

THE STATE OF TEXAS

Plaintiff,

v.

GERSTY, INC.,

Defendant.

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Cause No. 2006 - 889

**EX PARTE TEMPORARY RESTRAINING ORDER**

1. Plaintiff, State of Texas, has filed its Original Petition in this cause seeking a temporary and permanent injunction against GERSTY, INC., and in the same petition has presented its request for an ex parte temporary restraining order.

2. The Court finds that Defendant may be violating § 17.46(a) and (b) of the Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (“DTPA”) by representing that it is selling vehicles to consumers when it does not have clear title to sell same, and by misrepresenting the character of the transaction by calling it both a purchase and a lease, and by forcing consumers to enter into “Management” agreements in which Defendant manages very little except the consumers’ money.

3. It appears from facts set forth in the Plaintiff’s Original Petition and the exhibits and sworn affidavits attached thereto that unless Defendant is immediately restrained from the acts prohibited below, Defendant will commit such acts before notice can be given and a hearing can be held on the State of Texas’ request for a temporary injunction, and Defendant will continue to mislead consumers to their financial detriment.

4. Such injury would be irreparable because continued violations of the DTPA may well

cause many more consumers to lose their money by deception.

5. **IT IS THEREFORE ORDERED** that Defendant GERSTY, INC., and its agents, servants, relatives, employees, attorneys and any other persons in active concert or participation with him who receive actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be restrained from engaging in the following acts or practices:

a. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written or computer generated materials relating to the business of Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause;

b. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any bank, savings association, credit union or other financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, sports memorabilia, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by such Defendant without further order of this court;

c. Advertising goods or services with intent not to sell them as advertised, including characterizing a sale as a lease and selling vehicles encumbered with liens;

d. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, including misrepresenting warranty terms;

e. Representing that a guarantee or warranty confers or involves rights or

remedies which it does not have or involve, including misleading references to a limited warranty combined with an "as is" sale, or that the "Management Agreement" confers benefits that it does not have;

- f. Failing to disclose information concerning its goods or services which was known by Defendant at the time of the transaction when such failure to disclose was intended to induce the consumers into transactions which they would not have entered if disclosure had been made, including selling vehicles that are encumbered with a lien without the consumers knowing that fact.

6. **IT IS FURTHER ORDERED** that Defendant in this cause be and hereby is commanded forthwith to comply with this Order from the date of entry until and to the fourteenth (14) day after entry or until further order of this Court, whichever is less.

7. **IT IS FURTHER ORDERED** that the Clerk of the above-entitled Court shall forthwith issue an ex parte temporary restraining order in conformity with the law and the terms of this Order. This Order shall be effective without the execution and filing of a bond as Plaintiff, State of Texas is exempt from such bond under TEX. BUS. & COM. CODE ANN. § 17.47(b).

Hearing on Plaintiff, State of Texas' Application for an Temporary Injunction is hereby set for the 6<sup>th</sup> day of March, 2006 at 3:30 o'clock, P m.

SIGNED this 22<sup>ND</sup> day of February, 2006, at 242 o'clock, P m.

SAM M. PAXSON  
Senior District Judge  
Presiding

  
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JUDGE PRESIDING