STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF WAKE	11 CVS
STATE OF NORTH CAROLINA ex rel.)
ROY COOPER, Attorney General,))
Plaintiffs,)
v.)) COMPLAINT
GFS STORES, INC., d/b/a/ GRAND) COMPLAINT)
FURNITURE GALLERY and MAX ROBERT GODFREY JR.,) MOTION FOR TEMPORARY) RESTRAINING ORDER
Defendants.) MOTION FOR PRELIMINARY) INJUNCTION
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)
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INTRODUCTION

1. This action is brought by the State of North Carolina, by and through its Attorney General Roy Cooper, to obtain temporary and permanent injunctive relief prohibiting defendants from engaging in unfair and deceptive trade practices in the sale of furniture and to obtain restitution for consumers, civil penalties and attorney fees, pursuant to N.C.G.S. §§ 75-14, 75-15.1, 75-15.2, and 75-16.1.

PARTIES

2. Plaintiff is the State of North Carolina acting by and through its Attorney General Roy Cooper, pursuant to authority granted by Chapters 75 and 114 of the North Carolina General Statutes.

- 3. Defendant GFS Stores, Inc., d/b/a Grand Furniture Gallery ("GFG"), is a North Carolina corporation with its principal place of business in Wake County, North Carolina. GFG is an online retail distributor of furniture.
- 4. GFG's given address is 2474 Walnut Street, Suite 300, Cary, NC 27518. This address corresponds to a UPS Store, where GFG rents a mailbox. Upon information and belief, GFG is actually operated out of defendant Godfrey's home at 7025 Robbie Dr., Raleigh, NC 27607.
- 5. Defendant Max Robert Godfrey, Jr. ("Godfrey") is a North Carolina resident and owner of GFG. At all times relevant to this complaint, defendant Godfrey has managed and controlled the operations of defendant GFG.

FACTUALALLEGATIONS

- 6. GFG offers to sell discount furniture to consumers nationwide on its website, www.grandfurnituregallery.com. Consumers learn about GFG through internet search engines when they search for discounted furniture.
- 7. Upon information and belief, GFG has never had a furniture showroom or kept any inventory of furniture; GFG simply serves as the "middle man" between manufacturers and consumers.
- 8. Defendants take furniture orders from consumers by telephone or over the internet. Defendants require consumers to pay advance deposits for the furniture at the time of the order, and these deposits are anywhere from 50% to the full price of the order. Defendants state that all orders are "irrevocable" and that there is a 50% cancellation fee once an order is placed. At one time, defendants allowed consumers to pay by credit or debit card. Upon information and belief, since late 2010, defendants have either required consumers to pay by

check or encouraged them to do so by offering discounts.

- 9. Defendants typically give consumers an estimated delivery time of four to sixteen weeks for their furniture. In some cases, defendants have given estimates as low as two to three weeks in order to facilitate furniture sales.
- 10. Dozens of consumers have not received their furniture in the estimated four to sixteen week period. Defendants routinely fail to notify consumers of delivery delays, and although required to do so by the Federal Trade Commission's Mail and Telephone Order Rule, 16 CFR 435.1(b)(1), fail to offer consumers the option of cancelling their contract and receiving a full and prompt refund when their furniture is not delivered within the estimated time.
- 11. The Attorney General's Office notified defendants of the Mail Order Rule in writing through a letter dated July 7, 2011 and sent to GFG via certified mail. Defendants did not respond to this communication. A copy of this letter is attached hereto as Exhibit 1.
- 12. Defendants have failed to deliver any furniture at all to many consumers, some of whom have been waiting since late 2010. Cases of delayed and undelivered furniture include, but are not limited to:
 - (a) John Badke, a resident of of Suffolk County, New York, ordered a total of \$2164.17 in furniture from GFG on November 15, 2010. He paid by check, which was cashed four days later. Despite sending repeated emails, making several phone calls and sending the company a letter via registered mail demanding a refund, Mr. Badke has been unable to communicate with anyone from GFG since November of 2010. To date, he has not received furniture or a refund. The affidavit of John Badke is attached hereto as Exhibit 2.
 - (b) Donna Camerlo, a resident of Pima County, Arizona, ordered a total of \$972.99 in

furniture from GFG on August 13, 2010. She prepaid by check due to a 5% discount offered by GFG for doing so. She placed many calls to the company, which were not answered, and received nonresponsive emails. GFG offered her a refund by email, but despite her repeated demands for a refund, she has to date received neither her money back nor her furniture. The affidavit of Donna Camerlo is attached hereto as Exhibit 3.

- (c) John Heller, a resident of Gwinnett County, Georgia, ordered a total of \$2,249.51 in furniture from GFG on November 26, 2010. He prepaid by check because GFG offered him a 5% discount to do so. He tried many times to contact the company by phone and email, and received occasional responses stating that GFG was working on his order and that delivery would take another few weeks. To date, he has not received his furniture or a refund. The affidavit of John Heller is attached hereto as Exhibit 4.
- (d) Steven Whitehead, a resident of Guilford County, North Carolina, ordered a total of \$618.70 in furniture from GFG on February 4, 2011. On May 12, 2011, after sending several emails asking for the delivery date of his order, he was told by "Jamie" that GFG tries to deliver within 4-8 weeks, but sometimes takes as much as 10-12. He attempted to call and email the company many times, but his communications were generally ignored. To date, he has received neither his furniture nor a refund. The affidavit of Steven Whitehead is attached hereto as Exhibit 5.
- 13. Thirteen consumers from different states have filed complaints against GFG with the Consumer Protection Division of the Attorney General's Office since 2010. Ten such

complaints were filed in 2011. Although defendants have resolved some of these complaints, the majority remain unresolved. Defendants have ignored attempts by the consumers and the Attorney General's office to resolve these complaints.

- 14. The Better Business Bureau ("BBB") of Eastern North Carolina has received 51 complaints from consumers around the nation about GFG in the last three years. Twenty-five of those complaints were closed due to no response from the business, and several more are still awaiting a response. Accordingly, the BBB has given GFG a rating of "F," the lowest possible score.
- 15. Prior to incorporating GFG in January, 2009 as GFS Stores, Inc., Godfrey owned and operated at least two other online furniture retail companies. Beginning in April 2007, he operated a business known as Grand Furniture Showcase, Inc., which was incorporated in North Carolina then dissolved on April 1, 2009. From 2004 to 2006, Godfrey owned and operated NC Home Furniture, Inc. Like GFG, NC Home Furniture, Inc. took online orders from consumers and failed to deliver their furniture. The Attorney General's office received 74 complaints against NC Home Furniture between 2004 and 2006.
- 16. On June 26, 2006, the Attorney General's office sent NC Home Furniture, Inc. a letter, addressed to Godfrey, informing him of the Mail Order Rule. On November 17, 2006, the Attorney General's office sent Godfrey another letter regarding the Mail Order Rule and requesting documents and a meeting. Copies of these letters are attached to the affidavit of Julie Daniel, a consumer protection specialist with the Attorney General's office. The affidavit of Julie Daniel is attached hereto as Exhibit 6. Godfrey never responded to either letter. On December 6, 2006, shortly after the second letter, NC Home Furniture, Inc. filed for bankruptcy, leaving 51 of those consumers without furniture or a refund. Another 10 consumers received a

refund from their credit card companies rather than from NC Home Furniture, Inc.

- 17. Defendant Godfrey represents himself as the owner of GFG. (See Exhibits 7 and 8, describing where Godfrey represented himself as the owner of GFG to a detective investigating GFG, as well as to a shipping company doing business with GFG.), and Godfrey is listed as the owner of the mailbox located at 2474 Walnut St. Godfrey also manages and controls the day to day operations of GFG; he signs checks on behalf of GFG and is responsible for much of the business's communications with consumers, including negotiating prices for furniture and making delivery estimates.
- 18. As of the date of the filing of this Complaint, GFG continues to maintain its website at www.grandfurnituregallery.com and to accept furniture orders from consumers.

CLAIM FOR RELIEF

UNFAIR OR DECEPTIVE TRADE PRACTICES

- 19. Plaintiffs reallege and incorporate herein the allegations in paragraphs 1 through 18. Defendants' sale of furniture is, and at all relevant times has been, in or affecting commerce in North Carolina.
- 20. In the course of selling furniture, defendants have engaged in unfair and deceptive acts in violation of N.C.G.S. § 75-1.1.
- 21. Defendants' unfair and deceptive business practices include, but have not been limited to:
 - (a) failing to deliver furniture to consumers who paid advance deposits;
 - (b) giving consumers unrealistic estimated dates for delivery when defendants knew they could not deliver the furniture within that time-frame;

- (c) failing to communicate with consumers regarding their orders long after the consumers' estimated delivery dates had passed;
- (d) offering consumers discounts to pay by check so that consumers would not be able to seek charge-backs through their credit cards when the furniture was not delivered;
- (e) failing to place orders with manufacturers within a reasonable period of time after the consumer ordered and paid either a deposit or in full for the furniture; and
- (f) violating the Federal Mail Order Rule, including but not limited to failing to notify consumers of delivery delays, in violation of 16 CFR 435.1(a)(2), and failing to offer consumers the opportunity to consent to a delay in shipping or to cancel the order and receive a prompt refund when defendants were unable to deliver the consumer's furniture by the estimated delivery date, in violation of 16 CFR 435.1(b)(1).
- 22. Pursuant to N.C.G.S. § 75-14, the Attorney General is authorized to seek and obtain a temporary restraining order and injunctive relief to restrain defendants' violations of N.C.G.S. § 75-1.1.
- 23. Pursuant to N.C.G.S. § 75-15.1, the Attorney General is authorized to seek and obtain cancellation of all contracts and the restoration of all moneys obtained by defendants as a result of defendants' violations of N.C.G.S. § 75-1.1.
- 24. Pursuant to N.C.G.S. § 75-15.2, the Attorney General is authorized to seek and obtain civil penalties for each and every knowing violation of a statute, including but not limited to N.C.G.S. § 75-1.1, where the defendant has violated N.C.G.S. § 75-1.1.

25. Pursuant to N.C.G.S. § 75-16.1, the Attorney General is authorized to seek and obtain a reasonable attorney fee for the prosecution of this action.

REQUEST FOR A TEMPORARY RESTRAINING ORDER

<u>UNDER N.C.G.S. § 75-14</u>

As shown by this complaint and the accompanying affidavits, defendants' deceptive and illegal practices are ongoing and continue to harm the citizens of this state. Plaintiff State of North Carolina therefore requests a Temporary Restraining Order pursuant to N.C.G.S. § 75-14 so that further consumer harm and further violations of law might be prevented. In support of plaintiff's motion for a temporary restraining order, the affidavits of John Badke, Donna Camerlo, John Heller, Steven Whitehead, Julie Daniel, Jim Grier, and Richard Cole are attached hereto and incorporated herein by reference.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays the Court for the following relief:

- 1. That the Court issue a temporary restraining order prohibiting defendants, their agents, employees, and persons acting in concert with them from:
 - unfair or deceptive acts or practices in violation of N.C.G.S. § 75-1.1, including but not limited to the acts and practices listed in Paragraph 21 of plaintiff's Claim for Relief;
 - (b) accepting new orders or advance deposits for furniture from consumers until all outstanding orders have been filled or refunded;
 - (c) if defendants have fully complied with (b) above, failing to:
 - (i) place all orders with the specified manufacturer(s) within five days of receiving the order from the customer;

- (ii) provide specific, realistic delivery dates and notify customers of the circumstances affecting their delivery dates; and
- (iii) abide by the Mail and Telephone Order Rule, 16 CFR 435.1, by delivering furniture when promised or notifying purchasers of delays and giving them an opportunity to cancel their orders for a full and prompt refund, and make the refund if requested;
- (d) destroying, transferring, concealing, altering or removing from the possession and control of defendants, their agents, employees, and persons acting in concert with them any financial records, customer contracts, correspondence, business records, and other documents of defendants; and
- (e) transferring, withdrawing, concealing, or encumbering any of defendant GFG's assets without permission of the court; provided, that permission shall not be required if the plaintiff agrees in writing to the expenditures;
- 2. That, upon proper notice to defendants and within ten (10) days of the entry of the temporary restraining order, a hearing be conducted to determine whether the temporary restraining order, or any reasonable modification thereof, should be continued in the form of a preliminary injunction pending the final adjudication hereof, as allowed by N.C.G.S. § 74-14;
- 3. That, pursuant to N.C.G.S. § 75-15.1, the Court cancel all contracts entered into by any of the defendants in violation of N.C.G.S. § 75-1.1 and order all amounts consumers have paid to any defendants pursuant to such contracts to be refunded;
- 4. That, pursuant to N.C.G.S. § 75-14, a permanent injunction be entered upon final adjudication of this case to prevent defendants and their officers, agents, employees, successors, and assigns from resuming any unfair or deceptive practices;

- 5. That defendants be required to pay civil penalties to the State in the amount of \$5,000.00 per violation of the Unfair and Deceptive Trade Practices Act, pursuant to N.C.G.S. § 75-15.2;
- 6. That costs and reasonable attorney's fees be awarded the Attorney General pursuant to N.C.G.S. § 75-16.1; and
 - 7. That the Court award such other and further relief as may be just and proper.

Respectfully submitted this 21st day of September, 2011.

ROY COOPER Attorney General

Creecy C. Johnson

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