

JOSEPH M. JACKSON, Jr. GREENE CO., C.S.C.  
BY \_\_\_\_\_ )  
Plaintiff, )  
v. )  
ATWOOD RENTALS, INC., )  
Defendant. )

**ORDER GRANTING  
PARTIAL SUMMARY  
JUDGMENT**

THIS CAUSE comes on to be heard before the undersigned during the 9 May, 2022, Civil Session for the Superior Court for Greene County pursuant to Rule 56 of the North Carolina Rules of Civil Procedure on the plaintiff's Motion for Partial Summary Judgment as to the plaintiff's First and Second Claims for Relief and on the defendant's cross-Motion for Summary Judgment as to all claims asserted by the plaintiff.

This cause was properly noticed for hearing and after considering the plaintiff's and the defendant's respective motions for summary judgment and supporting materials thereto along with the memoranda submitted by the parties to this matter and upon considering the arguments of counsel, this Court hereby determines as follows:

**BACKGROUND**

1. This case arises out of a transaction wherein the plaintiff Joseph M. Jackson, Jr. entered into a transaction to purchase a portable storage shed from the defendant Atwood Rentals, Inc. through a purported "rent to own" transaction.

2. Mr. Jackson wanted to obtain a storage shed so that he could store personal items at his residence. On October 18, 2019, the plaintiff entered into a "Rental Purchase Agreement and Disclosure" with the defendant Atwood Rentals, Inc. for a portable storage shed for the purchase price of \$7,720.00 plus applicable sales tax.

3. The agreement is structured as a "rent to own" transaction whereby if Mr. Jackson makes 48 payments of \$343.38 (\$321.67 monthly payment plus \$21.71 sales tax), he would then become the owner of the property.

4. The agreement further specified that the rental term is one (1) month and the term automatically renews when the plaintiff makes a monthly payment. The plaintiff will not acquire any ownership interest in the property until all 48 payments of \$343.38 are paid.

5. The plaintiff contends that the purported "rent to own" transaction that the plaintiff entered into is actually a "consumer credit sale" under North Carolina's Retail Installment Sales Act (RISA). N.C. Gen. Stat. § 25A-1 *et seq.*

6. The plaintiff contends that his transaction with the defendant Atwood Rentals is a "consumer credit sale" under North Carolina's RISA because, in addition to the elements set out under N.C. Gen. Stat. § 25A-2(a), North Carolina's RISA includes in its definition of a "consumer credit sale" a

contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods or services involved, and it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration, has the option

to become the owner of the goods and services upon full compliance with his obligation under the contract.

N.C. Gen. Stat. § 25A-2(b).

7. The plaintiff further contends that his transaction with the defendant Atwood Rentals, Inc. meets RISA's definition of a "consumer credit sale" because RISA's definition of a "consumer credit sale" also includes

a contract in the form of a terminable bailment or lease of goods or services in which the bailee or lessee can renew the bailment or lease contract periodically by making the payment or payments specified in the contract if:

(1) The contract obligates the bailor or lessor to transfer ownership of the property for no other or a nominal consideration (no more than 10% of the cash price of the property at the time the bailor or lessor initially enters into the contract with the bailee or lessee) upon the making of a specified number of payments by the bailee or lessee;

and

(2) The dollar total of the specified number of payments necessary to exercise the purchase option is more than ten percent (10%) in excess of the aggregate value of the property and services involved.

N.C. Gen. Stat. § 25A-2(b).

8. The plaintiff contends that the transaction is properly deemed a "consumer credit sale" under RISA the terminable nature of the transaction notwithstanding because both conditions set out under § 25A-2(b) are met--the plaintiff may become the owner for no additional or nominal consideration at the end of the agreement and the plaintiff will pay more than 10% of the value of the property involved in this transaction.

9. As appears from the agreement itself and from an affidavit from a certified public accountant, the "cash price" of the storage shed is \$8,241.10 which consists of the sale price of \$7,720.00 plus 6.75% which is the sales tax. The difference between \$16,482.24 (\$343.38 x 48 payments) which is what the plaintiff must pay to achieve ownership of the property and the "cash price" of \$8,241.10 is properly deemed a "finance charge" under RISA. N.C. Gen. Stat. § 25A-8.

10. The finance charge attributable to the plaintiff's transaction with Atwood Rentals equals an annual percentage rate (APR) of 39.391% but the maximum amount that may be charged on this "consumer credit sale" is 18%.  
*Affidavit of Cheryl A. Alleman, CPA; N.C. Gen. Stat. § 25A-15(b).*

11. The plaintiff contends that because the finance charge for this transaction exceeds the maximum amount allowed under RISA by over two times (2x), the contract is void. N.C. Gen. Stat. § 25A-44(2).

12. To counter the plaintiff's contentions, the defendant Atwood Rentals, Inc. asserts that the plaintiff's claims are barred by the one-year statute of limitations set forth under the federal Consumer Credit Protection Act (CCPA) encompassing the Truth in Lending Act (TILA). 15 U.S.C. § 1640(e).

13. The defendant has not submitted an affidavit or other evidence pursuant to Rule 56 of the North Carolina Rules of Civil Procedure by which this Court may conclude that a genuine issue of material fact exists which would make summary judgment inappropriate as to the plaintiff's first two claims for relief.

## RESOLUTION OF ISSUES ON SUMMARY JUDGMENT

Based on the foregoing, this Court concludes as follows:

13. That there is no genuine issue as to material fact and summary judgment as to the plaintiff's first two claims for relief is appropriate in this matter.

14. The plaintiff has shown that his transaction with the defendant Atwood Rentals is properly deemed a "consumer credit sale" under North Carolina's Retail Installment Sales Act in that the defendant regularly extends or arranges for the extension of consumer credit in the ordinary course of its business; the transaction was entered into for a consumer purpose, the transaction is payable in installments or a finance charge is imposed; and that the amount financed is less than \$75,000.00. N.C. Gen. Stat. § 25A-2(a); *Simmons v. C.W. Myers Trading Post, Inc.* 56 N.C. App. 549, 551, 290 S.E.2d 710, 712 (1982); *Mattox v. Graceland Props, LLC (In re: Mattox)*, 635 B.R. 444, 449-50 (Bankr. E.D.N.C. 2021).

15. The plaintiff has shown and the agreement itself shows that this transaction is a "consumer credit sale" under RISA the terminable nature of the transaction notwithstanding. N.C. Gen. Stat. § 25A-2(b); *Mattox v. Graceland Props, LLC (In re: Mattox)*, 635 B.R. 444, 449-50 (Bankr. E.D.N.C. 2021).

16. The plaintiff has shown that in this "consumer credit sale" the "finance charge" imposed by the defendant Atwood Rentals exceeds by over two times (2x) the lawful maximum rate of 18% that may be charged in this "consumer credit sale" under RISA. N.C. Gen. Stat. § 25A-15(b)(4).

17. The plaintiff has shown that the plaintiff's transaction with the defendant Atwood Rentals is void under North Carolina law. N.C. Gen. Stat. § 25A-44(2).

18. The plaintiff has shown that a contract void under applicable law cannot be the basis of a judgment and that the Small Claims Judgment entered in 20 CvM 61 should be set aside.

19. The plaintiff's claims for relief under Count I and Count II are not barred by the one-year statute of limitations set forth under 15 U.S.C. § 1640(e) as contended by the defendant Atwood Rentals.

20. Under § 25A-1, RISA excludes from its coverage any party or transaction that is not also covered under the "Consumer Credit Protection Act (Federal Truth-in-Lending Act) yet RISA excludes from that exclusion (meaning RISA does cover the transaction), those transactions "defined under G.S. [§] 25A-2(b)" which covers a lease or bailment terminable at will--the very transaction at issue in this case.

21. Under the regulations promulgated by the Federal Reserve Board and the Consumer Financial Protection Bureau, the Truth-in-Lending Act does not apply to a "rent to own" transaction such as that entered into by the plaintiff and the defendant Atwood Rentals. 15 U.S.C. § 1603(5); 12 C.F.R. § 1026.2(a)(16).

22. Because TILA does not apply to this transaction, there can be no "conflict" between TILA and North Carolina's RISA and the defendant's reference to N.C. Gen. Stat. § 25A-45 is inapposite. Likewise, TILA's one-year statute of

limitations set forth at 15 U.S.C. § 1640(e) is inapposite and the plaintiff's action is timely filed.

**ORDER**

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The plaintiff has demonstrated that no genuine issue of material fact exists and that the plaintiff is entitled to judgment as a matter of law as to the plaintiff's First and Second Claims for Relief and the plaintiff's Motion for Partial Summary Judgment is hereby ALLOWED.
2. The judgment entered by the District Court-Small Claims Division for Greene County in case number 20 CvM 61 entered on August 5, 2020, is hereby set aside as the court was without jurisdiction to enter the judgment based on a contract void under law.
3. That the transaction between the plaintiff and the defendant is void under N.C. Gen. Stat. § 25A-44(2).
4. The defendant's Motion for Summary Judgment as to all claims asserted by the plaintiff is hereby DENIED.
5. This matter may proceed to trial upon the plaintiff's remaining claims for relief.

This the 9<sup>th</sup> day of May, 2022.



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Honorable G. Frank Jones  
SUPERIOR COURT JUDGE PRESIDING