered agent, Russell Mashburn at 3200 S. Shackleford, STE. 4, Little Rock, Arkansas 72204.

II. JURISDICTION AND VENUE

4. Jurisdiction and Venue are proper in Pulaski County because the cause of action occurred in Pulaski County, Arkansas and the Defendants are residents of and were doing business in Pulaski County, Arkansas at the time of the fraudulent transaction hereinafter described.

III. FACTS

5. Tracy Tisdale was the owner of a 2018 Toyota Sienna handicap van with a VMI Northstar 360 handicap conversion, his family used to transport their adult disabled son for all of his daily personal and medical needs.

6. There was an issue with the alignment of the van, so he took the van to Accessibility Specialties, Inc. (“ASI”), to perform work.

7. The owner of ASI is and was Defendant Russell Mashburn.

8. ASI considers itself as Arkansas’s Total Mobility Provider, specializing in vehicle conversions, stair lifts, elevators, ramps, power wheelchairs, scooters, custom seating and van rentals.

9. The van was in and out of multiple shops in the hopes of finding one that could perform the necessary alignment needed to adequately take care of Tisdale’s disabled son.

10. On or about August 15, 2020, Russell Mashburn contacted Mr. Tisdale’s to inquire if he would be willing to sell the van, as Russell Mashburn had found a potential buyer.

11. The buyers were Plaintiffs Glenn and Barbara Greenwell who were looking for a vehicle to transport their handicap daughter in for her personal and medical needs.

12. Mr. Tisdale told Russell Mashburn to give the potential buyer, Glenn Greenwell, his contact information so they could arrange the details of the sale of the van.

13. Russell Mashburn never passed on Tracy Tisdale’s contact information, and instead,

continued to relay information to the Greenwells himself.

14. After weeks of not hearing from Russell Mashburn or from any potential buyers, Tracy Tisdale went to ASI to check on the van and discovered it had already been sold.

15. Unbeknownst to Tisdale, Russell Mashburn had been communicating with the Greenwells regarding the sale of the 2018 Toyota Sienna, without Tracy Tisdale's permission since mid-July of 2020.

16. Unbeknownst to the Greenwells, Russell Mashburn has not been communicating with Tisdale regarding the sale of the van.

17. The Greenwell family was in need of this particular van to take care of their handicap daughter who is confined to an electric wheelchair and is totally dependent on her parents for her mobility and care.

18. In addition to the deception listed above, Russell Mashburn represented to Glenn Greenwell that the 2018 Toyota Sienna was listed on consignment from a woman whose husband has passed away and the van only had 1742 miles on it.

19. Russell Mashburn presented the Greenwells with a purchase price of \$49,500.00 and the Greenwells agreed to pay the price subject to the owner fixing the front-end alignment issue.

20. On or about August 22, 2020, Glenn Greenwell obtained a cashier's check in the amount of \$49,500.00, payable to ASI, Inc., at the request of Russell Mashburn, to pay for the 2018 Toyota Sienna.

21. Once the Greenwell family had a chance to test drive the vehicle at ASI in Little Rock, they completed what they believed to be a legitimate purchase and received a bill of sale from Russell Mashburn.

22. At the time of the fraudulent sale, the Greenwells received the van and one set of keys,

the bill of sale, and a breakdown of the medical equipment exemption.

23. After the fraudulent sale, the Greenwells contacted Russell Mashburn numerous times regarding the other key and the title for the van.

24. Russell Mashburn provided countless excuses to the Greenwells as to when he would send the requested items. However, he never followed through on delivering the requested key fob and title.

25. At no time did Russell Mashburn alert Tisdale of the sale of the 2018 Toyota Sienna nor did he produce the check in the amount of \$49,500.00.

26. After discovering the van had been sold, Tracy Tisdale contacted the Little Rock Police Department to report Russell Mashburn for the fraudulent sale of his van.

27. On or about September 10, 2020, Glenn Greenwell was contacted by the Texarkana, Arkansas Police Department alerting him that Tracy Tisdale was attempting to repossess the 2018 Toyota Sienna at the Greenwell residence.

28. Such fraudulent activity and turmoil to the lives of the Greenwell family, who take care of their handicap children, caused severe emotional distress, physical distress, humiliation and mental anguish from the time of the incident to today.

29. In addition to the acts of Defendant above, it was necessary for the for the Greenwells to take out a second loan in the amount of \$49,500.00 to pay to Tracy Tisdale so Plaintiffs would have clear titled to the van and to eliminate the fear and emotional distress of not having transportation for their daughter.

IV. FIRST CAUSE OF ACTION Intentional Infliction of Emotional Distress

30. Plaintiffs repeat and reallege by reference each and every allegation contained hereinabove and incorporates the same herein as though fully set forth herein.

31. Defendant knew that he was intentionally selling the motor vehicle of another person to a family, who was in desperate need of the vehicle to transport their handicap daughter, without the true owner's permission.

32. Defendant's conduct was extreme and outrageous. Defendant acted with reckless disregard for Plaintiffs' rights and feelings, and with deliberate indifference to the certainty that Plaintiff would suffer severe emotional distress.

33. As a direct and proximate result of Defendant's actions, Plaintiffs have suffered and will continue to suffer severe mental anguish, humiliation, pain, sever emotional distress and physical distress.

**V. SECOND CAUSE OF ACTION
Deceit, Fraud, and Intentional Misrepresentation**

34. Plaintiffs repeat and reallege by reference each and every allegation contained hereinabove and incorporates the same herein as though fully set forth herein.

35. On numerous occasions, Defendant Mashburn communicated with the Greenwells without the Tisdale's permission.

36. Defendant Mashburn presented to the Greenwells that he had authority to sell the 2018 Toyota Sienna, when in fact he knew he did not have authority on behalf of the Tisdale's to sale the van.

37. Based on these representations, Defendant Mashburn intended to induce the Greenwells to purchase the vehicle at the stated price of \$49,500.00.

38. Based on Defendant Mashburn's representations, the Greenwells relied on his statements and issued a check for \$49,500.00, which Defendant accepted.

39. As a result of their reliance on Defendant Mashburn's representation, the Plaintiffs suffered damages.

VI. THIRD CAUSE OF ACTION

Conversion

40. Plaintiffs repeat and reallege by reference each and every allegation contained hereinabove and incorporates the same herein as though fully set forth herein.

41. After the Tisdale's dropped their 2018 Toyota Sienna off at ASI to perform the necessary maintenance work, Defendant Mashburn had access to the vehicle.

42. It was during this time that Defendant Mashburn fraudulently sold the vehicle to the Greenwells and thereby converted their purchase money in the amount of \$49,000.00.

VII. PLAINTIFF'S DAMAGES

43. Plaintiffs incorporate by reference herein the preceding paragraphs as though stated word for word.

44. The damages sustained by the Plaintiffs as a result of Defendant's actions, include, but are not limited to, the following:

- a. General and special damages;
- b. Punitive damages, in excess of the minimum amount required, to punish Defendants and to deter Defendants and others from similar conduct, for misconduct associated with his decision to fraudulently sale a vehicle, which he was not an owner of, and to withhold that money from the true owner, because Defendant know or should have known, in light of the surrounding circumstances, that his conduct would naturally and probably result in injury and damages and that Defendants continues such conduct with malice or in reckless disregard of the consequences from which malice may be inferred;

- c. Reasonable attorney fees;
 - d. For costs of suit incurred in this action;
 - e. Prejudgment and post-judgment interest at the maximum lawful rate;
 - f. For such other and further relief as the Court may deem just and proper.
45. Plaintiffs reserve the right to amend their pleadings as discovery clarifies the pleadings and where the evidence gives cause of action to assert further and additional claims.

WHEREFORE, Plaintiffs pray that Defendant be cited to appear and answer herein, as the law directs, and that upon final hearing thereof, Plaintiffs have and recover judgment over and from Defendant in such amounts as the evidence may show proper at the time of trial, together with pre-judgment and post-judgment interest thereon at the maximum legal rate allowed by law, and costs of Court, and for such other and further relief, both general and special, at law or in equity, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

Erin M. Keil
Arkansas Bar No. 2020060
ekeil@kglawfirm.com

Matt Keil
Arkansas Bar No. 86099
mkeil@kglawfirm.com

KEIL & GOODSON P.A.
Attorneys at Law
406 Walnut Street
Texarkana, Arkansas 75504-0618
Telephone: (870) 772-4113
Facsimile: (870) 773-2967

By: /s/ Matt Keil
Matt Keil

EXHIBIT D

Complaint

Mary T. Henry v. Russell Mashburn, Individually, and Accessibility Specialties Inc.

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

DIVISION

MARY T. HENRY

PLAINTIFF

VS. No. _____

RUSSELL MASHBURN, Individually, and
ACCESSIBILITY SPECIALTIES INC.

DEFENDANTS

COMPLAINT

Comes plaintiff by her attorneys, Barber Law Firm PLLC, and for her Complaint against defendants, states:

1. Plaintiff is an adult resident of Pulaski County, Arkansas.
2. Russell Mashburn is an adult resident of Pulaski County, Arkansas. Accessibility Specialties Inc. (ASI) is an Arkansas for profit corporation with its principal place of business in Little Rock, Arkansas, and its agent for service being Russell Mashburn, 1920 John Barrow Road, Little Rock, Arkansas.
3. Plaintiff has been the owner of a 2004 Dodge handicap van, VIN number 2D4GP44L54R613056. A copy of plaintiff's title to this vehicle is attached hereto as Exhibit "A". Plaintiff desired to sell her van and defendants, through Russell Mashburn, agreed to sell the van for plaintiff. Defendants were to receive a minor commission for the sale and plaintiff was to receive the full proceeds of the sale price less the minor commission being withheld by defendants.
4. In reliance upon the representation of defendants, plaintiff's van was delivered to defendants in April, 2019 for sale. Defendants sold the vehicle in May, 2019, for the sum of Eleven Thousand Dollars (\$11,000.00).

5. Defendants advised plaintiff they needed to have the title executed so they could deliver title to the purchaser to consummate the sale. Defendants at all times represented the sale proceeds would be delivered to plaintiff less the minor commission to be held by defendants. In reliance upon the representations, the title was executed solely for the purpose of facilitating the sale under the agreement with defendants and representations of defendants. In reliance upon those representations, the title was executed on behalf of plaintiff solely for the purpose of facilitating the sale under the agreement with defendants and for plaintiff to receive her sale proceeds.

6. Defendants completed the sale of the van and received Eleven Thousand Dollars (\$11,000.00) as the purchase price for the van. Plaintiff was notified the sale was completed by defendants and defendants received Eleven Thousand Dollars (\$11,000.00) as the purchase price.

7. Since May, 2019, plaintiff has repeatedly demanded that defendants provide to her the net sum owed to her from the Eleven Thousand Dollars (\$11,000.00) sale price and sale the monies received by defendants. Defendants have continually promised to remit the funds to plaintiff, but have never done so.

8. Defendants have admitted they stole plaintiff's funds. They knowingly used plaintiff's funds for some other purpose rather than providing plaintiff's funds to her.

9. Despite repeated demands to defendants to remit the funds owed to plaintiff, defendants have failed to do so.

10. The monies of plaintiff, in the amount of Eleven Thousand Dollars (\$11,000.00), were stolen and converted by defendants to their own use and have not been remitted to plaintiff. Defendants, jointly and severally, are liable to plaintiff for this conversion of her funds.

11. Defendants' conversion and theft of the funds is a breach of contract. Plaintiff is also entitled to recover her costs and attorney's fees for this breach of contract pursuant to ACA § 16-22-308.

12. Pursuant to ACA §16-118-107, in addition to other remedies, "any person injured or damaged by reason of conduct of another person that would constitute a felony under Arkansas law may file a civil action to recover damages based on the conduct." And "if the person who is injured or damaged prevails, he or she shall be entitled to recover costs and attorney's fees." Defendants knowingly took plaintiff's monies, stole those funds, and they have refused to remit plaintiff those funds. Pursuant to ACA § 5-36-103, theft of property constitutes a felony if the value of the property is greater than One Thousand Dollars (\$1,000.00). Plaintiff was damaged by reason of defendants' felonious conduct and is entitled to recover damages from defendants for such conduct, jointly and severally, pursuant to ACA § 16-118-107.

13. Plaintiff is also entitled to pre-judgment interest from May, 2019 to the date of judgment, and judgment interest thereon following judgment.

14. Plaintiff has been damaged in the amount of Eleven Thousand Dollars (\$11,000.00) together with prejudgment interest together with her attorney's fees and costs herein.

15. There is a secretarial employee at ASI who participated in the felonious conduct, the theft, and the conversion of plaintiff's money. Plaintiff reserves the right to amend this Complaint to name that secretarial employee upon discovery in this case which will reveal that employee's name. Plaintiff will then seek judgment against that secretarial employee in addition to other defendants in this case.

WHEREFORE, plaintiff prays for judgment, jointly and severally, against defendants for the principal sum of Eleven Thousand Dollars (\$11,000.00), together with prejudgment interest, together with her attorney's fees, and her costs herein, as well as any other relief to which she may be entitled.

Respectfully submitted,

BARBER LAW FIRM PLLC
Attorneys for Plaintiff
425 West Capitol Avenue, Suite 3400
Little Rock, AR 72201-3483
(501) 372-6175

By /s/ Robert L. Henry, III
Robert L. Henry, III AR BIN 72054

CERTIFICATE OF TITLE

STATE OF ARKANSAS

VEHICLE IDENTIFICATION NUMBER 2D4GP44L54R613056		YEAR 2004	MAKE DODG	MODEL CVN	BODY TYPE SV
TITLE NUMBER 60030709789	PREVIOUS TITLE NUMBER 60040603588	PREV. TITLE STATE AR	ISSUE DATE 05/14/2007	ODOMETER 15,585	UNLADEN WEIGHT 4033

MAILING ADDRESS

HENRY, MARY T
8100 LINDA LANE
LITTLE ROCK AR 72227

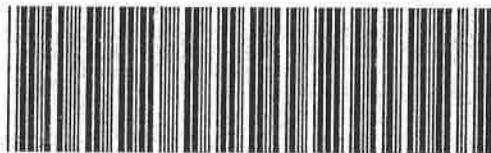
REMARKS

OD ACTUAL

OWNER

HENRY, MARY T
8100 LINDA LANE
LITTLE ROCK AR 72227

Mary T. Henry
OWNER'S SIGNATURE (IF JOINT OWNERSHIP, BOTH MUST SIGN)
THIS TITLE MUST BE SIGNED UPON RECEIPT BY OWNERS



The Department of Finance and Administration, State of Arkansas, hereby certifies that the applicant named hereon is duly registered as the owner of the vehicle described above. From the statements of the owner and the records on file with this department the hereon described vehicle is subject to the liens enumerated hereon.

In Witness Whereof, I have affixed my hand and seal.

Timothy J. Lenthers

COMMISSIONER OF REVENUE

00964412

EXHIBIT E

Default Judgment

Mary T. Henry v. Russell Mashburn, Individually, and Accessibility Specialties Inc.

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
9TH DIVISION

MARY T. HENRY

PLAINTIFF

VS.

No. 60CV-19-7579

RUSSELL MASHBURN, Individually, and
ACCESSIBILITY SPECIALTIES INC.

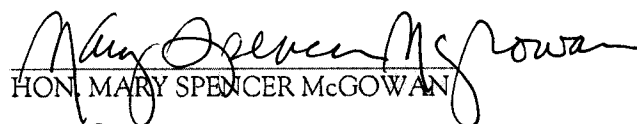
DEFENDANTS

JUDGMENT

This matter comes before the Court on the Motion of the Plaintiff for a Default Judgment, Defendants have wholly failed to appear or respond to the Complaint. Being well and sufficiently advised, the Court finds:

1. Defendants have wholly failed to appear in this action and are in default.
2. Plaintiff is entitled to recover from Defendants, jointly and severally, the sum of \$11,000.00.
3. Plaintiff is entitled to recover costs.
4. Plaintiff is entitled to recover attorney's fees pursuant to A.C.A. §16-118-107.

IT IS, THEREFORE, ORDERED CONSIDERED AND ADJUDGED that Plaintiff have judgment against Defendants, jointly and severally, in the principal amount of \$11,000.00, together with prejudgment interest at the rate of 6% per annum from May 15, 2019, together with attorney's fees in the amount of \$ 400.00 ^{msm}, together with costs in the amount of \$290.00, with said judgment to bear interest thereon from the date of entry until paid at the maximum rate permitted by Arkansas law.


HON. MARY SPENCER MCGOWAN

Date: January 2, 2020

Prepared by:

G. Spence Fricke, AR BIN 79068
Barber Law Firm PLLC
425 West Capitol Ave., Suite 3400
Little Rock, AR 72201
(501) 372-6175

Judge McGowan
Date 1/2/20 Div 9th
Jury Trial ☐
Bench Trial ☐
Non-Trial ☒

EXHIBIT F

Complaint

Scott Martin v. Accessibility Specialties, Inc. Accessible Solutions for Independence, Inc., and Russell A. Mashburn a/k/a Rusty Mashburn

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION**

SCOTT MARTIN

PLAINTIFF

vs.

Case No. 60CV-20-_____

**ACCESSIBILITY SPECIALTIES, INC.,
ACCESSIBLE SOLUTIONS FOR INDEPENDENCE, INC.,
and RUSSELL A. MASHBURN
a/k/a RUSTY MASHBURN**

DEFENDANTS

COMPLAINT FOR BREACH OF CONTRACT

Comes now the Plaintiff, Scott Martin, by and through his attorneys, HILBURN, CALHOON, HARPER, PRUNISKI & CALHOUN, LTD., and for his Complaint for Breach of Contract, states as follows:

JURISDICTION

1. The above-named Plaintiff is an individual and Arkansas resident.
2. The above-named Defendant, Accessibility Specialties, Inc. (hereinafter referred to as "Accessibility") is an Arkansas corporation authorized to conduct business in the State of Arkansas with its principle place of business located in Pulaski County, Arkansas.
3. The above-named Defendant, Accessible Solutions for Independence, Inc. (hereinafter referred to as "ASI") is an Arkansas corporation authorized to conduct business in the State of Arkansas with its principle place of business located in Pulaski County, Arkansas.
3. The above-named Defendant, Russell A. Mashburn a/k/a Rusty Mashburn (hereinafter referred to as "Mashburn") is an individual and Arkansas resident.

5. This Court has jurisdiction over the parties and subject matter, and venue is proper herein.

CLAIM AGAINST ACCESSIBILITY SPECIALTIES, INC.

6. On or about April 25, 2019, the Plaintiff and Accessibility entered into an agreement regarding the sale of the Plaintiff's handicap van and wheelchair (hereinafter referred to as "vehicles").

7. The Agreement contemplated that the Plaintiff hired Accessibility to perform resale services on his behalf in exchange for a fee that was to be paid to Accessibility after the sale of the vehicles.

8. Accessibility specializes in the resale of items such as stair lifts, elevators, ramps, power wheelchairs, custom seating, van rentals, etc. Accessibility holds itself out and is recognized by the public as a place that specializes in reselling handicap vehicles.

9. The Plaintiff delivered the vehicles to Accessibility on or about April 25, 2019.

10. Defendant Mashburn then informed the Plaintiff that both vehicles had sold, and that the Plaintiff was to receive \$23,000.00 as part of the Agreement.

11. A contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such contract. Ark. Code Ann. § 4-2-204(1).

12. Further, an agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined. Ark. Code Ann. § 4-2-204(2).

13. A contract does not fail for indefiniteness because one or more terms of the contract are left open. Ark. Code Ann. § 4-2-204(3). All that is required is a showing that the parties intended to make a contract and there is a reasonably certain basis for providing a remedy. *Id.*

14. As of the date of this Complaint, the Plaintiff has not received any funds as contemplated in the Agreement, nor is he in possession of either of the above-mentioned vehicles.

15. Accessibility breached the contract by failing to perform as contemplated in its Agreement with the Plaintiff.

16. As a direct and proximate result of Accessibility's breach hereinbefore alleged, the Plaintiff has suffered actual damages in the amount of **\$23,000.00**.

17. Accessibility knew that its conduct as hereinbefore described would naturally and proximately result in injury and damage to the Plaintiff and continued such conduct with malice, or in reckless disregard of the consequences from which malice may be inferred, entitling the Plaintiff to an award of punitive damages in the amount of not less than \$100,000.00.

18. The Plaintiff should be awarded a judgment for actual damages of \$23,000.00 and punitive damages of \$100,000.00, plus pre-judgment and post-judgment interest in accordance with Arkansas law.

19. The Plaintiff should be awarded his reasonable attorney's fees and costs associated with Accessibility's breach of contract as set forth herein.

CLAIM AGAINST ACCESSIBLE SOLUTIONS FOR INDEPENDENCE, INC.

20. The Plaintiff restates and incorporates by reference paragraphs 1-19 herein word for word.

21. On or about April 25, 2019, the Plaintiff and ASI entered into an agreement regarding the sale of the Plaintiff's handicap van and wheelchair.

22. The Agreement contemplated that the Plaintiff hired ASI to perform resale services on his behalf in exchange for a fee that was to be paid to ASI after the sale of the vehicles.

23. ASI specializes in the resale of items such as stair lifts, elevators, ramps, power wheelchairs, custom seating, van rentals, etc. ASI holds itself out and is recognized by the public as a place that specializes in reselling handicap vehicles.

24. The Plaintiff delivered the vehicles to ASI on or about April 25, 2019.

25. Defendant Mashburn then informed the Plaintiff that both vehicles had sold, and that the Plaintiff is to receive \$23,000.00 as part of the Agreement.

26. A contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such contract. Ark. Code Ann. § 4-2-204(1).

27. Further, an agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined. Ark. Code Ann. § 4-2-204(2).

28. A contract does not fail for indefiniteness because one or more terms of the contract are left open. Ark. Code Ann. § 4-2-204(3). All that is required is a showing that the parties intended to make a contract and there is a reasonably certain basis for providing a remedy. *Id.*

29. As of the date of this Complaint, the Plaintiff has not received any funds as contemplated in the Agreement, nor is he in possession of either of the above-mentioned vehicles.

30. ASI breached the contract by failing to perform as contemplated in its Agreement with the Plaintiff.

31. As a direct and proximate result of ASI's breach hereinbefore alleged, the Plaintiff has suffered actual damages in the amount of **\$23,000.00**.

32. ASI knew that its conduct as hereinbefore described would naturally and proximately result in injury and damage to the Plaintiff and continued such conduct with malice, or in reckless disregard of the consequences from which malice may be inferred, entitling the Plaintiff to an award of punitive damages in the amount of not less than \$100,000.00.

33. The Plaintiff should be awarded a judgment for actual damages of \$23,000.00 and punitive damages of \$100,000.00, plus pre-judgment and post-judgment interest in accordance with Arkansas law.

34. The Plaintiff should be awarded his reasonable attorney's fees and costs associated with ASI's breach of contract as set forth herein.

CLAIM AGAINST RUSSELL A. MASHBURN A/K/A RUSTY MASHBURN

35. The Plaintiff restates and incorporates by reference paragraphs 1-34 herein word for word.

36. On or about April 25, 2019, the Plaintiff and Mashburn, acting as an agent for Accessibility and ASI, entered into an agreement regarding the sale of the Plaintiff's handicap van and wheelchair.

37. The Agreement contemplated that the Plaintiff hired Mashburn to perform resale services on his behalf in exchange for a fee that was to be paid to Mashburn after the sale of the vehicles.

38. The Plaintiff delivered the vehicles to Mashburn on or about April 25, 2019.

39. Mashburn then informed the Plaintiff that both vehicles had sold, and that the Plaintiff was to receive \$23,000.00 as part of the Agreement.

40. A contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such contract. Ark. Code Ann. § 4-2-204(1).

41. Further, an agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined. Ark. Code Ann. § 4-2-204(2).

42. A contract does not fail for indefiniteness because one or more terms of the contract are left open. Ark. Code Ann. § 4-2-204(3). All that is required is a showing that the parties intended to make a contract and there is a reasonably certain basis for providing a remedy. *Id.*

43. As of the date of this Complaint, the Plaintiff has not received any funds as contemplated in the Agreement, nor is he in possession of either of the above-mentioned vehicles.

44. Mashburn breached the contract by failing to perform as contemplated in his Agreement with the Plaintiff.

45. As a direct and proximate result of Mashburn's breach hereinbefore alleged, the Plaintiff has suffered actual damages in the amount of **\$23,000.00**.

46. Mashburn knew that his conduct as hereinbefore described would naturally and proximately result in injury and damage to the Plaintiff and continued such conduct with malice, or in reckless disregard of the consequences from which malice may be inferred, entitling the Plaintiff to an award of punitive damages in the amount of not less than \$100,000.00.

47. The Plaintiff should be awarded a judgment for actual damages of \$23,000.00 and punitive damages of \$100,000.00, plus pre-judgment and post-judgment interest in accordance with Arkansas law.

48. The Plaintiff should be awarded his reasonable attorney's fees and costs associated with Mashburn's breach of contract as set forth herein.

WHEREAS, the Plaintiff, Scott Martin, prays for judgment against the Defendants, Accessibility Specialties, Inc. Accessible Solutions for Independence, Inc. and Russell A. Mashburn a/k/a Rusty Mashburn, in the amount of \$23,000.00 in actual damages and \$100,000.00 in punitive damages, together with pre-judgment and post-judgment interest as allowed by law; his attorney's fees and costs; and all other just and equitable relief to which he may be entitled.

Respectfully submitted,

SCOTT MARTIN, Plaintiff

By: /s/ SaraCate Moery
SaraCate Moery, #2015181
HILBURN, CALHOON, HARPER,
PRUNISKI & CALHOUN, LTD.
Post Office Box 5551
North Little Rock, AR 72119
(501) 372-0110
smoery@hilburnlawfirm.com

EXHIBIT G

Default Judgment

Scott Martin v. Accessibility Specialties, Inc. Accessible Solutions for Independence, Inc., and Russell A. Mashburn a/k/a Rusty Mashburn

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
4TH DIVISION**

SCOTT MARTIN

PLAINTIFF

vs.

Case No. 60CV-20-2146

**ACCESSIBILITY SPECIALTIES, INC.,
ACCESSIBLE SOLUTIONS FOR INDEPENDENCE, INC.,
and RUSSELL A. MASHBURN
a/k/a RUSTY MASHBURN**

DEFENDANTS

DEFAULT JUDGMENT

Came on for hearing this day Plaintiff's Motion for Default Judgment. Upon consideration of same, as well as the pleadings and all other matters before the Court, the Court finds:

1. On April 1, 2020, Defendants Accessibility Specialties, Inc.; Accessible Solutions for Independence, Inc.; and Russell A. Mashburn a/k/a Rusty Mashburn ("**Defendants**") were served with the Complaint herein seeking, inter alia, a judgment against them, jointly and severally, in the amount of \$23,000.00 in actual damages and \$100,000.00 in punitive damages, plus interest, costs and attorney's fees expended herein.

2. Defendants failed to appear or otherwise defend the Complaint against them in the time and manner provided by law.

3. Plaintiff is entitled to a default judgment against Defendants for the amounts set forth herein.

IT IS THEREFORE ORDERED, CONSIDERED AND ADJUDGED:

1. That Plaintiff, Scott Martin, shall have and recover, and is hereby granted, judgment against Defendants Accessibility Specialties, Inc.; Accessible Solutions for Independence, Inc.; and Russell A. Mashburn a/k/a Rusty Mashburn, jointly and severally, on his Complaint filed herein in the total sum of \$23,000.00 actual damages, plus pre-judgment interest thereon until the date of judgment herein and accrued attorney's fees to date in the amount of \$2,100.00 and costs to date in the amount of \$350.45; all to bear interest from the date of this Judgment at the rate of ten percent (10%) per annum or at the maximum amount allowed by law, whichever is less, until paid in full.

2. That Defendants, Accessibility Specialties, Inc.; Accessible Solutions for Independence, Inc.; and Russell A. Mashburn a/k/a Rusty Mashburn shall prepare and file with the Clerk of the Court, within forty-five (45) days of this date, a schedule, certified by Affidavit, of all their respective property, both real and personal, including moneys, bank accounts, rights, credits, and choses in action held by each respective Defendant or others for them and specify the particular property which they claim as exempt under the provisions of law.

CIRCUIT JUDGE

DATE: _____

Prepared by:

**HILBURN, CALHOON, HARPER,
PRUNISKI & CALHOUN, LTD.**

Post Office Box 5551
North Little Rock, AR 72119
(501) 372-0110

smoery@hilburnlawfirm.com

Attorneys for Plaintiff

By: /s/ SaraCate Moery
SaraCate Moery, #2015181



Arkansas Judiciary

Case Title: SCOTT MARTIN V ACCESSIBILITY SPECIALTIES INC
ET AL
Case Number: 60CV-20-2146
Type: JUDGMENT-DEFAULT

So Ordered

A handwritten signature in black ink, appearing to read "Herb Wright", written in a cursive style.

Honorable Herbert T Wright

Electronically signed by HTWRIGHT on 2020-05-18 16:28:05 page 3 of 3

EXHIBIT H

Satisfaction of Judgment

Scott Martin v. Accessibility Specialties, Inc. Accessible Solutions for Independence, Inc., and Russell A. Mashburn a/k/a Rusty Mashburn

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
4TH DIVISION**

SCOTT MARTIN

PLAINTIFF

vs.

Case No. 60CV-20-2146

**ACCESSIBILITY SPECIALTIES, INC.,
ACCESSIBLE SOLUTIONS FOR INDEPENDENCE, INC.,
and RUSSELL A. MASHBURN
a/k/a RUSTY MASHBURN**

DEFENDANTS

SATISFACTION OF JUDGMENT

For good and valuable consideration, Plaintiff, Scott Martin, does hereby acknowledge full and complete satisfaction of the Judgment rendered in this cause entered on May 18, 2020, against the Defendants, Accessibility Specialties, Inc.; Accessible Solutions for Independence, Inc.; and Russell A. Mashburn, in the principal sum of \$26,131.45.

The Pulaski County Circuit Clerk is hereby authorized to place this Satisfaction of Judgment of record and to satisfy the judgment records of Pulaski County Circuit Court, insofar as they relate to the above-styled matter.

HILBURN & HARPER, LTD.

Post Office Box 5551

North Little Rock, AR 72119

(501) 372-0110

smoery@hilburnlawfirm.com

Attorneys for Plaintiff

By: /s/ SaraCate Moery

SaraCate Moery, #2015181