

FILED 8 O'CLOCK A
AURORA DE LA GARZA, CLERK

2008-08-4406-A
NO. _____

AUG 06 2008

THE STATE OF TEXAS,
Plaintiff,

v.

ANDERSON, CRENSHAW &
ASSOCIATES, L.L.C.
Defendant.

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IN THE DISTRICT COURT OF CAMERON COUNTY, TEXAS
SE DEPUTY

CAMERON COUNTY, TEXAS

107th JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

COMES NOW, THE STATE OF TEXAS, plaintiff, acting by and through Attorney General GREG ABBOTT, filing Plaintiff's Original Petition and Application for Temporary and Permanent Injunction, complaining of and against ANDERSON, CRENSHAW & ASSOCIATES, L.L.C. (hereinafter "defendant").

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.2(b)(3).

NATURE OF THIS SUIT

2. 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, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (hereinafter "DTPA"), and the Texas Debt Collection Act, TEX. FIN. CODE ANN. §392.001 *et seq.* (hereinafter "TDCA"). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. BUS. & COM CODE ANN. § 17.47. The TDCA also grants authority to the Attorney General to seek injunctive relief for violations of its provisions. TEX. FIN. CODE ANN. § 392.403(d).

DEFENDANT

3. Defendant, ANDERSON, CRENSHAW & ASSOCIATES, L.L.C. is a Texas corporation whose registered office is at 12801 N. Central Expressway, Ste. 250, Dallas, Texas 75243. Defendant is authorized to do business in Texas and may be served with process by serving its registered agent for service of process, Steven R. Dunn, at 12801 N. Central Expressway, Ste. 250, Dallas, Texas 75243.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to Section 17.47(b) of the DTPA.

VENUE

5. Venue of this suit lies in Cameron County, Texas, pursuant to Section 17.47(b) of the DTPA because defendant has done business in the county of suit.

PUBLIC INTEREST

6. Plaintiff, STATE OF TEXAS, has reason to believe that defendant is engaging in, has engaged in, or is about to engage in, the unlawful acts or practices set forth below, that defendant has, by means of these unlawful acts and practices, caused damage to or acquired money or property from persons, and that defendant adversely affects the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

7. Defendant has, at all times described below, engaged in conduct which constitutes "trade" and "commerce," as those terms are defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

8. Whenever in this petition it is alleged that defendant did any act, it is meant that defendant performed or participated in the act, or that the officers, agents or employees of defendant performed or participated in the act on behalf of and under the authority of defendant.

NOTICE BEFORE SUIT GIVEN

9. The Consumer Protection and Public Health Division contacted defendant in writing to inform it in general of the alleged unlawful conduct at least seven days before this suit was filed, as may be required by § 17.47(a) of the DTPA.

NATURE OF DEFENDANT'S OPERATION

10. Defendant is a "third-party debt collector" as defined in the TDCA § 392.001(7). Defendant regularly collects, or attempts to collect, from consumers, debts that are due or alleged to be due by employing a prohibited debt collection method, as alleged more specifically below.

FACTUAL ALLEGATIONS

11. Defendant is regularly engaged to solicit consumer debts for collection and/or regularly makes contact with consumers for the purpose of collection or adjustment of debts.

12. Defendant has mailed dun letters to consumers throughout the state of Texas. A copy of defendant's dun letter is attached hereto as State's Exhibit 1 and incorporated herein for all purposes. The dun letter is regularly used by defendant to solicit payment of the debt.

13. Defendant's dun letter informs the consumers of the alleged debt that is due to the creditor. Defendant directs the consumers to "Please forward this amount [debt] to our office at the address listed below within (30) days after your receipt of this correspondence." In addition to the above statement is the debt validation notice information where the consumer can dispute the debt within

30 days. However, defendant's demand of payment within 30 days is inconsistent¹ and contradicts² the validation notice.

14. The dun letter further states, that failure to pay the alleged debt within the 30 days, defendant will pursue their client's legal remedies, which "could include reporting the debt to the appropriate credit bureau(s) and forwarding your file to an attorney for appropriate legal action." In some instances, defendant will verbally inform the consumers that a lawsuit is being filed when no such lawsuit has been filed, and request the consumers to pay the debt. However, according to defendant's policy and procedure, and in many instances defendant will not initiate a lawsuit against the consumer to collect the debt because it is not within its litigation criteria.³

15. In addition defendant used various means to harass, abuse, or threaten a person when collecting, or soliciting for consumer debts by using profane language or language intended to unreasonably abuse the consumers, making repeated or continuous telephone calls, and threatening to take an action prohibited by law such as garnishing wages and placing a lien on a homestead.

TEXAS DEBT COLLECTION ACT VIOLATIONS

16. Defendant, as alleged above, in the course and conduct of trade and commerce, has directly and indirectly engaged in and will continue to engage in debt collection practices declared unlawful

¹ See 15 U.S.C. § 1692g(b). Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

² Even though the validation information properly is included in a communication from a debt collector to a debtor, the debt collector may not overshadow or contradict the information with other messages sent with the validation notice. *Chauncey v. JDR Recovery Corporation*, 118 F. 3d 516 (7th Cir. 1997).

³ The district court correctly concluded that the false threats that legal action would be taken also violated 15 U.S.C. § 1692e(10) (The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.) as a misleading statement. *United States v. National Fin. Servs., Inc.*, 98 F.3d 131 (4th Cir. 1996).

by the Texas Debt Collection Act. including but not limited to:

- a. By using the above referenced dun letter, which includes a demand for payment that contradicts the debt validation notice, defendant is using a deceptive means to collect a debt, in violation of § 392.304(a)(19) of the TDCA;
- b. By using the above referenced dun letter, which includes a representation that defendant will forward the consumer's file to an attorney for appropriate legal action, when in fact the consumer debt is not within defendant's criteria to initiate a lawsuit, defendant is using a false representation or deceptive means to collect a debt or obtain information concerning a consumer, in violation of § 392.304(a)(19) of the TDCA;
- c. By threatening to take action prohibited by law, including but not limited to garnishing wages and filing a lien on a homestead, in violation of § 392.301(a)(8) of the TDCA;
- d. By using profane or obscene language or language intended to abuse unreasonably the hearer or reader, in violation of § 392.302(1) of the TDCA; and
- e. By causing the telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, in violation of § 392.302(4) of the TDCA.

DTPA VIOLATIONS

17. Defendant, as alleged above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA as follows:

- a. By informing consumers that a lawsuit is being filed when it has not, in order to induce the consumers to pay a debt, defendant is engaging in or has engaged in an act or

practice that is false, misleading, or deceptive, in violation of §17.46(a) of the DTPA; and

b. Section 392.404 of the TDCA provides that a violation of the TDCA is a deceptive trade practice and actionable under the DTPA.

INJURY TO CONSUMERS

18. Defendant has, by means of the unlawful act(s) or practice(s) alleged, caused actual damages to identifiable persons who should be compensated for such damages, or in the alternative, acquired money or property from persons to whom such money or property should be restored.

19. Because defendant has engaged in the unlawful acts and practices described above, defendant has violated the law as alleged in this petition, or will continue to violate the law, and should be restrained by this Honorable Court will continue to violate the laws of the State of Texas and cause injury to the general public.

PRAYER

20. WHEREFORE, plaintiff prays that defendant be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon trial of this cause a PERMANENT INJUNCTION be issued, restraining and enjoining defendant, its officers, agents, servants, employees and attorneys and any other person in active concert or participation with defendant from the following acts or practices:

a. Conveying a dun letter to consumers which includes a demand payment within the 30-day validation period;

b. Conveying a dun letter to consumers which includes a representation that defendant will forward the consumer's file to an attorney for appropriate legal action when the consumer debt is not within defendant's criteria to initiate a lawsuit;

- c. Representing that a lawsuit is being filed when it has not;
- d. Using profane or obscene language or language intended to abuse the consumer;
- e. Causing the telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls;
- f. Threatening to take action prohibited by law, including but not limited to garnishing wages and filing a lien on a homestead;
- g. Concealing, withholding, destroying, mutilating, altering, falsifying or removing from the jurisdiction of this court any books, records, documents, invoices, receipt or other written material relating to the business of defendant currently or hereafter in defendant's possession, custody or control except in response to further orders or subpoenas in this cause; and
- h. Representing, directly or by implication, that this Court, or the Office of the Attorney General has approved any good or service sold or offered for sale by defendant, or has approved any business practice of defendant.

21. WHEREFORE, the STATE OF TEXAS, respectfully prays that this Court will:

- a. Adjudge against defendant civil penalties in favor of plaintiff, STATE OF TEXAS, in the amount of not more than \$20,000.00 per violation of the DTPA;
- b. Adjudge against defendant civil penalties in favor of plaintiff, STATE OF TEXAS, in the amount of not more than \$250,000.00 for violations of the DTPA if the consumer was 65 years of age or older;
- c. Order defendant to restore all money or other property taken from identifiable people by means of unlawful acts or practices, or in the alterative award judgment for damages to compensate for such losses;

- d. Adjudge against defendant reasonable attorney's fees and court costs pursuant to TEX. GOV'T. CODE ANN. § 402.006;
- e. Adjudge against defendant prejudgment and post judgment interest at the highest lawful rate; and
- f. 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).
22. Further, plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which plaintiff, STATE OF TEXAS, may be justly entitled.

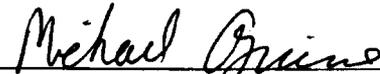
Respectfully submitted,

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