

19CV000741

STATE OF NORTH CAROLINA  
WAKE COUNTY

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. )  
 )  
KYLE JEFFREY ROWE, Individually, )  
STUART E. CAMPBELL, JR, a/k/a )  
STUART CAMPBELL, Individually, and )  
GEORGIA TREE COMPANY LLC, )  
 )  
Defendants. )

COMPLAINT  
MOTION FOR TEMPORARY  
RESTRAINING ORDER  
MOTION FOR PRELIMINARY  
INJUNCTION

FILED  
2019 JAN 15 PM 1:51  
WAKE COUNTY C.S.C.

**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 prohibited debt collection practices, following Hurricane Florence.

Plaintiff State of North Carolina, *ex rel.* Joshua H. Stein, Attorney General (“the State”), brings this action against defendants KYLE JEFFREY ROWE, individually, STUART E. CAMPBELL, JR., a/k/a STUART CAMPBELL, individually, and GEORGIA TREE COMPANY LLC, a Georgia limited liability company (“defendants”). The State alleges that defendants (1) price gouged a homeowner in North Carolina for tree removal services in the wake of Hurricane Florence by charging \$19,598.29 to remove three fallen trees and one tree leaning on a structure; (2) used bait-and-switch tactics by telling the homeowner that Georgia Tree Company LLC would only charge him his deductible, plus whatever the homeowner’s insurance paid for the tree work, but then turned around and charged him more than that; and (3) committed various prohibited debt collection practices, including misrepresenting that the homeowner had agreed to the \$19,598.29

charge, and making threats to place a mechanic's lien on the homeowner's residence, garnish his wages, seize his bank accounts, and bring criminal charges against him for theft of services.

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 against 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 Kyle Jeffrey Rowe lives at 2031 Wexford Green Drive, Valrico, Florida. On information and belief, defendant Rowe at all times relevant to this Complaint was a managing agent of defendant Georgia Tree Company LLC, and his acts or practices were done under the supervision or control, or with the approval, of defendant Georgia Tree Company LLC.

3. On information and belief, defendant Stuart E. Campbell, Jr. lives at 5750 Peltier Trace, Norcross, Georgia. On information and belief, defendant Campbell at all times relevant to this Complaint was a managing agent of Georgia Tree Company LLC, and his actions were done under the supervision or control, or with the approval, of defendants Rowe and Georgia Tree Company LLC.

4. Defendant Georgia Tree Company LLC is a Georgia limited liability company that has its principal place of business at 2370 Justin Trail, Alpharetta, Georgia. It is not authorized to do business in North Carolina.

**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 Onslow, 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**.)

9. Six days after Hurricane Florence made landfall on the North Carolina coast, homeowner James McFarland was able to get back to his house in Sneads Ferry, Onslow County, North Carolina. He discovered that an oak tree was leaning across the corner of an outbuilding, and three hardwoods were down beside the building with their crowns touching it.

10. McFarland found Georgia Tree Company LLC on the Internet and called the company on September 20, 2018. Defendant Stuart Campbell, representing defendant Georgia Tree Company LLC, came out that afternoon. (Mr. McFarland’s affidavit is at **State’s Exhibit 2**)

11. McFarland asked defendant Campbell what the price would be, but defendant Campbell told him not to worry and that McFarland would just pay the deductible and Georgia Tree Company LLC would obtain the rest from McFarland's insurance company. When McFarland pressed defendant Campbell further about the price, Campbell said he could not give one because he would send the information to "Kyle" in the main office, implying that Kyle would generate the bill.

12. McFarland reasonably relied on defendant Campbell's representations that McFarland would just pay the deductible and that Georgia Tree Company LLC would then accept whatever the insurance company allowed.

13. Accordingly, McFarland agreed for Georgia Tree Company LLC to do the work and signed a document that tracked their oral agreement and stated, in relevant part, as follows: "The client acknowledges that Georgia Tree Company (GTC) will work directly with the Insurance Company for the Emergency Tree Removal. The client will be responsible for the deductible once the tree Service and Mitigation of Damages is completed." (**Attachment 1** appended to State's Exhibit 2, McFarland Aff.) Those are the only provisions regarding payment that McFarland agreed to with defendants Campbell and Georgia Tree Company LLC.

14. McFarland's homeowner's insurance has a \$1,155.00 deductible for a named storm. (**Attachment 2** appended to State's Exhibit 2, McFarland Aff.)

15. A crew of five men from Georgia Tree Company LLC arrived about 8:15 the next morning and left when the work was done at about 4:15 p.m. The crew consisted of a man who drove a bobcat and supervised the others who used chainsaws.

16. Of the five-man crew, two of them took more than two hours to change a tire on one of their vehicles. Further, when one of these five injured his finger, he rested for about an hour

after Mrs. McFarland cleaned the wound and applied a bandage. All five also took a lunch break for about an hour.

17. In addition, a crane operator was there with a crane for about two hours removing the oak tree that was leaning against the storage building. He told McFarland that he rented the crane for \$300 per day. Defendant Campbell was there briefly but left before the crane work was done.

18. After the tree crew left, two other men with Georgia Tree Company LLC put a torn piece of tarp on the roof of the storage building, using McFarland's ladder, and weighed the tarp down with sandbags, using sand supplied by McFarland. These men were on the job for about 40 minutes.

19. Defendant Georgia Tree Company LLC submitted a purported "Agreement" directly to McFarland's insurer. However, the insurer instructed them to send it to the homeowner, for him to forward to the insurer.

20. McFarland subsequently received by email from defendant Kyle Rowe, on behalf of defendant Georgia Tree Company LLC and with a "cc" to Stuart Campbell, the document labeled "Agreement," stating a balance due of \$19,598.29, including \$1,450.00 to put the tarp and sandbags on the roof. McFarland had never signed this "Agreement," and the space for his signature on this document is blank. McFarland also never agreed to this price. (**Attachment 3** appended to State's Exhibit 2, McFarland Aff.)

21. The purported "Agreement" also incorrectly states that a six-man crew, plus a project manager and safety supervisor, did the tree work. As noted above, it was a five man crew, with a crane operator there for about two hours. There was no project manager and no safety

supervisor. Further, the purported "Agreement" incorrectly states that "Kyle" was the project manager. To McFarland's knowledge he was never on site.

22. With three men working 7 hours (8:15 a.m. to 4:15 p.m., with a one-hour lunch break), two men working 5 hours (8:15 a.m. to 4:15 p.m., with a one-hour lunch break, and two hours for changing a tire), the crane operator working for two hours, and two men putting up the tarp (40 minutes each), the total labor comes to 33 man-hours for the tree work and 1.33 man-hours for the tarping.

23. Dividing the tree work invoice amount of \$16,948.29 by 33 man-hours yields a pay rate of \$513.58 per man-hour for the tree work.

24. Dividing the \$1,450.00 invoice amount for tarping by 1.33 man-hours produces a pay rate of \$1,090.00 per man-hour for the tarping.

25. Dividing the total \$19,598.29 bill by 34.33 total man-hours comes to \$570.88 per man-hour for the entire job.

26. At seven places the fine print on the back of the actual agreement of the parties describes defendant Georgia Tree Company's rate as \$180.00 per man-hour for: customer-requested return trip driving time, discretionary upcharge for trimming for satellite dish reception, any change-order, hindrance of crew caused by owner, investigation of owner claim for damage, a visit in connection with investigation of owner claim for damage, and moving or spreading mulch. (**Attachment 1** appended to State's Exhibit 2, McFarland Aff. p. 2, at ¶¶ 2, 3, 8 and 13.)

27. The McFarlands' total insurance claim for all of the repair and recovery work for their property totaled \$23,031.37, which included the \$19,598.29 claimed by Georgia Tree Company (and the balance being for non-Georgia Tree Company LLC related work done on the McFarland's' property). However, the maximum payout on their insurance policy is 10 percent of

the value of the house, which would result in a total possible maximum payout of \$11,550.00. (**Attachment 4** appended to State's Exhibit 2, McFarland Aff.)

28. By email to McFarland on October 3, 2018, defendant Rowe attempted to justify the \$19,598.29 bill based on "high call volume, lack of equipment available, additional crane, crew, living cost, and additional expenses in general...." (**Attachment 5** appended to State's Exhibit 2, McFarland Aff.)

29. McFarland's contact at his insurance company told him there was no way they would pay this amount, and that she had three or four comparable trees removed for \$2,500.00 total following the hurricane. She also told him that the insurance company was inundated with claims, with its staff working seven days a week, 10 to 12 hours a day, and it would just max out his policy.

30. McFarland later informed defendant Rowe that he had received the maximum \$11,550.00 insurance payout. He received several telephone calls from defendant Rowe who demanded the entire \$11,550.00 insurance payout, even though the McFarlands had \$3,500.00 of other storm damage to repair that they would need to cover with that payout.

31. McFarland then offered to pay Georgia Tree Company LLC one-half of the \$11,550.00 maximum possible insurance payout as he considered that amount to be more reasonable, even if it was still high. However, defendant Rowe replied that this was not enough.

32. Defendant Rowe has repeatedly threatened to take the McFarlands to court, and he threatened three times to put a mechanic's lien on their house. Defendant Rowe has also threatened to garnish Mr. McFarland's wages and to seize his bank account. Defendant Rowe further threatened to have McFarland charged criminally for theft of services. When McFarland told

defendant Rowe that he wanted to run this matter by a lawyer, defendant Rowe replied that if McFarland gets a lawyer, it will only get worse.

33. On December 28, 2018 at 2:00 p.m., a person who stated his name was Anthony called McFarland and left a voicemail stating he was an associate of Kyle's and that he was in the area to wrap up some outstanding debts owed to defendant Georgia Tree Company LLC.

29. After McFarland informed Anthony by text message that he had filed a complaint with the Attorney General's office and wanted to see how that process played out, Anthony replied by text message with an offer to accept \$5,600.00 to resolve the matter, with that offer "good for today only." (**Attachment 6** appended to State's Exhibit 2, McFarland Aff.) McFarland did not reply to this text message.

30. On January 4, 2019 defendant Rowe left a voicemail for McFarland stating that he owes them at least \$8,200.00 from insurance proceeds and that there is still an outstanding bill of \$19,598.29 that they want to resolve.

### **CLAIMS FOR RELIEF**

#### **CLAIM I PRICE GOUGING N.C. GEN. STAT. §§ 75-38 and 75-1.1**

34. The demand of defendants Rowe, Campbell and Georgia Tree Company LLC, to the McFarlands and their insurer, for payment of \$19,598.29, 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**

35. The representation of defendants Rowe and Georgia Tree Company LLC, to McFarland's insurer, that the document styled "Agreement," containing the charge for \$19,598.29,



was an actual agreement between McFarland and defendant Georgia Tree Company LLC — when McFarland had not agreed to that price — constitutes an unfair or deceptive act or practice in violation of N.C. Gen. Stat. § 75-1.1.

36. The representation of defendants Campbell and Georgia Tree Company LLC, to Mr. McFarland, that he would be responsible only for paying his insurance deductible and they would accept what his insurance allows for the work, when in fact defendants Rowe and Georgia Tree Company LLC then demanded that he pay them the entire \$11,550.00 insurance payout, even though McFarland had another \$3,500.00 of damage to repair in addition to the tree work, 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.***

37. The demand by defendants Rowe and Georgia Tree Company LLC for payment of \$19,598.29 as stated in the purported “Agreement” — when McFarland had not agreed to pay that amount — 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.

38. Each later demand by defendants Rowe and Georgia Tree Company LLC for payment of the entire \$11,550.00 insurance payout for the McFarlands’ entire insurance claim, which included \$3,500.00 for other damage — when the agreed upon price with Georgia Tree Company LLC was the amount of the deductible plus what the insurer would pay for the tree and tarp work — also 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.

39. Each threat by defendants Rowe and Georgia Tree Company LLC to file a mechanic’s lien on the McFarlands’ residence, to garnish Mr. McFarland’s wages, to seize his bank account, and to impose other costs if he did not pay them the entire \$11,550.00 insurance

payout — an amount which was not owed — constitutes an unfair threat, coercion, or attempt to coerce, in violation of N.C. Gen. Stat. §§ 75-51 and 75-1.1.

40. Each threat by defendants Rowe and Georgia Tree Company LLC to bring criminal charges against McFarland for theft of services if he did not pay them \$11,550.00 — an amount which was 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**

41. In light of the evidence that defendants engaged in price gouging, unfair and deceptive practices, and prohibited collection practices as set forth in this complaint and the attached affidavit, the State requests that defendants, and persons acting under their direction or control or with their approval, be enjoined immediately as set forth in detail in paragraphs 43 and 44 of this Complaint.

42. Unless defendants are so 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:

43. 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. 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;

- ii. engaging in unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1, including but not limited to (1) falsely representing that the homeowner will be responsible only to pay the insurance deductible and that defendants would accept what the insurer allows, and (2) representing that a document is an “agreement” when the consumer never agreed to its contents;
- iii. engaging in any prohibited debt collection practices, including (1) falsely representing the character or amount of the debt, and (2) communicating any threat to file a mechanic’s lien, to garnish wages, to seize a bank account, or to bring criminal charges, in connection with an effort to collect an amount that is not owed, in violation of N.C. Gen. Stat. §§ 75-50 *et seq.*;
- iv. directly or indirectly attempting to collect on any claimed debt for tree removal 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 tree removal and related services in North Carolina;
- vi. performing or providing any tree removal and related 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.

44. 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 tree removal and related 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 Georgia Tree Company LLC.

45. 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;

46. That upon final adjudication 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;

47. That upon final adjudication 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 tree removal and related work set forth above, under N.C. Gen. Stat. § 75-14;

48. That upon final adjudication 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 tree removal and related work done by defendants as set forth above;

49. That upon final adjudication the defendants be ordered to pay civil penalties of \$5,000.00 for each instance of price gouging, unfair and deceptive trade practice found by the Court, pursuant to N.C. Gen. Stat. § 75-15.2;

50. That upon final adjudication 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);

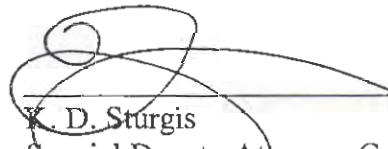
51. That upon final adjudication defendants be ordered to reimburse the State for attorneys' fees and litigation expenses in this action, pursuant to N.C. Gen. Stat. § 75-16.1;

52. That upon final adjudication the costs of this action be taxed to defendants; and

53. That upon final adjudication the State be granted such other and further relief as to the Court seems just and appropriate.

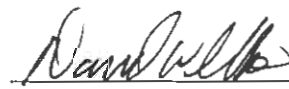
This the 15<sup>th</sup> day of January, 2019.

JOSHUA H. STEIN  
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