

NATURE OF THIS SUIT

2.1 The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against Defendants for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (Vernon 2002 and Supp. 2005) (hereinafter “DTPA”) and the Texas Property Code, section 5.061 *et seq.* (Vernon 2002 and Supp. 2005) (hereinafter “Property Code”). The DTPA grants authority to the Attorney General to seek a restraining order, injunctive relief and civil penalties for violations of its provisions. DTPA § 17.47.

DEFENDANTS

3.1 Defendant Galindo Trust is an unincorporated entity doing business in Travis County, Texas. Defendant Galindo Trust may be served with process through one of its trustees, Richard Allen Small Jr. at his residence, 3804 Palomar Lane, Austin, Texas 78727.

3.2 Defendant Robert L. Flores Jr. is an individual engaging in real estate transactions in Travis County. On information and belief, he is also a trustee for the Galindo Trust. Defendant Flores may be served with service of process at his business address of 307 East Croslin St., Suite 114, Austin, Texas 78752.

3.3 Defendant Richard Allen Small Jr. is a licensed real estate broker, conducting real estate transactions in Travis County. On information and belief, he is also a trustee for the Galindo Trust. Defendant Small may be served with service of process at his home address, 3804 Palomar Lane, Austin, Texas 78727.

3.4 RF Homestead Group I Limited Partnership is a limited partnership doing business in Travis

County, Texas. It may be served with service of process by serving its General Partner, Robert L. Flores Jr., at his address at 307 East Croslin St., Suite 114, Austin, Texas 78752.

AUTHORITY

4.1 This Court has jurisdiction over this action pursuant to § 17.47(b) of the DTPA.

VENUE

5.1 The venue of this suit lies in Travis County, Texas, because (a) under DTPA § 17.47(b), Defendants have been doing business in the county of suit and (b) the real property that is the subject of the real estate transactions is located in Travis County, Texas.

PUBLIC INTEREST

6.1 Plaintiff has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below, that Defendants adversely affect the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

7.1 Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce,” as those terms are defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

8.1 Whenever in this petition it is alleged that a Defendant did any act, it is meant that such Defendant performed or participated in the act, or that the officers, agents or employees of such Defendant performed or participated in the act on behalf of and under the authority of such Defendant.

NOTICE BEFORE SUIT

9.1 The Consumer Protection and Public Health Division did not contact Defendants at least seven days before suit was filed to inform them in general of their unlawful actions because Plaintiff has good cause to believe that the Defendants would seek to avoid service of process, destroy relevant records and dissipate assets if prior contact were made.

NATURE OF DEFENDANTS' OPERATIONS

10.1 Defendants are engaged in selling property located on Galindo Street in Austin, Texas, using as a marketing tool "owner financed" sales. These sales are Contracts for Deed, which appear to target Spanish-speaking and/or unsophisticated buyers who do not understand the requirements for a Contract for Deed and the difference between a Warranty Deed and a Contract for Deed.

EXHIBITS

11.1 Plaintiff relies on the following exhibits in support of its Petition:

- A. Exhibit A, which is the Affidavit of Mary Vinson, an Investigator with the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas.
- B. Exhibit B, which is the affidavit of Maria Carrizales, a consumer who purchased property through a contract for deed in 2000 from the Galindo Trust. Attachments 1, 2, 3 and 4 to her affidavit are the flier on the home, contract for deed, and the financing documents provided to her by Galindo Trust.
- C. Exhibit C, which is the affidavit of Maria del Carmen Lopez, a consumer who purchased property through a contract for deed in 2003 from the Galindo Trust. Attachments 1, 2, 3 and 4 to her affidavit are the flier on the home, the contract for deed and the disclosures provided to her by Galindo Trust.

- D. Exhibit D, which is the affidavit of a representative from Shriners Hospital on the status of the Galindo Trust note.
- E. Exhibit E, which is a certified copy the Special Warranty Deed referencing the note given to Shriners Hospital to secure payment for the property.
- F. Exhibit F, which is a certified copy the deed of trust signed by Galindo Trust referencing its debt to Shriners Hospital and the lien

SPECIFIC FACTUAL ALLEGATIONS

12.1 On March 2, 1999, the Galindo Trust entered into a contract with Shriners Hospital to buy certain houses on fifteen lots located on Galindo Street, in Austin, Travis County, Texas. See Exhibit A and E. Galindo Trust signed a note, vendor's lien and deed of trust in return for Shriners Hospital financing \$432,000.00 of the sale. The deed of trust provided that if the Galindo Trust sold one of the lots, a principle payment reduction of 6.67% "shall occur." See Exhibit F. Defendant Small signed the deed of trust on behalf of Galindo Trust as trust manager. Id.

12.2 In 2000, the houses owned by Galindo Trust were advertised for sale as "owner-financed." See e.g., Exhibit B. Consumers calling the number provided would reach an individual who identified himself as Roberto Flores, the owner of the house for sale. Mr. Flores would arrange to show them the house in which they were interested, he would thereafter ask if they wanted the house. If they said yes, he would inform them that if they had no financing or could not obtain financing, that would not be a problem. Mr. Flores would quote a relatively low down payment of \$2000.00 to \$5000.00 with the rest of the sales price to be paid over time. A number of the callers were Spanish-speaking only. See Exhibits A, B and C. Mr. Flores would speak to them in Spanish and assure them that if they had the down payment, the sale could be completed quickly, and that he would translate the documents for

them so they did not need to bring someone who could read English with them to complete the sale. See Exhibit B.

12.3 Mr. Flores would arrange a time to consummate the sale. The sale would be finalized at a post office and other similar businesses. There, Mr. Flores would give the consumer documents written in English and tell the consumer that he/she needed to sign the documents before a notary so that the sale could be completed. He also purported to translate the sales, disclosure and financing documents. See Exhibits B¹ and C. Mr. Flores would have a notary with him or arrange for one to be present and the sale would be completed.

12.4 Mr. Flores, however, was not translating the documents in their entirety, nor was he providing full and truthful disclosures. Mr. Flores did not translate any part of the contract relating to a prior lien. See Exhibits B and C. Indeed, Mr. Flores provided disclosures specifically stating that there was no lien on the property and that no one (other than the seller) had an interest in the property. See Attachment 3 to Exhibit C. Further, even though Mr. Flores had purported that the sale was “owner-financed,” Defendant RF Homestead Group I LP, Mr. Flores’ company was financing the sale. See Attachment 2 to Exhibit B.

12.5 In addition, Mr. Flores assured consumers that their monthly payments would not increase. See Attachment 1 to Exhibit B. Consumers during the 2000 time period were given different instruction on property taxes and insurance. Some were told that they needed to pay taxes when they received the tax bill. Others were told that Mr. Flores would pay the taxes and insurance out of the payments made to him by the buyer. However, two years after the purchase, a consumer would receive notice that there

¹ The Carrizales contracts are entitled “installment land contracts” but after the sale was consummated, Mr. Flores referred to them as “contracts for deed” or executory contracts.

was a two-year delinquency on the property taxes. When the consumer contacted Robert Flores to find out why the taxes had not been paid, Mr. Flores would deny that he had agreed to pay property taxes on the property. See e.g., Exhibit B. With other consumers, the tax bill would not arrive because the Tax Office had Mr. Flores' address listed as the billing address. Consumers were then placed in the position of having to pay several thousand dollars in back taxes. If the consumers could not make arrangements to pay the back taxes, they were essentially forced off the property. Galindo Trust could then simply resell the property under the same terms and conditions to someone else.

12.6 Galindo Trust continued to make Contract for Deed sales on Galindo Street into 2003. See Exhibit C. These sales included sales to consumers who intended to use the houses as their residence. Id. Contracts for sales negotiated in Spanish were not translated into Spanish, neither were the accompanying disclosures. See Attachments 2, 3 and 4 to Exhibit C. Galindo Trust did not provide disclosures regarding tax payments and insurance coverage, failed to provide a survey of the property and failed to record the contracts for deed with the local county clerk's office within 30 days after the contracts were executed. Exhibit C. The disclosures which were provided specifically stated that no one other than the seller had an interest in the party and that there were no liens on the property. See Exhibit C, Attachment 3.

12.7 In 2005, several consumers attempted to sell their Galindo Trust property. The consumers were unable to complete their sales because the property was subject to the pre-existing lien owed to Shriners Hospital. See Exhibit B. This was the first that the consumers had heard about a pre-existing lien on their property. See Exhibits B and C.

12.8 At that time, Galindo Trust was in default on the underlying note and had been in default since December 2004. See Exhibits A and D. The consumers had, however, been paying on their properties

in 2005. See e.g., Exhibits B and C. Upon information and belief, most, if not all, of the consumers purchasing residences from the Galindo Trust on a Contract for Deed basis made payments to Galindo Trust, through its representative and trustee, Roberto Flores Jr, throughout 2005. Galindo Trust has not made a payment on the pre-existing lien in over a year, instead the Trust and/or the individual trustees have retained the money. See Exhibits A and D. Meanwhile the consumers purchasing homes on Galindo Street from the Galindo Trust face possible foreclosure and possible loss of their homes, even though they have made their payments.

DTPA VIOLATIONS

13.1 Defendants, as alleged above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA as follows:

- A. By representing that taxes and insurance payments were included in the monthly payments, Defendants represented that their goods and services had characteristics, uses or benefits which they did not have, in violation of §17.46(b)(5) of the DTPA.
- B. By representing that monthly payments would not increase, Defendants represented that their goods and services had characteristics, uses or benefits which they did not have, in violation of §17.46(b)(5) of the DTPA.
- C. By representing that the tax bills would be sent to the buyer while arranging to have the tax bill sent to Roberto Flores, Defendants represented that an agreement conferred or involved rights, remedies or obligations which it did not have or involve, or which are prohibited by law, in violation of §17.46(b)(12) of the DTPA.
- D. By representing that the property was not subject to any lien and that the seller had the

only interest in the property, Defendants represented that an agreement conferred or involved rights, remedies or obligations which it did not have or involve, or which are prohibited by law, in violation of §17.46(b)(12) of the DTPA.

- E. By failing to disclose that property being sold was subject to a pre-existing lien when such failure to disclose was intended to induce the consumers into purchasing the property, a transaction into which the consumers would not have entered had the information been disclosed, Defendants are in violation of §17.46(b)(24) of the DTPA.
- F. For sales after September 1, 2001, by failing to provide a survey of the property, or disclosures in Spanish when all negotiations have been conducted in Spanish and in failing to provide a legible copy of any document that describes an encumbrance or other claim, including a restrictive covenant or easement that affects title to the property, Defendants are in violation of Texas Property Code § 5.069 and §17.46 of the DTPA.
- G. For sales after September 1, 2001, by failing to provide disclosures on tax payments and insurance coverage, Defendants are in violation of Texas Property Code § 5.070 and §17.46 of the DTPA.

INJURY TO CONSUMERS

14.1 Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated the law as alleged in this petition. Unless restrained by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause damage to the general public.

**MOTION FOR EX PARTE TEMPORARY RESTRAINING
ORDER AND ASSET FREEZE**

15.1 The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

15.2 The State alleges that by reason of the foregoing, Defendants should not continue to collect monies from the consumers and Defendants should not keep in their possession any monies collected from these consumers, and that unless injunctive relief is immediately granted, Defendants will dissipate monies collected from consumers by use of false, misleading, or deceptive trade practices.

15.3 The State is requesting that the Temporary Restraining Order be granted on an *ex parte* basis because Plaintiff believes that, if provided notice, Defendants will either secrete or remove monies and assets, which will cause immediate irreparable damage to the consumers as there will be no monies left for restitution to the consumers if Defendants are allowed time to remove and/or secrete monies or assets.

15.4 Further, Defendants have been dissipating assets, see Exhibit A, they are receiving monthly payments from consumers, see Exhibits B and C, yet they are failing to pay and have failed to pay for over a year on the pre-existing lien on the property. See Exhibit D.

15.5 The State of Texas requests that the Court ORDER that Defendants, their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, including, but not limited to, **all financial institutions** such as Bank of America, holding money in the name and/or for the benefit of the above Defendants, including any accounts for which any named defendant is a signatory, who receive actual notice of this order by personal service or otherwise, be restrained from engaging in the following acts or practices:

- A. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing, or allowing the transfer, removal, or withdrawal, from any financial institution or from the jurisdiction of this Court, any money, stocks, bonds, assets, 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 of, or claimed by said Defendants, save and except for the expenditure of funds reasonably necessary for the payment of taxes, attorneys' fees, and, in the case of the individual Defendants sued, their reasonable living expenses; provided that none of the foregoing expenditures shall be made without notice to Plaintiff and the approval of this Court.
- B. Destroying, altering, mutilating or otherwise disposing of or changing any records related to any defendant or entity in which any defendant has an ownership interest.

15.6 For the reasons set forth above, the STATE OF TEXAS requests an Ex Parte Temporary Restraining Order; and after notice and hearing, Temporary and Permanent Injunctions as set out below, as authorized pursuant to § 17.47(a) of the DTPA.

15.7 The State is exempt from filing a bond for a temporary restraining order or temporary injunction under § 6.001 of the Texas Civil Practice and Remedies Code.

PRAYER

16.1 WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendants

individually and by their agents, servants, employees, and representatives from making the representations, doing the acts, and engaging in the practices set out in the proceeding paragraphs as well as from making the following representations and doing the following acts and engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas, as follows:

- A. Representing, directly or by implication, in the sale of real property that:
 - I. That tax and insurance payments are included in the monthly payments when they are not.
 - ii. That monthly payments will not increase, if the consumer is required to pay more to the financing company if the property taxes and insurance increase.
- B. Failing to disclose in the sale of real property the following:
 - I. That the property is subject to a pre-existing lien.
 - ii. That others beside the seller have an interest in the property.
- C. Failing to provide in the sale of real property through a contract for deed:
 - I. A survey completed in the past year or a plat of a current survey of the property.
 - ii. A legible copy of any document that describes an encumbrance or other claim, including a restrictive covenant or easement that affects title to the property.
 - iii. A tax certificate from the collector for each taxing unit that collects taxes due on the property as provided by Section 31.08, Tax Code.

- iv. A legible copy of any insurance policy, binder, or other evidence relating to the property that indicates (a) the name of the insurer and the insured; (b) a description of the property insured; and (c) the amount for which the property is insured.
 - v. The disclosures and contracts for deed in Spanish when the sale negotiations have been conducted in Spanish.
- D. Transferring, concealing, destroying, or removing from the jurisdiction of this Court:
- I. Any books, records, documents, invoices or other written materials relating to Defendants' business currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause
 - ii. Any money, stocks, bonds, assets, 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 of, or claimed by said Defendants, save and except for the expenditure of funds reasonably necessary for the payment of taxes, attorneys' fees, and, in the case of the individual Defendants sued, their reasonable living expenses; provided that none of the foregoing expenditures shall be made without notice to Plaintiff and the approval of this Court.

16.2 Plaintiff further requests that Plaintiff be granted leave to take telephonic, video, written, and other depositions prior to any scheduled temporary injunction hearing upon

reasonable shortened notice to Defendants;

16.3 In addition, Plaintiff respectfully requests that this Court will:

- A. Adjudge against Defendants civil penalties in favor of Plaintiff in the amount of not more than \$20,000.00 per violation of the DTPA.
- B. Order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative, award judgment for damages to compensate for such losses;
- C. Order Defendant to pay all costs of Court, costs of investigation, and reasonable attorney's fees pursuant to Tex. Govt. Code Ann. § 402.006(c).
- D. Adjudge against Defendants prejudgment and postjudgment interest at the highest lawful rate; and
- E. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. §523(a)(7).

16.4 Finally, Plaintiff respectfully requests that this Court grant all other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

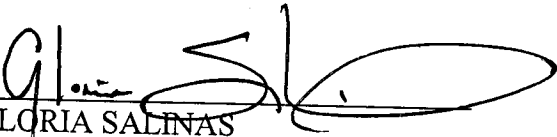
GREG ABBOTT
Attorney General of Texas

BARRY MCBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection and Public
Health Division

JOHN OWENS
Deputy Chief, Consumer Protection and Public
Health Division



GLORIA SALINAS
Assistant Attorney General
State Bar No. 17534300
Office of the Attorney General
Consumer Protection and Public Health Division
P.O. Box 12548
Austin, TX 78711-2548
(512) 463-0286
Fax (512) 473-8301
Attorneys for Plaintiff