

Feb 10 2010

NO. 2010-02-1242-D

DISTRICT COURT OF CAMERON COUNTY, TEXAS
MURPHY DEPUTY

STATE OF TEXAS, §
Plaintiff, §
§
v. §
§
GRANDE VALLEY HOMES, L.L.C., §
d/b/a CASA LINDA HOMES §
Defendant. §

IN THE DISTRICT COURT
CAMERON COUNTY, TEXAS
103 JUDICIAL DISTRICT

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

COMES NOW, STATE OF TEXAS, hereinafter referred to as plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of GRANDE VALLEY HOMES, L.L.C, doing business as Casa Linda Homes, hereinafter referred to as defendant, and for cause of action would respectfully show:

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. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against defendant for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (hereinafter "DTPA"). 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.

COPY

DEFENDANT

3. Defendant, GRANDE VALLEY HOMES, L.L.C., doing business as Casa Linda Homes, is a Texas corporation whose registered office is 1409 N. Main, McAllen, Hidalgo County, Texas 78501, and may be served with process by serving its registered agent for service of process, Mark W. Dizdar, at 1409 N. Main, McAllen, Hidalgo County, Texas 78501.

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 are 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 Section 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

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 Section 17.47(a) of the DTPA.

NATURE OF DEFENDANT'S OPERATIONS

10. Defendant, GRANDE VALLEY HOMES, L.L.C., was - and is - organized for the purpose of conducting business in this State, including but not limited to, the purchase, development, sale, service, lease and management of personal and real properties of all kinds and description.

FACTUAL ALLEGATIONS

11. Defendant, GRANDE VALLEY HOMES, L.L.C. ("GVH"), builds and sells homes and has advertised, offered for sale, sold, or leased homes within its subdivisions in Alton, Edinburg, Pharr, McAllen, Brownsville, Weslaco, Donna, La Joya, Harlingen, San Juan, San Antonio, Hidalgo, Mission, and Pearland (Houston), Texas. Defendant GVH financed the sale of its homes by providing mortgage loans to the home buyers and also served as the loan servicer, collecting the principal, interest, and escrow account (if any) payments from the home buyers.

12 For a price certain, defendant GVH offered to sell and convey to the consumers an estate, with good title, in real property (a lot), together with the improvement (a new home), fixtures and all other property located thereon, in one of its subdivisions. (The lot, home, and fixtures are hereinafter referred to collectively as "the residential real estate".)

13. In an unknown number of instances, there was one or more of the following encumbrances attached to and binding the residential real estate which defendant GVH offered for sale to consumers, to wit:

- a. a lien or claim held by taxing units to secure payment of delinquent ad valorem property taxes, penalties, interest, and costs due;
- b. a lien or security interest held by third party lenders to secure payment of amounts owed under a loan made to defendant GVH for the purpose of building the homes and buying the real property on which the homes were built; or
- c. a lien or claim held by materialmen to secure payment of amounts unpaid, due, and owing for labor performed for, and/or material furnished to, defendant GVH for the improvement made to the real property.

14. The Consumer Protection and Public Health Division of the Office of the Texas Attorney General alleges as follows:

- a. In order to induce the purchase of the residential real estate by the consumers, defendant GVH did not disclose the encumbrance, described in the preceding paragraph, existing at the time the consumers entered the earnest money contract with defendant GVH.

Those consumers who entered into the earnest money contract, under which they agreed to buy the residential real estate from defendant GVH, would not have done so had such information been disclosed; and

b. Furthermore, in order to induce the purchase of the residential real estate by the consumers, defendant GVH told prospective home buyers that, under its refund policy, GVH would refund earnest money, deposited in escrow, if the consumer's home loan was rejected or if construction of the home was not completed within 240 days from the date of the earnest money contract. In fact, defendant did not always refund the earnest money when either contingency came to pass. Those consumers who entered into the earnest money contract, under which they agreed to buy the residential real estate from defendant GVH would not have done so had such information been disclosed.

15. In an unknown number of instances, defendant GVH granted, sold, and conveyed residential real estate to home buyers with a Special Warranty Deed with Vendor's Lien, although it had permitted one of the undisclosed encumbrances, described above, to be placed on the properties. The special warranty deeds failed to include the encumbrance as a reservation from and exception to the conveyance and warranty.

16. In an unknown number of instances, when a undisclosed lien was not discharged by payment from defendant GVH, the lienholder would undertake to foreclose on the lien by giving notice to, or filing suit against, those home buyers who had purchased the residential real estate subject to the undisclosed lien(s). See, e.g., State's Exhibit 1 (urgent notice notifying home buyer that property has been targeted for lawsuit and is subject to lien foreclosure by taxing authorities) and State's

Exhibit 2 (letter from third party lender about scheduled foreclosure on home buyer's house and lot).

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 selling residential real estate subject to undisclosed encumbrances of persons claiming by, through, under, or against defendant GVH, defendant is engaging in or has engaged in an act or practice that is false, misleading, or deceptive, in violation of section 17.46(a) of the DTPA;
- b. By conveying title to residential real estate with a special warranty deed, when such property is subject to encumbrances of persons claiming by, through, under, or against defendant GVH, defendant is representing that the property is free of such encumbrances, a characteristic, use, or benefit which the properties do not have, in violation of section 17.46(b)(5) of the DTPA;
- c. By failing to disclose information known to defendant (namely, that certain residential real estate offered for sale were subject to an encumbrance), when such failure to disclose was intended to induce the consumers into purchasing the property, a transaction into which consumers would not have entered had the information been disclosed, defendant is in violation of section 17.46(b)(24) of the DTPA; and
- d. By telling prospective home buyers that it would refund earnest money if the consumer's home loan was rejected or if construction of the home was not completed within

240 days from the date of the earnest money contract, when in fact defendant did not always refund the earnest money when either contingency came to pass, defendant is representing that goods or services have a characteristic or benefit which they do not have, in violation of section 17.46(b)(5) of the DTPA. In the alternative, by failing to disclose information known to defendant (namely, that defendant did not always refund the earnest money when the consumer's home loan was rejected or when construction of the home was not completed within 240 days from the date of the earnest money contract), when such failure to disclose was intended to induce the consumers into purchasing the property, a transaction into which consumers would not have entered had the information been disclosed, defendant is in violation of section 17.46(b)(24) of 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.

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, attorneys and any other person in active concert or participation with defendant from selling, conveying, or transferring residential real estate to consumers unless:

- a. Defendant can convey good title to the home buyer on the property, free and clear of any pre-existing lien, security interest, claim, or other encumbrance (including, but not limited to, tax liens and mechanic/materialmen liens), provided that nothing herein shall prohibit defendant from creating a vender's lien to secure payment of the mortgage loan by the consumer;
- b. The home buyer has obtained title insurance on the property purchased from defendant;
- c. No delinquent taxes are owed on the property to any taxing authority at the time of closing;
- d. Defendant has paid all third parties in full for the labor done or materials furnished during the construction or repair of the property; and
- e. An independent appraisal of the property has been made by a qualified appraiser.

21. WHEREFORE, plaintiff further prays that, in each consumer transaction in which defendant GVH is found to have engaged in any violation of the DTPA as alleged herein:

- a. Defendant be ordered, compelled, and commanded to take all action necessary to terminate, extinguish, or remove any lien, security interest, claim, or other encumbrance in property sold by defendant GVH; or
- b. In the alternative, and at the consumer's sole option and discretion, grant rescission of the earnest money contract, the real estate sales contract, the mortgage note, and all other

agreements or contracts incident to the consummation of the real estate sales transaction, and order defendant GVH to pay restitution of all money acquired by it (or affiliated companies) from the consumer.

22. WHEREFORE, plaintiff further prays that this Court will order, compel, and command defendant, its officers, agents, servants, employees, attorneys and any other person in active concert or participation with defendant to segregate and deposit into an escrow account all money that has been received, or will be received, as a down payment, deposit, or earnest money on the purchase of property, and to preserve and protect from disposing of, converting, dissipating, using, releasing, transferring, withdrawing, allowing to be withdrawn, spending, assigning, offsetting, commingling, or concealing, in any manner any amount of money so received unless approved by the court.

23. WHEREFORE, plaintiff further prays that this Court will enjoin defendant, its officers, agents, servants, employees, attorneys and any other person in active concert or participation with defendant from 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.

24. Plaintiff, STATE OF TEXAS, further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled temporary injunction hearing and prior to defendant's answer date, with reasonable shortened notice to defendant and its attorney, if known.

25. In addition, plaintiff, 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 not to exceed 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 acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages;

d. Adjudge against defendant reasonable attorney's fees and court costs pursuant to ~~TX~~ GOV'T. CODE ANN. § 402.006;

e. Adjudge against defendant pre-judgment and post-judgment interest at the highest lawful rate;

f. Appoint a receiver or sequester defendant's assets if defendant has been ordered by this Court to make restitution and defendant has failed to do so within three months after the order to make restitution has become final and nonappealable; and

g. 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).

26. Further, plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which plaintiff, STATE OF TEXAS, may be justly entitled.

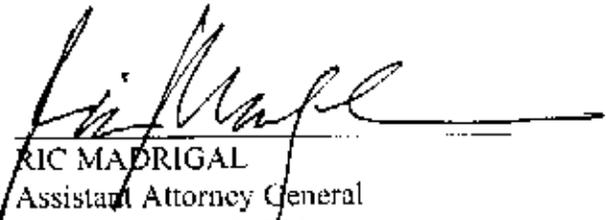
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Assistant Attorney General for Civil
Litigation

PAUL D. CARMONA
Chief, Consumer Protection and
Public Health Division



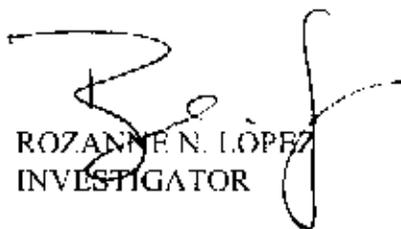
RIC MADRIGAL
Assistant Attorney General
State Bar No. 12807200
Office of the Attorney General
Consumer Protection and
Public Health Division
3201 N. McColl, Suite B
McAllen, Texas 78501
(956) 682-4547; Fax (956) 682-1957
Attorney for Plaintiff

VERIFICATION

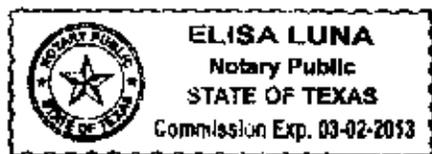
STATE OF TEXAS §

COUNTY OF HIDALGO §

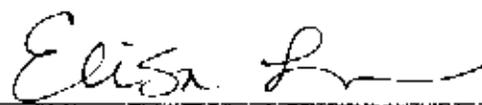
BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the factual allegations in the foregoing PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION, and has reason to believe that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.


ROZANNE N. LOPEZ
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the 26th day of February, 2010.



Notary without Bond


NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP
ATTORNEYS AT LAW
205 SOUTH PIN OAK AVENUE
EDINBURG, TX 78539
PHONE: (956) 383-4500 FAX: (956) 383-830
1-800-414-3961
November 17, 2009

URGENT CANDIDATE FOR LAWSUIT

Your property has been targeted for lawsuit and is now subject to lien foreclosure by City of Weslaco, Weslaco ISD, South Texas ISD, South Texas College because of unpaid delinquent property taxes.

Please make your check payable to City of Weslaco, Weslaco ISD, South Texas ISD, South Texas College and mail your payment to:

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP
205 SOUTH PIN OAK AVENUE
EDINBURG, TX 78539
(956) 383-4500

REPLY IMMEDIATELY

Please disregard this notice if: (1) you have paid these taxes since October 29, 2009; (2) you are timely paying these taxes under an installment agreement with the tax collector; or (3) you are now a debtor in a pending bankruptcy. If you are in bankruptcy, please furnish to us in writing the number of your bankruptcy case and the identification of the court in which it is pending so as to enable us to code your account and avoid further mailings to you.

IF YOU ARE 65 YEARS OF AGE OR OLDER OR ARE DISABLED AND YOU OCCUPY THE PROPERTY DESCRIBED IN THIS DOCUMENT AS YOUR RESIDENCE HOMESTEAD, YOU SHOULD CONTACT THE APPRAISAL DISTRICT REGARDING ANY ENTITLEMENT YOU MAY HAVE TO A POSTPONEMENT IN THE PAYMENT OF THESE TAXES.

Esta correspondencia se trata de sus impuestos y de la posibilidad de poder perder su propiedad. Para mas informacion, llame a (956) 289-7978 y alguien le podra asistir.

TO ENSURE PROPER CREDIT - PLEASE RETURN BOTTOM PORTION WITH YOUR PAYMENT

City of Weslaco, Weslaco ISD, South Texas ISD, South Texas College

ACCOUNT NUMBER: [REDACTED]

YEARS DUE: 2007 - 2008 (2)

PROPERTY DESCRIPTION: [REDACTED]

TAX DEBIT

[REDACTED]

1.239

TOTAL AMOUNT DUE

If paid in NOV. 2009: \$2,102.64

If paid in DEC. 2009: \$2,119.67

AMOUNT ENCLOSED \$

WESLACO TX 78562-185

[REDACTED]

STATE'S
EXHIBIT

1



February 11, 2009

VIA FEDERAL EXPRESS
AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[REDACTED]
Brownsville, Texas 78526

Dear [REDACTED]

Please read this letter and the enclosed Notice about the foreclosure on your house (lot) that is scheduled on March 3, 2009.

On October 27, 2006, First Horizon Home Loans, a division of First Tennessee Bank National Association ("First Horizon") made a loan to Grande Valley Homes, also known as Casa Linda Homes. Grande Valley used First Horizon's loan to build a home (buy a lot) which it sold to you on January 31, 2007, but they did not pay First Horizon off.

Grande Valley has also stopped paying us on our loan to them. Because they stopped paying us on the loan and for other reasons, we are foreclosing on the house (lot).

The foreclosure sale of your house (lot) will be on March 3, 2009.

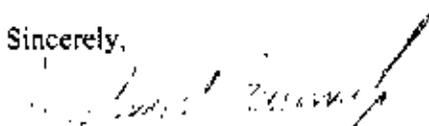
Please read the enclosed Notice of Substitute Trustee's Sale. While we are not legally required to send you the attached Notice, we wanted to let you know about the foreclosure. Even though we have sent this letter and the enclosed Notice to you, it does not obligate us to send you any further letters or notices.

It would be good for you to show this letter and the enclosed Notice to your accountant, banker, or mortgage broker. They may be able to help you obtain financing so you can make a bid at the foreclosure sale for your house or lot. If you are the winning bidder using a new loan, the old loan due Grande Valley will be canceled and you would then only owe on your new loan.

If you do nothing, the house (lot) will be sold at the foreclosure sale and you will no longer be the owner.

If your accountant, banker, or mortgage broker has any questions, please ask them to give me a call at 727-712-0287, ext. 1.

Sincerely,


Richard A. Baumer, Jr.
Vice President, Senior Loan Rehab Officer
First Tennessee Bank for
First Horizon Home Loans

First Horizon Construction Lending
480 Park Place Blvd., Suite 130
Clearwater, FL 34619
Phone 727-712-0287
Fax 727-796-2167

STATE'S
EXHIBIT

2