

STATE OF MAINE  
PENOBSCOT, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-84-461

STATE OF MAINE, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 DAVID LAWLER )  
 d/b/a DAVE'S AUTO SALES, )  
 )  
 Defendant )

MEMORANDUM OF LAW IN SUPPORT  
OF PLAINTIFF'S MOTION FOR A  
TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Pursuant to Rule 7(b)(3) of the Maine Rules of Civil Procedure, the Plaintiff submits this Memorandum of Law supporting the Plaintiff's Motion for a Temporary Restraining Order.

II. FACTS

1. Procedural History

David Lawler (d/b/a Dave's Auto Sales) is engaged in the business of selling used motor vehicles. On October 5, 1984, the State of Maine filed a Complaint against Defendant Lawler. This Complaint requested Preliminary and Permanent Injunctions against the Defendant engaging in the following unfair and deceptive trade practices in violation of 5 M.R.S.A. § 207 (1979):

A. selling used motor vehicles for transportation which cannot meet the inspection standards of 29 M.R.S.A. §§ 2502-2503 (Supp. 1984), in violation of 29 M.R.S.A. § 2507-A(3) (Supp. 1984), 10 M.R.S.A. § 1474(1) (1980) and 10 M.R.S.A. § 1476(2)(C) (1980) [pursuant to 29 M.R.S.A. § 2507-A(3) (Supp. 1984) and 10 M.R.S.A. § 1477(1) (1980), this practice is a per se violation of the Maine Unfair Trade Practices Act];

B. selling used motor vehicles for transportation that do not properly display a valid certificate of inspection, in violation of 29 M.R.S.A. § 2507-A (Supp. 1984) [pursuant to 29 M.R.S.A. § 2507-A(3) (Supp. 1984), this practice is a per se violation of the Maine Unfair Trade Practices Act];

C. not providing written disclosure statements detailing the history of the used motor vehicle being sold by him for transportation, in violation of 10 M.R.S.A. § 1475 (1980 & Supp. 1984) [pursuant to 10 M.R.S.A. § 1477(1) (1980), this practice is a per se violation of the Maine Unfair Trade Practices Act];  
and

D. stamping the sale agreements of consumers purchasing a used motor vehicle for purposes of transportation with the phrase "as is not for road use" and thereby attempting to exclude the warranty of

inspectability, in violation of 10 M.R.S.A. § 1472(2) (1980) [pursuant to 10 M.R.S.A. § 1477(1) (1980), this practice is a per se violation of the Maine Unfair Trade Practices Act].

The State's Complaint and Request for Preliminary and Permanent Injunctions is currently scheduled for trial on December 19, 1984. The State requests that a Temporary Restraining Order remain in effect until that trial date.

2. Unfair Trade Practices

The State's Complaint was based on consumer complaints received by the State and on information developed by the State's own investigation of the Defendant's sale practices. The incidents on which the State has based its Complaint occurred as recently as September 14, 1984 and stretch back to May 5, 1982. These complaints involve the following Unfair Trade Practices:

- A. Name: Jeffrey Moody  
Address: 46 Patten Street, Bangor, ME 04401  
Purchase Date: 9/14/84  
Dave's Auto Sales sold him:  
(1) a used car that a State inspection station confirmed could not pass inspection (rusted struts);  
(2) a used car without a valid inspection sticker; and  
(3) a used car without a Used Car Information Act sticker.
- B. Name: Donna Peterson  
Address: 7 Union Place, Bangor, ME 04401  
Purchase Date: 8/27/84  
Dave's Auto Sales sold her:  
(1) a used car for transportation but stamped the bill of sale "not for road use".

- C. Name: Andrew Rolfe  
Address: Main Street, Milbridge, ME 04658  
Purchase Date: 7/10/84  
Dave's Auto Sales sold him:  
(1) a used car that the State Police confirmed could not pass inspection (rusted frame);  
(2) a used car without a valid inspection sticker;  
(3) a used car without a Used Car Information Act sticker; and  
(4) a used car for transportation but stamped the bill of sale "not for road use".
- D. Name: Laurie Raymond  
Address: 253 Union Street, Bangor, ME 04401  
Purchase Date: 4/18/84  
Dave's Auto Sales sold her:  
(1) a used car that the State Police confirmed could not pass inspection;  
(2) a used car without a valid inspection sticker;  
(3) a used car without a Used Car Information Act sticker; and  
(4) a used car for transportation but stamped the bill of sale "not for road use".
- E. Name: Brian Goggins  
Address: 319 Fourteenth Street, Bangor, ME 04401  
Purchase Date: 4/8/84  
Dave's Auto Sales sold him:  
(1) a used car for transportation but stamped the bill of sale "not for road use".
- F. Name: Fayland Campbell  
Address: RFD 1, Guilford, ME 04443  
Purchase Date: 3/31/84  
Dave's Auto Sales sold him:  
(1) a used car that a State inspection station confirmed could not pass inspection (rusted frame);  
(2) a used car without a valid inspection sticker; and  
(3) a used car for transportation but stamped the bill of sale "not for road use".
- G. Name: Joseph LaBree  
Address: 76 Lincoln Street, Old Town, ME 04468  
Purchase Date: 3/5/84  
Dave's Auto Sales sold him:  
(1) a used car without a valid inspection sticker;  
(2) a used car that could not pass inspection (rust);  
(3) a used car without a Used Car Information Act sticker; and  
(4) a used car for transportation but stamped the bill of sale "not for road use".

- H. Name: Ruth Raymond  
Address: 66 South Main Street, Brewer, ME 04412  
Purchase Date: 2/10/84  
Dave's Auto Sales sold her:  
(1) a used car that could not pass inspection;  
(2) a used car without a valid inspection sticker;  
(3) a used car without a Used Car Information Act sticker; and  
(4) a used car for transportation but stamped the bill of sale "not for road use".
- I. Name: Jim Troutman  
Address: 47 North Main Street, Brewer, ME 04412  
Purchase Date: 12/31/83  
Dave's Auto Sales sold him:  
(1) a used car without a valid inspection sticker; and  
(2) a used car without a Used Car Information Act sticker.
- J. Name: Mr. and Mrs. Jason Farnsworth  
Address: Hancock Heights #20, RFD 4, Ellsworth, ME 04605  
Purchase Date: 12/14/83  
Dave's Auto Sales sold them:  
(1) a used car that could not pass inspection; and  
(2) a used car without a valid inspection sticker.
- K. Name: Rev. Wilbur Strout  
Address: 37 Water Street, Rockland, ME 04841  
Purchase Date: 7/21/83  
Dave's Auto Sales sold him:  
(1) a used car without a Used Car Information Act sticker; and  
(2) a used car for transportation but stamped the bill of sale "not for road use".
- L. Name: David Roy  
Address: 423 Union Street, Bangor, ME 04401  
Purchase Date: 7/13/83  
Dave's Auto Sales sold him:  
(1) a used car without a Used Car Information Act sticker; and  
(2) a used car for transportation but stamped the bill of sale "not for road use".
- M. Name: Edna Pio (and son Aaron)  
Address: 3 Mae Street, Ellsworth, ME 04605  
Purchase Date: 5/14/83  
Dave's Auto Sales sold them:  
(1) a used car for transportation but stamped the bill of sale "not for road use".

- N. Name: Terry Anne Cote  
Address: 345 Union Street, Apt. 5, Bangor, ME 04401  
Purchase Date: 3/24/83  
Dave's Auto Sales sold her:  
(1) a used car for transportation but stamped the bill of sale "not for road use".
- O. Name: Elizabeth Cox  
Address: 97 Third Street, Bangor, ME 04401  
Purchase Date: 3/22/83  
Dave's Auto Sales sold her:  
(1) a used car that the State Police confirmed could not pass inspection (rusted frame).
- P. Name: Michael Cote  
Address: Sunset Trailer Park, Old Town, ME 04468  
Purchase Date: 12/29/82  
Dave's Auto Sales sold him:  
(1) a used car that the State Police certified could not pass inspection (no tail lights, rusted frame);  
(2) a used car without a valid inspection sticker; and  
(3) a used car for transportation but stamped the bill of sale "not for road use".
- Q. Name: Greg Boober  
Address: 804 Sunset Avenue, Bangor, ME 04401  
Purchase Date: 10/5/82  
Dave's Auto Sales sold him:  
(1) a used car that could not pass inspection;  
(2) a used car without a valid inspection sticker; and  
(3) a used car without a Used Car Information Act sticker.
- R. Name: Bill Howes  
Address: 5 Houlton Street, Patten, ME 04765  
Purchase Date: 9/14/82  
Dave's Auto Sales sold him:  
(1) a used car that could not pass inspection; and  
(2) a used car without a Used Car Information Act sticker.
- S. Name: Cheryl Frost Cassidy  
Address: RR 1, Box 478, Carmel, ME 04419  
Purchase Date: 5/12/82  
Dave's Auto Sales sold her:  
(1) a used car that could not pass inspection;  
(2) a used car without a valid inspection sticker; and  
(3) a used car without a Used Car Information Act sticker.

III. ARGUMENT

1. The State has met the single standard for granting a Temporary Restraining Order, which is authorized by statute: the showing of the likelihood of success.

As discussed below in Argument No. 2, the State's Request for a Temporary Restraining Order satisfies the traditional four-part test for granting such an emergency order. However, in the instant case it is not necessary to meet this traditional test as the statutes the State has sued under specifically authorize the granting of a Temporary Restraining Order. Both 29 M.R.S.A. § 2507-A(3) of the Motor Vehicle Examinations and Inspections law and 10 M.R.S.A. § 1477(1) state that the Defendant's practices as described above constitute per se violations of the Maine Unfair Trade Practices Act 5 M.R.S.A. §§ 206-214 (1979 and Supp. 1984). The Unfair Trade Practices Act in 5 M.R.S.A. § 209 (1979) specifically authorizes the Attorney General to seek a temporary injunction against continued unfair trade practices. The Law Court has recently held in State v. Sirois, No. 3554, Slip op at 8 (Me. July 17, 1984) that where a State statute specifically authorizes injunctive proceedings that the State need only show a likelihood of success on the merits to obtain relief. In Sirois, the Law Court, in reviewing the issuance of an injunction pursuant to 38 M.R.S.A. § 348 (1978), which authorizes the Attorney General to institute injunctive.

proceedings to enjoin a violation of the environmental laws, held that because the statute authorized injunctive relief, it was unnecessary to meet the traditional standards for an emergency injunction. The Court stated:

On the basis of the evidence of defendant's continued discharge and operation of a surface waste water disposal system, the Superior Court, without any further showing, was justified in granting injunctive relief whether or not the license was in effect. Ackerman v. Tri-City Geriatric & Health Care, Inc., 55 Ohio St.2d 51, 56, 378 N.E.2d 145, 148-49 (1978) (where an injunction is authorized by statute designed to provide a government agent means to enforce public policy, no balancing of equities is necessary); UV Industries, Inc. v. Posner, 466 F.Supp. 1251, 1255 (D.Me. 1979) (where a statute authorizes injunctive relief upon showing of a violation, the parties seeking such relief need not make a showing of irreparable harm in a normal equity sense); 7 Moore's Federal Practice § 65.04(1) (n. 7b 2d Ed. 1983).

The rationale for this approach was explained in UV Industries, Inc. v. Posner, 466 F. Supp. 1251 (D. Me. 1979):

The rationale for such an exception with respect to injunction suits which are 'creatures of statute' is that the party bringing the suit is acting to vindicate the public interest... As the Supreme Court stated in Hecht v. Bowles, 321, 331, 64 S.Ct. 587, 592, 88 L.Ed 754 (1944), "standards of the public interest not the requirements of private litigation measure the propriety and need for injunctive relief in these cases." At 1256

*Judy Ginsan*

Therefore, since an injunction is authorized by the Unfair Trade Practices Act and since the State has demonstrated in its Verified Motion and Affidavits, the strong likelihood of



success on the merits, the State is entitled on the basis of statute alone the requested Temporary Restraining Order.

2. Regardless of the statutory authorization of a Temporary Restraining Order, the State also believes it meets the traditional tests for such an emergency order.

To prevail on application for a Temporary Restraining Order, Plaintiffs traditionally have had the burden of establishing each of the following four propositions to the satisfaction of the Court:

- A. that Plaintiff will suffer irreparable injury if the injunction is not granted;
- B. that Plaintiff's injury outweighs any harm which granting the injunctive relief would inflict on Defendant;
- C. that Plaintiff has exhibited a likelihood of success on the merits (at the most, a probability; at the least, a substantial possibility); and
- D. that the public interest will not be adversely affected by granting the injunction.

Ingraham v. University of Maine at Orono, Me., 441 A.2d, 691 (1982); see also Bar Harbor Banking and Trust Company v. Alexander, Me., 411 A.2d, 74 (1980). In addition to the statutory grounds for the granting of this Temporary Restraining Order, the State meets the above traditional four-part test in that:

A. The Defendant's sale of used cars in violation of the State inspection laws and Used Car Information Act results in irreparable harm in that Maine consumers are purchasing vehicles that have serious safety defects and are in need of expensive repairs. Thus, drivers' lives are threatened by the Defendant's sale practices. Further, even if purchasers are fortunate enough to avoid an accident, they are faced with unexpected repairs.

B. The State's Request for a Temporary Restraining Order seeks nothing more than the adherence by the Defendant to the State laws concerning the sale of used cars. Thus, the consumers' injuries from being sold unsafe motor vehicles in need of costly repairs far outweigh any harm to the Defendant from the granting of the Temporary Restraining Order.

C. The State's request for this emergency order is based on its Verified Motion (which lists 19 separate serious consumer complaints) and accompanying Affidavits. These materials exhibit a strong likelihood of success on the merits.

D. The public interest will certainly not be adversely affected by granting this injunction as Maine highways will be significantly safer if the Defendant is prohibited from selling used motor

vehicles in violation of our State safety laws.

Further, the granting of this injunction will assist in alerting consumers of their rights in purchasing used cars.

For all the foregoing reasons, it is respectfully submitted that this Court should temporarily enjoin the Defendant from violating the Maine Unfair Trade Practices Act.

Dated: October 31, 1984

*James A. McKenna*

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