

II. NATURE OF DEFENDANTS' OPERATIONS

2. Defendants maintain a website at www.youcanttakeit.org. On the website, Defendants represent that they can help consumers who face possible loss of property by eminent domain procedures due to the Trans-Texas Corridor Project. Defendants represent that they have “created and prepared ironclad agreements” that are the only means that consumers have to protect their property from eminent domain procedures (the “Property Protection Scheme”). Exhibit 1 to this petition is an affidavit from John C. Flores, an investigator in the Consumer Protection and Public Health Division of the Office of the Attorney General, with a print out of the website attached. Mr. Flores downloaded and printed out the website located at www.youcanttakeit.org on September 8, 2006.

3. In addition to advertising to consumers through the website, Defendants are soliciting consumers door-to-door throughout Texas in areas that may potentially be affected by the Trans-Texas Corridor Project. Defendants are attempting to get consumers to pay them \$600.00 at the time of the visit to secure Defendants' services. Exhibit 2 to this petition is an affidavit by Rosalinda Fierro, an investigator in the Consumer Protection and Public Health Division of the Office of the Attorney General. Attached to Exhibit 2 is a copy of the leaflet which is being distributed door-to-door by Defendants. Ms. Fierro received a copy of this leaflet from the Texas Department of Transportation (“TxDot”). A concerned consumer turned in the leaflet to TxDot.

4. Defendants are also soliciting consumers to purchase their services through Ebay. Ebay Item # 280024238449 is Defendants' "Property Protection Scheme," offered at six hundred dollars (\$600.00), as a way for consumers to protect their property from eminent domain proceedings. Exhibit 3 is an affidavit by John C. Flores, an investigator in the Consumer Protection and Public Health Division of the Office of the Attorney General. Mr. Flores downloaded and printed out the listing for Item # 280024238449 located at www.ebay.com on September 11, 2006. Attached to Exhibit 3 is a copy of the listing downloaded by Mr. Flores.

III. JURISDICTION

5. This suit is brought by the ATTORNEY GENERAL through the Consumer Protection and Public Health Division in the name of the STATE OF TEXAS and in the public interest under the authority granted to him by § 17.47 of the Deceptive Trade Practices - Consumer Protection Act ("DTPA"), TEX. BUS. & COM. CODE ANN. 17.41 *et seq.* (Vernon 2002 and Supp. 2004-05).

IV. DEFENDANTS

6. Defendant DOUGLAS LEE THAYER A/K/A DOUGLAS LEE MORGAN is an individual and may be served with process at his home and business located at 6111 South Fort Hood Road, Killeen, Texas 76542. Mr. Thayer is the managing member of YouCan'tTakeIt, LLC.

7. Defendant LOU ANN REED A/K/A LOU ANN FULLER is an individual and

may be served with process at her home and business located at 6111 South Fort Hood Road, Killeen, Texas 76542. Ms. Reed is listed as the owner of YouCan'tTakeIt, LLC on the website.

8. Defendant NYKEE JOLENE MURRAY A/K/A NYKEE JOLENE KEEN is an individual and may be served with process at her home located at 11914 Oakbrook Drive, Austin, Texas 78753-2124. Ms. Murray is listed as the Austin Region Marketing Director on the website.

9. Defendant YouCan'tTakeIt, LLC is a Texas limited liability company and may be served with process by serving its registered agent, Hale Stewart at 11155 Wheatridge Drive, Houston, Texas 77064.

V. VENUE

10. Venue of this action lies in Travis County pursuant to § 17.47(b) of the DTPA because the transactions and events giving rise to this action are occurring in Travis County.

VI. PUBLIC INTEREST

11. Because Plaintiff, STATE OF TEXAS, has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff, STATE OF TEXAS, has reason to believe that Defendants have caused, and will cause adverse effects to legitimate business enterprise which conducts its trade and

commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest.

VII. TRADE AND COMMERCE

12. Defendants are engaged in “trade” and “commerce” as defined by §17.45(6) of the DTPA, in that Defendants are offering a good or service for sale to consumers in Travis County and throughout Texas.

VIII. NOTICE BEFORE SUIT

13. The Plaintiff has provided notice to Defendants of its intent to file Plaintiff’s Original Petition and Application for a Temporary Restraining Order prohibiting the continued violation of the DTPA, by email on September 12, 2006.

IX. ACTS OF AGENTS

14. Whenever in this Petition it is alleged that Defendants did any act or thing, it is meant that Defendants performed or participated in such act or thing or that such act was performed by the officers, agents or employees of said Defendants, and in each instance, the officers, agents or employees of said Defendants were then authorized to and did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of the Defendants.

X. STATEMENT OF FACTS

15. Defendants are advertising and selling a “Property Protection Scheme” on the internet, through door-to-door solicitations, and through “informational” meetings throughout

Texas. Defendants' website, located at www.youcanttakit.org, includes the following representation: "If you happen to live in Texas and your home or property falls within the blue shaded area on any of the TXDOT maps which you can view at: <http://keeptexasmoving.org> - it will only be a short matter of time before your home or property gets taken away from you under eminent domain for the Trans-Texas Corridor Project, unless you decide to do something about it right now." See page 5 of Exhibit 1, attached.

16. On Defendants' website, Defendants further represent: "It does not matter what politicians takes [sic] office, it does not matter what new state laws get passed, the Trans-Texas Corridor is going to happen because the big business interests sponsoring this project have the authority and power of the U.S. Supreme Court ruling behind them to push it through the courts. In other words, when the time comes, for whatever reason, should local or state government become reluctant to act, the big business behind the Trans-Texas Corridor Project does not have to rely on local or state government to take your home or property away from you for this project. Courts will ultimately be brought into play and they will do what neither local or state government will do, which is to take your home or property away from you." See pages 5-6 of Exhibit 1, attached.

17. On their website, Defendants represent that when consumers' homes are taken away from them by eminent domain proceedings, consumers will not receive a fair price for

their homes: “If local government gets involved and TXDOT moves to have your home or property condemned under eminent domain, you will receive 75% of your last tax appraisal for it.” See page 6 of Exhibit 1, attached.

18. After frightening consumers with the above representations, Defendants offer their “solution” (the “Property Project Scheme”), at a cost of six hundred dollars per consumer: “On the other hand, should you decide you would like to keep your home or property and not have it taken away from you for the Trans-Texas Corridor Project, you could enter into a commercial lease agreement with YouCan’tTakeIt, LLC for an economic development project to be scheduled by CANNON CONSTRUCTION on your property. When you enter into a commercial lease agreement with YouCan’tTakeIt, LLC, we schedule an economic development project for your property that fully satisfies the U.S. Supreme Court’s requirement under the Kelo decision, that “if” and “when” the project gets completed, it would increase local tax revenues.” See page 6 of Exhibit 1, attached. In addition to the initial payment of six hundred dollars (which Defendants have stated will increase to one thousand dollars after November 1, 2006), Defendants also charge a “monthly maintenance fee” of one hundred dollars a month (increasing to two hundred and fifty dollars a month after November 1, 2006). One manner in which consumers can purchase the “Property Protection Scheme” is through Defendants’ Ebay listing and corresponding PayPal account.

19. Defendants represent that they have developed a way to guarantee protection of property from eminent domain proceedings: “As things stand, TXDOT cannot reserve any land it intends to take for the TTC-35 Project. Until all the legal requirements are met and satisfied, all that land is open and still fair game for ‘other’ economic development projects. Should another company properly schedule an economic development project ahead of TXDOT on the property, eminent domain can no longer be used to ‘take’ that particular property.” See page 7 of Exhibit 1, attached.

20. Not only do Defendants represent that they have developed a guaranteed manner of protecting property from eminent domain proceedings, they further represent that their “Property Protection Scheme” is the only way that consumers can protect their homes: “In fact, only by doing business with YOUCAN’TTAKEIT, LLC, can you avail yourself, home and property, of certain forms of protection from profit thirsty developers unavailable anywhere else.” See page 15, Exhibit 1, attached. According to the website, “[b]usiness and tax attorneys working for YOUCAN’TTAKEIT, LLC, have created and prepared ironclad agreements that put into play certain specific legal strategies exclusively developed by YOUCAN’TTAKEIT, LLC, which not only protect your home and property, but insure it should a persistent developer pursue the issue concerning your home, or property.” See page 15 of Exhibit 1, attached.

21. Defendants represent that there is a further benefit to consumers of purchasing

this "Property Protection Scheme" from Defendants: "The benefits you receive are not just the ability to get first in line on your home or property to prevent anyone else from being able to take it from you, but also the financial gain of increasing the sale price of your home or property up to seven times the actual market value of it should some developer have the need to acquire it and YOU agree to sell it." See page 19 of Exhibit 1, attached.

22. Defendants fail to disclose the possible effect of their "Property Protection Scheme" on consumers' preexisting contractual agreements, for example mortgages, or home equity loans. Nor do Defendants disclose how a consumer could sign a lease to have a commercial economic development project developed at their home without running afoul of residential zoning ordinances.

23. Defendants have scheduled an informational meeting for consumers which is scheduled to take place on September 16, 2006 at 7:00 p.m., at Temple High School Auditorium in Temple, Texas. See Exhibit 2, pages 1-2, attached.

XI. VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

24. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

25. Defendants, as alleged and detailed above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in Section 17.46(a) of the DTPA;

26. Defendants, as alleged and detailed above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in the following subsections of Section 17.46(b):

- A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of §17.46(b)(2);
- B. Causing confusion or misunderstanding as to the affiliation, connection, or association with or certification by another in violation of §17.46(b)(3);
- C. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which they do not have in violation of §17.46(b)(5);
- D. Disparaging the goods, services, or business of another by false or misleading representation of facts in violation of § 17.46(b)(8);
- E. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law in violation of § 17.46(b)(12); and
- F. Failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information

was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of §17.46(b)(24).

XII. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

27. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

28. The State alleges that by reason of the foregoing, Defendants should not make false, misleading and deceptive representations in the advertising, promoting, soliciting and/or selling of their “Property Protection Scheme”, nor should Defendants fail to disclose material information in the advertising, promoting, soliciting and/or selling of their “Property Protection Scheme.” Defendants should not hold “informational” meetings, seminars, or sessions for consumers in Travis County or any other county in the State of Texas, in which Defendants make false, misleading, and deceptive representations regarding their “Property Protection Scheme,” in violation of the laws of the State. Defendants should not hold “informational” meetings, seminars, or sessions for consumers in Travis County or any other county in the State of Texas, in which Defendants fail to disclose material information regarding their “Property Protection Scheme.” Unless injunctive relief is immediately granted Defendants will continue to use false, misleading or deceptive practices as scare

tactics, frightening vulnerable consumers into paying Defendants six hundred dollars (\$600.00) for Defendants' questionable "Property Protection Scheme." If Defendants are not immediately restrained, many consumers may lose money and property rights due to Defendants' false, misleading or deceptive acts and practices.

29. For the reasons set forth above, the STATE OF TEXAS requests a Temporary Restraining Order; and after notice and hearing, Temporary and Permanent Injunctions as set out below, as authorized pursuant to § 17.47(a) of the DTPA. The State is exempt from filing a bond for a temporary restraining order or temporary injunction under § 6.001 of the Texas Civil Practice and Remedies Code

XIII. PRAYER

30. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendants individually and by their agents, servants, employees, and representatives from making the representations, doing the acts, and engaging in the practices set out in the proceeding paragraphs as well as from making the following representations and doing the following acts and engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas, as follows:

- A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to Defendants' business currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;
- B. Representing in any media, including but not limited to, print, television, radio, internet, leaflets, or fliers, that consumers' property will be taken by eminent domain unless Defendants have a verifiable factual basis for that representation;
- C. Representing to any consumer that the consumer's property will be taken by eminent domain proceedings unless Defendants have a verifiable factual basis for that representation;
- D. Representing in any media, including but not limited to, print, television, radio, internet, leaflets, or fliers that consumers can protect their property from eminent domain proceedings by signing up for Defendants' "Property Protection Scheme" prior to the conclusion of this lawsuit;
- E. Collecting any funds from consumers in payment for Defendants' "Property Protection Scheme" prior to the conclusion of this lawsuit;
- F. Filing any Uniform Commercial Code financing statements with the Secretary

of State on any consumers' properties in furtherance of Defendants' "Property Protection Scheme" prior to the conclusion of this lawsuit;

- G. Filing any liens or in any other fashion seeking to encumber consumers' properties in furtherance of Defendants' "Property Protection Scheme" prior to the conclusion of this lawsuit; and
- H. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal of any funds paid by consumers into Defendants' account with PayPal for Defendants' "Property Protection Scheme" as listed for sale on Ebay.

31. Plaintiff further prays that upon final hearing this Court order Defendants to restore all money or other property taken from identifiable persons by means of Defendants' unlawful acts or practices, or, in the alternative, award judgment for damages to compensate identifiable persons for such losses as provided in §17.47(d) of the DTPA.

32. Plaintiff further prays that Plaintiff shall be granted leave to take telephonic, video, written, and other depositions prior to any scheduled temporary injunction hearing upon reasonable shortened notice to Defendants;

33. Plaintiff further prays that upon final hearing this Court order Defendants to pay civil penalties of \$20,000.00 per violation of the DTPA to the State of Texas, as authorized by §17.47(c)(1) of the DTPA and an additional amount of \$250,000.00 if the

scheme was calculated to deprive money or other property from a consumer who was 65 years of age or older when the act or practice occurred.

34. Plaintiff requests that the Court adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. §523(a)(7).

35. Plaintiff requests that the Court adjudge against Defendants prejudgment and postjudgment interest at the highest lawful rate; and

36. Plaintiff further prays for costs of Court, reasonable attorney fees as provided in TEX. GOV'T. CODE ANN. § 402.006(c), and such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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