

STATE OF NORTH CAROLINA
WAKE COUNTY

FILED
2019 JAN 15 PM 1:48
WAKE COUNTY, C.S.C.
BY [Signature]

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 19 CV _____

STATE OF NORTH CAROLINA *ex rel.*
JOSHUA H. STEIN, Attorney General,

Plaintiff,

v.

ZACHARY BRYAN BROCH, a/k/a ZACH
BROCH, Individually, CHARLES KIM
SLAUGHTER, JR., a/k/a KIM
SLAUGHTER, Individually, and SECURE
RESTORATION, INC.,

Defendants.

COMPLAINT

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

**MOTION FOR PRELIMINARY
INJUNCTION**

INTRODUCTION

This is an action by the State of North Carolina to enforce its laws against price gouging during a state of emergency, unfair and deceptive trade practices, and unfair debt collection practices, in the wake of Hurricane Florence.

Plaintiff State of North Carolina, *ex rel.* Joshua H. Stein, Attorney General (“the State”), brings this action against defendants ZACHARY BRYAN BROCH, a/k/a ZACH BROCH, individually, CHARLES KIM SLAUGHTER, JR. a/k/a KIM SLAUGHTER, individually, and SECURE RESTORATION, INC., a Florida corporation authorized to do business in North Carolina (“defendants”). The State alleges that defendants (1) price gouged consumers in North Carolina for flood remediation services in the wake of Hurricane Florence; (2) used bait-and-switch tactics to obtain homeowners’ approval to do flood remediation work, including by representing to one homeowner that they would charge him no more than \$5,000.00, but later charging him \$39,005.96, and representing to another homeowner that defendants would charge

no more than \$12,000.00, and later charging \$21,430.64; and (3) committed various prohibited debt collection acts or practices, including misrepresentations and threats.

The State therefore alleges that the defendants violated North Carolina's prohibition on price gouging during a state of emergency, N.C. Gen. Stat. § 75-38; North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1; and North Carolina's law on Prohibited Acts by Debt Collectors, N.C. Gen. Stat. §§ 75-50 *et seq.* The State seeks temporary, preliminary, and permanent injunctive relief against defendants, together with restitution for victims, civil penalties, attorneys' fees, and other relief.

PARTIES

1. The State of North Carolina, acting on the relation of its Attorney General, Joshua H. Stein, brings this action pursuant to authority granted by Chapters 75 and 114 of the North Carolina General Statutes.

2. On information and belief, defendant Zachary Bryan Broch, a/k/a Zach Broch, resides at 45 Gaston Mountain Road, Asheville, North Carolina. On information and belief, defendant Broch at all times relevant to this Complaint was the owner and a managing agent of Secure Restoration, Inc., and the acts or practices of defendants Secure Restoration, Inc. and defendant Slaughter alleged herein were done under the supervision or control of, or with the approval of, defendant Broch.

3. On information and belief, defendant Charles Kim Slaughter, Jr., a/k/a Kim Slaughter, resides at 9 Candor Drive, Fletcher, North Carolina. On information and belief, defendant Slaughter at all times relevant to this Complaint was a managing agent of Secure Restoration, Inc. with the title of "Operations Manager," and his actions were done under the supervision or control of, or with the approval of, defendants Broch and Secure Restoration, Inc.

4. Defendant Secure Restoration, Inc. is a Florida corporation authorized to do business in North Carolina, with its principal place of business at 7778 SW Ellipse Way, Stuart, Florida.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction pursuant to N.C. Gen. Stat. §§ 75-1.1 and 75-15 because the acts or practices alleged herein are in or affecting commerce in North Carolina.

6. The Court has personal jurisdiction over defendants because their acts or practices alleged herein occurred in the State of North Carolina.

7. Venue is proper in Wake County pursuant to the Attorney General's selection under N.C. Gen. Stat. § 75-14.

FACTUAL ALLEGATIONS

8. On September 7, 2018, North Carolina Governor Roy Cooper declared a state of emergency because the approach of Hurricane Florence from the Atlantic Ocean posed an "imminent threat" to North Carolina. The declaration, which covered various counties including Craven, specifically noted that North Carolina's price gouging statute, N.C. Gen. Stat. § 75-38, was in effect. (The Declaration is attached as **State's Exhibit 1**.) The State of Emergency was in effect at all times relevant to this Complaint.

I. The Darden Job

9. On or about Tuesday, September 25, 2018, representatives of defendant Secure Restoration, Inc. were providing flood remediation services at houses in the New Bern, North Carolina, neighborhood where Monterio Darden had lived prior to Hurricane Florence. (Affidavit of Monterio Darden, **State's Exhibit 2**) Darden spoke with defendant Slaughter about drying out

his house. Defendant Slaughter gave Darden his business card as well as that of defendant Broch. (Attachment 1 appended to State's Exhibit 2, Darden Aff.)

10. Prior to defendant Slaughter coming to Darden's house to give an estimate, Darden had already removed from the house the furniture, drywall, cabinetry, carpet, carpet pad, baseboard, tack strip, duct work, appliances, and other items. When defendant Slaughter came to Darden's house and reviewed the work needed, he told Darden that because Darden had already done so much work, Secure Restoration, Inc. would charge him no more than \$5,000.00 to complete all of its services.

11. Darden reasonably relied on defendant Slaughter's representation that defendant Secure Restoration, Inc. would charge him no more than \$5,000.00, and he agreed to hire defendant Secure Restoration, Inc. He signed a contract and an authorization to directly bill his insurance company, and he gave defendant Slaughter a \$625.00 check to cover the insurance deductible. (Attachment 2 appended to State's Exhibit 2, Darden Aff.)

12. The contract provided in its second paragraph, "Customer understands that he/she is responsible for charges not paid by the insurance carrier within 30 days of completion."

13. Defendant Secure Restoration, Inc.'s crew came to work at Darden's house on or about Thursday, October 4 or Friday, October 5. They deployed air movers and dehumidifiers in connection with that work.

14. Defendant Secure Restoration, Inc. completed the work after about 14 days, including the time when no workers, but just air movers and dehumidifiers, were on site.

15. On October 29, 2018, Darden received by email an invoice from defendant Secure Restoration, Inc. charging \$39,005.96 for the work, with a net due of \$38,380.96 (to account for the \$625.00 deductible already paid). (Attachment 3 appended to State's Exhibit 2, Darden Aff.)

16. This invoice contained an itemization of the work that Secure Restoration, Inc. purported to have completed. However, intermingled in the itemized list was the extensive work that *Darden*, not Secure Restoration, Inc, had done.

17. Later that same day Darden received an 11:25 a.m. email from defendant Broch explaining that Darden should submit the \$39,005.96 invoice to his insurance company (as if defendant Secure Restoration, Inc. had done *all* of the itemized work) but that Darden should reduce his actual payment to Secure Restoration, Inc. by \$6,853.76 as a credit for the tasks itemized on the invoice that Darden had performed. (Attachment 4 appended to State's Exhibit 2, Darden Aff.)

18. Darden kept the insurance adjuster informed about these developments.

19. After receiving the invoice, which had been forwarded by Darden, Mark Woodard, an insurance adjuster, challenged defendant Secure Restoration, Inc. regarding various items, including the charges for air movers and dehumidifiers as well as the charges for the work Darden had done. (Affidavit of Mark Woodard at **State's Exhibit 3**)

20. Darden subsequently received by email from defendant Secure Restoration, Inc. another invoice for \$29,230.30. This second invoice modestly reduced the air mover and the dehumidifier charges, but it did not reduce the numbers of air movers and dehumidifiers for which reimbursement was sought, nor did it reduce the claimed operation time for that equipment. (Attachment 5 appended to State's Exhibit 2, Darden Aff.)

21. This second invoice also specified an "Adjusted Discount" of \$6,853.76 "for the line items of the estimate that are of the portions of work already completed by Homeowner prior to Secure Restoration being on site." (Attachment 5 appended to State's Exhibit 2, Darden Aff.)

22. A reasonable market price for the work done by Secure Restoration, Inc. at the Darden residence would have been approximately \$10,300.00. (State's Exhibit 3, Woodard Aff.)

23. On December 3, 2018, Darden received a phone call from defendant Broch threatening to put a mechanic's lien on his house if he did not promptly pay Secure Restoration, Inc. (Attachment 6 appended to State's Exhibit 2, Darden Aff.)

24. Believing Secure Restoration, Inc. would follow through on this threat, that same morning Darden obtained and sent to defendant Secure Restoration, Inc. a bank check for \$28,698.30 for payment of the second invoice amount, minus the \$625.00 deductible already paid. (Attachment 7 Appended to State's Exhibit 2, Darden Aff.)

II. The Dyson Job

25. Prior to the flooding of their house caused by Hurricane Florence in September, 2018, James and Stephanie Dyson lived at 140 Hawks Pond Road, New Bern, Craven County, North Carolina.

26. After the flood waters subsided in their area, at about 9:00 p.m. on Tuesday, September 18, 2018, defendant Broch knocked on their door. (Affidavit of James Dyson, **State's Exhibit 4**) He told the Dysons not to worry about paying him for the flood restoration work they needed, that he would deal with the insurance company, and that he would not charge more than \$12,000.00. He requested a check for the \$2,000.00 deductible, which the Dysons provided.

27. On Sunday, September 23, 2018 defendant Secure Restoration, Inc.'s crew came to the Dyson house and began work. The work was completed within a week and a half.

28. Shortly after the work was done, the Dysons received a call from a person who stated his name was "Jake" and that he was from State Farm Insurance, from telephone number 513-722-6236. "Jake" requested their homeowner's policy number so that he could release

payment for the work done by defendant Secure Restoration, Inc. The Dysons declined to provide their policy number because they reasoned that if “Jake” really was from State Farm Insurance, he should already have that information. During this conversation the Dysons first learned that defendant Secure Restoration, Inc. had invoiced \$21,430.64 for their job.

29. During a telephone call with their insurance company, State Farm, the Dysons learned that the company could not identify “Jake” and could not identify the telephone number “Jake” called from.

30. The Dysons called defendant Broch about the invoice, and he sent it to them by email. (Attachment 2 appended to State’s Exhibit 4, Dyson Aff.) The Dysons disputed the \$21,430.64 amount with defendant Broch, reminding him of his original agreement that he would not charge more than \$12,000.00, but defendant Broch was firm in his demand. He then sent the Dysons an email stating a limited time offer for them to pay \$13,000.00 within 10 days. (Attachment 3 appended to State’s Exhibit 4, Dyson Aff.)

31. After the Dysons forwarded the invoice to their insurance company, they learned that the insurance company also considered the price to be excessive.

32. When the claims adjuster came to their house, he also determined the work was incomplete, including that the crawl space had not been cleaned out and dried, and that Secure Restoration, Inc. had damaged a pipe and the hot water heater.

33. Since then the Dysons received estimates as high as \$3,000.00 to complete the work they had hired defendant Secure Restoration, Inc. to do. They paid \$2,000.00 to another company to clean out their crawl space, work that they had originally hired defendant Secure Restoration, Inc. to do.

34. On or about December 3, 2018, the Dysons received a document entitled “Claim of Lien on Real Property,” apparently signed by “Zach Broch,” and which displays a civil action caption representing that the proceeding was between Secure Restoration, Inc. as plaintiff, and the Dysons as defendants. Attached to the document was a “Certificate of Service” apparently signed by John W. King, Jr., an attorney with the Stubbs and Purdue, P.A. law firm.

35. This “Claim of Lien on Real Property” stated that the lien amount was \$19,430.64, which far exceeded the amount of not more than \$12,000.00 to which the Dysons and Secure Restoration, Inc. had agreed. (Attachment 4 appended to State’s Exhibit 4, Dyson Aff.)

36. Online records of the Craven County Register of Deeds do not reflect that any claim of lien has actually been filed.

CLAIMS FOR RELIEF

CLAIM I

PRICE GOUGING

N.C. GEN. STAT. §§ 75-38 and 75-1.1

37. The demand of defendants Broch and Secure Restoration, Inc., to Darden and his insurer, for payment of \$39,005.96 for flood remediation work, was done with the knowledge and intent to charge an unreasonably excessive price for services used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

38. The subsequent demand of defendant Secure Restoration, Inc. to Darden and his insurer, for payment of \$29,230.30 for flood remediation work, was done with the knowledge and intent to charge an unreasonably excessive price for services used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

39. The demand of defendants Broch and Secure Restoration, Inc. to the Dysons and their insurer, for payment of \$21,430.64 for flood remediation work, was done with the knowledge

and intent to charge an unreasonably excessive price for services used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

CLAIM II
UNFAIR AND DECEPTIVE TRADE PRACTICES
N.C. GEN. STAT. § 75-1.1

40. Defendant Slaughter's representation to Darden, on behalf of defendants Secure Restoration, Inc. and Broch, that they would charge no more than \$5,000.00 for the flood remediation work at his house, combined with their actual submission to Darden of one invoice for \$39,005.96, and another invoice for \$29,323.30, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

41. Each instance of defendants Broch and Secure Restoration, Inc. submitting an inflated invoice to Darden and/or his insurer, when the invoice included charges for work not performed by defendants, is an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

42. Defendants Broch and Secure Restoration, Inc.'s representation to the Dysons that they would complete the Dysons' flood remediation work for no more than \$12,000.00, after which they charged the Dysons \$21,430.64, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

43. Defendant Broch and Secure Restoration, Inc.'s representation to the Dysons that defendants would complete the work at their house for no more than \$12,000.00, combined with these defendants' subsequent demand that the Dysons pay \$13,000.00 in addition to the \$2,000.00 deductible already paid, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

44. The failure of defendants Broch and Secure Restoration, Inc. to complete a substantial amount of the work they were hired by the Dysons to do, combined with their demands

for payment of \$21,430.64, and then for payment of \$13,000.00 in addition to the \$2,000.00 deductible already paid, constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

CLAIM III
UNFAIR COLLECTION PRACTICES
N.C. GEN. STAT. §§ 75-1.1 and 75-50 et seq.

45. The demand by defendants Broch and Secure Restoration, Inc. for payment of \$39,005.96 for the Darden job — when the agreed upon price was no more than \$5,000.00 — constitutes a fraudulent, deceptive or misleading representation of the amount of the debt, in violation of N.C. Gen. Stat. §§ 75-54, 75-54(4), and 75-1.1.

46. The subsequent demand by defendant Secure Restoration, Inc. for payment of \$29,323.30 for the Darden job — when the agreed upon price was no more than \$5,000.00 — also constitutes a fraudulent, deceptive or misleading representation of the amount of the debt, in violation of N.C. Gen. Stat. §§ 75-54, 75-54(4), and 75-1.1.

47. The threat of defendants Broch and Secure Restoration, Inc. to file a mechanic's lien on the Darden residence, and to impose other costs on Mr. Darden, if he did not promptly pay them \$29,323.30 — an amount not owed — constitutes an unfair threat, coercion, or attempt to coerce, in violation of N.C. Gen. Stat. §§ 75-51 and 75-1.1.

48. Each demand by defendants Broch and Secure Restoration, Inc., to the Dysons, for payment of \$21,430.64 — when the agreed upon price was no more than \$12,000.00 — constitutes a fraudulent, deceptive or misleading representation of the amount of the debt, in violation of N.C. Gen. Stat. §§ 75-54, 75-54(4), and 75-1.1.

49. Each demand by defendants Broch and Secure Restoration, Inc., to the Dysons, for payment of \$13,000.00 in addition to the \$2,000.00 deductible already paid to them — when the agreed upon price was no more than \$12,000.00 — constitutes a fraudulent, deceptive or

misleading representation of the amount of the claimed debt, in violation of N.C. Gen. Stat. §§ 75-54, 75-54(4), and 75-1.1.

50. Defendant Secure Restoration, Inc.'s presentation to the Dysons of the "Claim of Lien on Real Property" in the amount of \$19,430.64 constitutes a fraudulent, deceptive or misleading representation of the nature or amount of the claimed debt, in violation of N.C. Gen. Stat. §§ 75-54, 75-54(4), and 75-1.1, in that:

- i. \$12,000.00 or less — and not \$19,430.64 — was the amount that the parties had agreed would be charged and paid for the work, and
- ii. defendants Broch and Secure Restoration, Inc. had failed to complete a substantial amount of the work they were hired by the Dysons to do.

51. Defendant Secure Restoration, Inc.'s presentation to the Dysons of the "Claim of Lien on Real Property" in the amount of \$19,430.64 — an amount not owed — constitutes an unfair threat, coercion, or attempt to coerce, in violation of N.C. Gen. Stat. §§ 75-51 and 75-1.1.

**REQUEST FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION UNDER N.C. GEN. STAT. § 75-14**

52. In light of the evidence that defendants engaged in price gouging, unfair and deceptive practices, and unfair collection practices as set forth in this complaint and the attached affidavits, the State requests that defendants, and persons acting under their direction or control or with their approval, be enjoined immediately, and upon due notice and hearing that they be preliminarily enjoined, as set forth in detail in paragraphs 54 and 55 of this Complaint.

53. Unless defendants are restrained and enjoined, they will continue to irreparably harm the State by violating North Carolina law, to the detriment of the State and its citizens.

PRAYER FOR RELIEF

WHEREFORE, THE STATE PRAYS THE COURT for the following relief:

54. That defendants, together with their agents, employees, representatives, subcontractors, successors and assigns, and any persons acting in concert with them, be temporarily restrained, and after hearing on due notice preliminarily enjoined, under N.C. Gen. Stat. § 75-14, from:

- i. engaging in unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1, including but not limited to stating that a job will not cost more than a certain amount and then charging a substantially higher price, and charging for uncompleted work;
- ii. charging or receiving payment for goods or services used as a direct result of an emergency with the knowledge and intent that the charge is an unreasonably excessive price under the circumstances, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1;
- iii. engaging in any prohibited debt collection practices, including falsely characterizing the character or amount of the debt by attempting to collect an amount to which a consumer has never agreed and attempting to collect a debt for work not performed; engaging in unfair threats or coercion by threatening to file a lien to collect an amount to which the consumer never agreed, in violation of N.C. Gen. Stat. §§ 75-1.1 and 75-50 *et seq.*;
- iv. directly or indirectly attempting to collect on any claimed debt for flood remediation and related services provided in North Carolina on and after September 7, 2018;

- v. advertising, offering, soliciting, or entering into contracts, or receiving payment for any flood remediation and related services in North Carolina;
- vi. performing or providing any flood remediation services in North Carolina;
- vii. destroying, removing, transferring, erasing, or otherwise disposing of any business or financial records relating to defendants' business, including but not limited to any business or financial records relating to monies obtained from any North Carolina consumer on or after September 7, 2018; and
- viii. transferring, withdrawing, concealing, disposing, or encumbering any of defendants' assets without permission of the Court or written permission of the Attorney General.

55. That defendants be required, under N.C. Gen. Stat. § 75-14, to produce the following records no later than three days prior to the preliminary injunction hearing or within ten days of entry of a temporary restraining order, whichever is sooner:

- i. (a) A verified list of the names and addresses of all North Carolina consumers to whom defendants, or those acting under their direction or control or with their approval, have provided products or services since September 7, 2018, together with (b) all related invoices, bills, estimates, and/or bids sent to those consumers and/or their insurers, (c) an individualized accounting of all payments received from each such consumer and/or insurer, and (d) the names and addresses of all insurance policy issuers, policy numbers, and claim numbers related to flood remediation services provided by defendants to North Carolina consumers on or after September 7, 2018.

- ii. The name and address of every bank at which defendants maintain deposit, checking, or other accounts, along with the account number for each such account, a statement of the current balance in each such account, and a copy of the bank statement(s) for each such account that covers the period September 7, 2018 through January 1, 2019.
- iii. A current balance sheet and the most recent profit and loss statement for defendant Secure Restoration, LLC.

56. That upon final adjudication of this cause, the terms of the Preliminary Injunction continue in the form of a Permanent Injunction, pursuant to N.C. Gen. Stat. § 75-14;

57. That defendants be ordered, pursuant to N.C. Gen. Stat. § 75-15.1 to pay restitution to all consumers and insurers who suffered injury due to defendants' unlawful acts and practices set forth above;

58. That defendants be ordered to disgorge all amounts they or their agents, employees, representatives, subcontractors, successors and assigns have received, or in the future do receive, in connection with the flood remediation work and related services set forth above, under N.C. Gen. Stat. § 75-14;

59. That the Court, pursuant to N.C. Gen. Stat. § 75-15.1, cancel all express, implied or constructive contracts between defendants, acting as contractors or subcontractors, and the owners of the properties described above, including that the Court extinguish all statutory lien rights and all common law *quantum meruit* rights of defendants against all property owners and/or their insurers for flood remediation work and related services set forth above;

60. That the defendants be ordered to pay civil penalties of \$5,000.00 for each instance of price gouging and unfair and deceptive trade practices, pursuant to N.C. Gen. Stat. § 75-15.2;

61. That the defendants be ordered to pay civil penalties of \$4,000.00 for each prohibited debt collection act, pursuant to N.C. Gen. Stat. § 75-56(b), (d);

62. That defendants be ordered to reimburse the State for attorneys' fees and litigation expenses in this action, pursuant to N.C. Gen. Stat. § 75-16.1;

63. That the costs of this action be taxed to defendants; and

64. That the State be granted such other and further relief as to the Court seems just and appropriate.

This the 15th day of January, 2019.

JOSHUA H. STEIN
ATTORNEY GENERAL



K. D. Sturgis
Special Deputy Attorney General
State Bar No. 9486
ksturgis@ncdoj.gov



Daniel T. Wilkes
Assistant Attorney General
N.C. State Bar No. 46500
dwilkes@ncdoj.gov

N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Phone: (919) 716-6000
Facsimile: (919) 716-6050