

COPY
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GILBERT SANCHEZ
DISTRICT CLERK

THE STATE OF TEXAS

Plaintiff,

v.

GERSTY, INC.,

Defendant.

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EL PASO COUNTY, TEXAS

Cause No. 2006 - 889

BY _____
DEPUTY

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

THE STATE OF TEXAS, hereinafter called Plaintiff, acting by and through the Attorney General of Texas **GREG ABBOTT** and the El Paso County Attorney, **JOSE RODRIGUEZ**, brings this action against **GERSTY, INC.**, hereinafter called Defendant, pursuant to the Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (Vernon 1987 and Vernon Supp. 2000)(hereinafter, "DTPA"). Plaintiff seeks, among other things, a permanent injunction and an order compelling Defendant to pay restitution to borrowers, civil penalties, and attorneys' fees and costs.

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends that discovery be conducted under Discovery Level 2 pursuant to TEX. R. CIV. P. 190.3.

PARTIES AND SERVICE

2. This action is brought by the Attorney General of Texas **GREG ABBOTT** and El Paso County Attorney **JOSE RODRIGUEZ** in the name of the **STATE OF TEXAS** and in the public interest under the authority granted to them by the DTPA upon the grounds that Defendant

has engaged in false, misleading and deceptive acts and practices in the conduct of trade and commerce as defined and declared unlawful by Sec. 17.46(a) and (b) of the DTPA.

3. Defendant Gersty, Inc. is a corporation duly formed and existing under the laws of the State of Texas. Defendant, at all times material to this action, has engaged in business in the State of Texas. Defendant may be cited by serving its President Gerardo Maldonado. Said Defendant may be served with process at the following address: 5966 Alameda Ave, El Paso, Texas 79905. Service of said Defendant as described above can be effected by personal delivery.

JURISDICTION AND VENUE

4. Under § 17.47 of the DTPA, the Consumer Protection and Public Health Division of the Office of the Attorney General may bring an action whenever it has reason to believe that any person is engaging in, has engaged in, or is about to engage in any false, misleading or deceptive act or practice in the conduct of any trade or commerce.

5. Under § 17.48 of the DTPA, the El Paso County Attorney's Office may institute and prosecute an action against any person who is engaging in, has engaged in, or is about to engage in any false, misleading or deceptive act or practice in the conduct of any trade or commerce.

6. Venue of this suit lies in El Paso County, Texas for the following reasons:

- a. Under the DTPA § 17.47(b), venue is proper because Defendant, at all times mentioned herein, has transacted business within the State of Texas and County of El Paso.
- b. Under TEX. CIV. PRAC. & REM. CODE §15.002(a)(1) venue is proper in El Paso County, Texas because the violations of law alleged herein were committed in the County of El Paso.

PUBLIC INTEREST

7. The Attorney General and the El Paso County Attorney have reason to believe that Defendant has engaged in the unlawful practices described below. The Attorney General and the El Paso County Attorney also have reason to believe that Defendant has caused and will continue to cause injury, loss and damage not only to Texas consumers, but also to legitimate businesses which lawfully conduct trade and commerce in Texas. The Consumer Protection Division of the Office of the Attorney General and the El Paso County Attorney believe that this action is in the public interest.

NOTICE BEFORE SUIT

8. Contact has been made with the Defendant herein to inform it of the DTPA violations alleged herein.

ACTS OF AGENTS FOR DEFENDANT

9. Whenever in this Petition it is alleged and Defendant did any act or thing, it is meant that the Defendant himself or the officers, agents, or employees of said Defendant performed or participated in such act or thing, and in such instance the officers, agents, or employees of the Defendant were then authorized to and did in fact such act on behalf of the Defendant.

FACTS

10. Defendant is in the business of leasing and selling motor vehicles. In the conduct of his business, Defendant has represented that it is "selling" to Texas consumers motor vehicles, when in truth and in fact it is not "selling" the consumers the motor vehicles.

11. Defendant prepares contract documents to effectuate this deception, and such documents are confusing and misleading in that in one document the transaction is described as a purchase, in another it is described as a lease, and in another as a management arrangement.

12. Defendant also misleads consumers into believing they are covered by a “warranty” that either does not exist, or if it does exist, its terms and conditions are so vague and indefinite that it is virtually illusory.

13. Defendant also has consumers direct the companies which employ the consumers to send the consumer’s compensation directly to Defendant. Defendant deducts the monthly installment payments plus other fees which are not reasonably related to any services rendered before remitting the balance, if any, to the consumers. If questioned about these fees, Defendant does not properly account for the various deductions.

14. Defendant purports to sell to consumers motor vehicles to which it does not have clear title, without informing the consumers that the vehicles are encumbered by liens held by banks or other financial institutions.

DECEPTIVE TRADE PRACTICES

15. Plaintiff has reason to believe and alleges the following specific violations of the DTPA:

- a. that Defendant has committed false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of §17.46(a);
- b. that Defendants has advertised goods or services with intent not to sell them as advertised, in violation of §17.46(b)(9);
- c. that Defendant has represented that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, in violation of §17.46(b)(12);
- d. that Defendant represented that a guarantee or warranty confers or involves rights or

remedies which it does not have or involve, in violation of §17.46(b)(20);

- c. that Defendant has failed to disclose information concerning its goods or services which was known by Defendant at the time of the transaction when such failure to disclose was intended to induce the consumers into transactions which they would not have entered if disclosure had been made, in violation of §17.46(b)(24).

INJURY TO CONSUMERS

16. By means of the foregoing unlawful acts and practices, which were the cause of injury to consumers affected, Defendant has acquired money from identifiable persons to whom such money should be restored, and the State seeks a determination of the amount which should be restored.

PRAYER

17. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated and will continue to violate the law as alleged in this Petition. Unless restrained by this Honorable Court, Defendant will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public.

18. **WHEREFORE**, Plaintiff prays that an Ex Parte Temporary Restraining Order be granted, and Defendant be cited according to law to appear and answer herein; that after due notice and hearing a Temporary Injunction be issued; and upon final hearing a Permanent Injunction be issued, restraining and enjoining Defendant, Defendant's successors, assigns, officers, agents, servants, employees, attorneys and any other person in active concert or participation with Defendant from engaging in the following acts or practices:

- a. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written or computer generated materials relating to the business of Defendants currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause;
- b. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any bank, savings association, credit union or other financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, sports memorabilia, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by such Defendant without further order of this court;
- c. Advertising goods or services with intent not to sell them as advertised, including characterizing a sale as a lease and selling vehicles encumbered with liens;
- d. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, including misrepresenting warranty terms;
- e. Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, including misleading references to a limited warranty combined with an "as is" sale, or that the "Management Agreement" confers benefits that it does not have;

- f. Failing to disclose information concerning its goods or services which was known by Defendant at the time of the transaction when such failure to disclose was intended to induce the consumers into transactions which they would not have entered if disclosure had been made, including selling vehicles that are encumbered with a lien without the consumers knowing that fact.
19. Plaintiff the STATE OF TEXAS further prays that this court will:
- a. Adjudge against Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in the amount of \$20,000.00 per violation of the DTPA;
 - b. Order Defendant to restore all money or other property taken from identifiable persons by means of unlawful acts or practices;
 - c. Order Defendant to pay Plaintiff the STATE OF TEXAS attorneys fees and costs of court;
 - d. Order Defendant to pay pre-judgement interest on all monetary awards as provided by law; and
 - e. Grant all other relief to which Plaintiff the State of Texas may show itself entitled.

DATED this 21 day of February, 2006.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
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THE STATE OF TEXAS

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Plaintiff,

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Cause No. 2006 - _____

GERSTY, INC.,

Defendant.

AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared PATRICIA M. ACOSTA who, after being by me duly sworn, upon her oath deposed and said as follows:

1. "My name is PATRICIA M. ACOSTA. I am over the age of eighteen years, am an adult resident of El Paso, El Paso County, Texas, and am fully competent and able to testify herein. I have personal knowledge of all of the facts set forth herein, and am able to swear, as I hereby do swear, that all of said facts and statements herein contained are true and correct.

2. "I am and at all times herein mentioned was employed by the Office of the Attorney General of Texas. I have been an employee of the Office of the Attorney General for over twenty years, in various capacities, nine years as a Legal Assistant and for the last five years as an Investigator. I review complaints that are filed with our office.

3. "I am familiar with complaints made by consumers against Defendant, and have personally met with two of them about the problems they encountered with Defendants. I have read the allegations in Plaintiff's Original Petition herein, and to my information and belief, they are true and correct and accurately reflect the complaints of the consumers.

4. "Based upon my experience and my familiarity with the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. CODE §§ 17.41 *et seq.*("the Act") and the policies and procedures of our office, I have reason to believe that all of the complaints lodged against Defendants are valid, and that it has engaged in and will engage in acts and practices declared to be unlawful by the Act.

Pursuant to §17.47(a) of the Act, I believe it would be in the public interest for Defendant to be enjoined from engaging in such acts and practices.”

Patricia M. Acosta

PATRICIA M. ACOSTA
Investigator II
Consumer Protection and Public Health Division
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El Paso, Texas 79901
(915) 834-5803
FAX (915) 542-1546

SUBSCRIBED AND SWORN TO before me on the 23rd day of February, 2006.

Lucia G. Jaime
Notary Public, State of Texas

My Commission Expires:

December 01, 2008

