

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO.

STATE OF NORTH CAROLINA)
ex rel. ROY COOPER,)
Attorney General and)
HAL D. LINGERFELT,)
Commissioner of Banks)
)
Plaintiffs)
)
v.)
)
ACE CASH EXPRESS, INC.)
)
Defendant)

COMPLAINT

Plaintiffs, complaining of the defendant, allege as follows:

1. This is an action for injunctive relief to restrain the defendant from offering, arranging and making usurious consumer loans known as "payday loans" in this State and to obtain restitution and further relief.

PARTIES

2. The plaintiff is the State of North Carolina, acting on relation of its Attorney General, Roy Cooper, pursuant to authority granted by Chapters 75 and 114 of the General Statutes, and on relation of its Commissioner of Banks, Hal D. Lingerfelt, acting pursuant to authority granted by Chapter 53 of the General Statutes.

3. The defendant Ace Cash Express, Inc. ("Ace"), is a Texas corporation with approximately 16 stores in North Carolina from which it offers payday loans and check cashing services to North Carolina residents. The defendant is licensed by the Commissioner of Banks as a check cashing business pursuant to G.S. 53-276. The defendant has no license or authorization from the State to make, originate, broker, or collect on consumer loans.

FACTUAL ALLEGATIONS

4. For the last year, and since September 1, 2001, the defendant has regularly offered, arranged, and made short term, high interest loans known as "payday loans" through its locations in North Carolina. Defendant offers these loans in amounts from \$100 to \$500 for 14 day periods. The defendant charges a finance charge for these loans of \$17 per \$100 loaned, which translates to an interest or annual percentage rate of approximately 443%. The defendant allows the loans to be renewed or refinanced for three additional two week periods if the borrower pays an additional 17% finance charge for each two week renewal plus 5% of the principal.

5. The North Carolina law regulating check cashing businesses (Article 22 of Chapter 53 of the General Statutes) allowed for deferred deposit check cashing loans, a form of payday lending, during the period October 1, 1997 through August 31, 2001. The provision of the law which authorized payday lending, G.S. 53-281, had a "sunset" date of July 31, 2001 which was extended by the General Assembly for 31 days until August 31, 2001, after which the law expired.

6. There is no longer any specific legislative authorization for payday lending in North Carolina. All such loans made by the defendant must therefore comply with the usury rates in Chapter 24 of the General Statutes or the consumer loan rates in the Consumer Finance Act, G.S. 53-164 et seq. The maximum rate allowed for consumer loans under existing North Carolina law (G.S. 53-173) is 36% per annum for loans of \$600 or less, and that rate is available only for consumer finance lenders licensed by the Commissioner of Banks. The defendant is not and never has been so licensed.

7. The defendant has entered into an arrangement with Goleta National Bank, located in Goleta, California, to act as the apparent lender on its payday loans. This arrangement is an attempt to evade the limitations and regulations of North Carolina law. The defendant represents that its payday loans are made by Goleta and that Ace is acting only as an agent for Goleta, and therefore, state usury law is preempted under the National Bank Act, 12 U.S.C. §85.

8. Under the defendant's arrangement with Goleta, loans are made in Goleta's name, an account is established for the consumer with Goleta, and an ATM card is issued to the consumer by Goleta to access the loan proceeds at the defendant's store.

9. In fact, despite the appearance of Goleta's role, the

defendant is the principal actor and the primary lender in its loan transactions. The defendant uses Goleta solely as a vehicle to provide cover for its loans in order to claim preemption over state usury law.

10. On information and belief, the defendant does all the marketing for its payday loans, solicits borrowers for loans, takes and completes loan applications, provides loan documents and disclosures to borrowers, disburses cash loan proceeds to borrowers, assumes ownership and liability of at least 90% of each loan, accepts cash repayments of loans, and is responsible for all collection activity for delinquent loans. In short, the defendant acts as a lender while using Goleta as a subterfuge to claim national bank status for its loans.

11. The defendant has collected, and continues to collect, excessive fees and interest from North Carolina consumers without lawful authorization.

CLAIMS FOR RELIEF

A. Violations of North Carolina Consumer Finance Act

12. The maximum rate allowed by North Carolina usury law, G.S. 24-1.1, on contract loans of \$25,000 or less is 16% per annum. The defendant makes all of its cash advance transactions or payday loans to North Carolina consumers at rates in excess of 16%. On information and belief, all of defendant's loans are made at annual rates in excess of 400%.

13. The North Carolina Consumer Finance Act, G.S. 53-166, requires that any person engaged in the business of lending cannot "directly or indirectly" contract for or receive consideration greater than allowed by Chapter 24 on consumer loans of \$10,000 or less without being licensed by the Commissioner of Banks as a consumer finance lender. The Act allows certain licensed consumer finance lenders to make consumer loans of \$600 or less at an annual rate of up to 36%.

14. The defendant is engaged in the business of lending and is subject to the provisions of the Consumer Finance Act, including G.S. 53-166. The defendant is not licensed as a consumer finance lender by the Commissioner of Banks, and it regularly makes consumer loans at rates far in excess of the limits in the Consumer Finance Act.

15. Even if the defendant styles its loans as loans made in

California, the Consumer Finance Act, G.S. 53-190, provides that such loans are unenforceable in North Carolina if made at rates or for consideration greater than allowed in the Act. G.S. 53-190(b) further requires compliance with the Consumer Finance Act if agents of out of state lenders solicit or conduct other activities in this State with respect to consumer finance loans.

16. Pursuant to G.S. 53-166(d), all loans made or collected by the defendant in violation of the Consumer Finance Act, which constitute all of the defendant's loans, are void, and the defendant has no right to retain any principal or charges related to such loans.

17. Pursuant to G.S. 53-190, the defendant's loans are unenforceable in this State.

B. Usury

18. On information and belief, all loans made directly or indirectly by the defendant to North Carolina consumers are usurious because the rates and charges exceed the rates and charges permitted by Chapter 24.

19. The defendant is subject to the usury remedies and penalties in G.S. 24-2. The interest on defendant's loans should be forfeited and the defendant should be required to disgorge twice the amount of all interest collected from its borrowers.

C. Violations of North Carolina Check Casher Act

20. At all times relevant hereto, in addition to its payday lending business, the defendant was engaged in the business of cashing checks for consideration. The defendant is licensed by the Commissioner of Banks as a check casher pursuant to G.S. 53-276.

21. The Check Casher Act, G.S. 53-283(2), prohibits licensed check cashers from engaging in the business of making loans or extensions of credit except as authorized by G.S. 53-281. G.S. 53-281 has expired as of August 31, 2001 so there is no authority for licensed check cashers to make loans of any kind.

22. The defendant should be enjoined from further engaging in the business of making loans.

D. Violations of North Carolina Loan Broker Act

23. The Loan Broker Act, G.S. 66-106 et seq., imposes requirements on any person or entity who, in return for consideration, promises to assist others in procuring a loan from any third party.

24. To the extent that the defendant is not making direct loans but is arranging or brokering loans for North Carolina consumers from Goleta National Bank, defendant is acting as a loan broker as defined in G.S. 66-106.

25. The Loan Broker Act requires, inter alia, that a loan broker provide a specified disclosure statement to prospective borrowers at least seven days prior to the loan brokering transaction; that the loan broker establish a \$10,000 bond in favor of the State; that the loan broker register with the Secretary of State; and that all loan broker contracts be in writing and signed by the borrower.

26. On information and belief, the defendant has complied with none of these requirements as mandated by G.S. 66-107, 66-108, 66-109, and 66-110.

27. Pursuant to G.S. 66-111(d), the violation of any provision of the Loan Broker Act constitutes an unfair trade practice.

28. Pursuant to G.S. 66-111, the defendant should be enjoined from further violations of the Loan Broker Act and should be required to refund all amounts collected by it for unlawful loan brokering activities.

E. Unfair and Deceptive Practices

29. In the course of offering, arranging, making and collecting on its payday loans, the defendant has engaged in unfair and deceptive acts or practices in trade or commerce in violation of G.S. 75-1.1.

30. The defendant's unfair and deceptive acts or practices include the following:

a. Continuing to offer and make payday or deferred deposit loans when such loans are not authorized in North Carolina after August 31, 2001.

b. Attempting to circumvent North Carolina lending and consumer protection laws by deceptively entering into an arrangement with a national bank solely to exploit

the bank's national bank charter while the defendant continues to be the primary lender in its loan transactions.

c. Deceptively representing to consumers that its payday loans are made and held by Goleta National Bank when the defendant has the ownership, liability and collection authority over all the loans.

d. Engaging in an unfair business enterprise of arranging loans for consumers when such loans are in gross violation of the usury laws of this State and violate the public policy of this State.

e. Engaging in loan brokering activity without complying with the Loan Broker Act.

31. Pursuant to G.S. 75-14, the Attorney General has the right to seek injunctive relief to restrain the defendant from further violations of G.S. 75-1.1.

32. Pursuant to G.S. 75-15.1, the Attorney General has the right to seek a refund of moneys obtained by the defendant as a result of violations of G.S. 75-1.1.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray the Court for the following relief:

A. That the defendant and its agents be preliminarily and permanently enjoined from offering, making, arranging, or collecting on loans to North Carolina consumers that violate the lending and consumer protection laws of this State.

B. That all loans made by the defendant in violation of the Consumer Finance Act be declared void pursuant to G.S. 53-166(d), and all moneys collected by the defendant pursuant to such unlawful loans be refunded.

C. That all loans made by the defendant at rates in excess of the interest rates allowed by Chapter 24 of the General Statutes, be declared usurious and the defendant be ordered to forfeit all interest and to refund two times the interest collected from North Carolina borrowers.

D. That all loans made by the defendant in violation of

G.S. 75-1.1 be cancelled pursuant to G.S. 75-15.1, and that defendant be ordered to refund all moneys collected from such loans.

E. That, in the alternative to the Consumer Finance Act and usury remedies, the defendant be enjoined from arranging or brokering loans in violation of the Loan Broker Act, and that defendant be ordered to refund all moneys collected by it for arranging consumer loans pursuant to G.S. 66-111.

F. That the Court award the plaintiffs attorney fees and costs and such other and further relief as may be just and proper.

This the ___ day of January, 2002.

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