

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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WAKE COUNTY, C.S.C.
BY _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO. 02 CVS 1844

STATE OF NORTH CAROLINA ex rel.)
ROY COOPER, Attorney General,)
and JOSEPH A. SMITH, JR.,)
Commissioner of Banks,)
)
Plaintiff,)
)
v.)
)
NCCS LOANS, INC.; JAGJRTX, LLC;)
JAG NC, LLC d/b/a "Advance Internet" and)
Advance Til Payday;" and JOHN A. GILL,)
)
Defendants.)
_____)

ORDER

THIS CAUSE came on for hearing before the Honorable W. Osmond Smith, III, judge presiding over the June 7, 2004, civil session of Wake County Superior Court, on the State's motion for summary judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure. The parties submitted affidavits, discovery materials and memoranda of law and the Court heard oral argument from counsel.

It appears to the Court that there is no genuine issue as to any material fact and that the plaintiff State of North Carolina is entitled to summary judgment as a matter of law. The Court further finds and concludes as a matter of law that:

1. Over at least the last six years, the defendants have been engaged in the business of offering cash advances to North Carolina consumers. The defendant JAG NC, LLC, with active

involvement and direction by the defendant John A. Gill, has offered immediate cash “rebates” at fourteen “Advance Internet” store locations in North Carolina since September 2001. These same stores, which were formerly operated by the defendant NCCS Loans, Inc. under the name “Advance Til Payday,” were in the business of making deferred deposit check cashing loans or “payday loans” until September 2001, when the statutory authority to make such loans expired by act of the General Assembly. In order to receive a cash advance or rebate after early September 2001, the defendants’ customers were required to sign a long-term contract for Internet access time.

2. The undisputed facts of this case establish that the Advance Internet cash rebate transactions were, in substance, disguised loans, and that the Internet service contracts were a pretext or subterfuge for the defendants to continue to make payday loans under the guise of retail service contracts.

3. Under prevailing legal precedent, this Court is required to look at the substance of the transaction, and not just the form, when usury is alleged or where a subterfuge to evade the State’s credit regulation laws is alleged.

4. The Advance Internet transactions, where immediate cash rebates were paid to customers who signed contracts for Internet access time, under the particular circumstances of this case, violated the North Carolina Consumer Finance Act, G.S. § 53-166. Although the defendants did not characterize these transactions as loans, the transactions and practices at issue herein constitute a “device, subterfuge or pretense” within the meaning of G.S. § 53-166(b).

5. The Advance Internet disguised loans in principal amounts from \$100 to \$500 were clearly usurious in violation of G.S. §§ 24-1.1 and 53-166.

6. The defendants' practices and course of dealing in creating a subterfuge, disguising loan transactions, and making loans at grossly usurious rates constitute unfair and deceptive trade practices in violation of G.S. § 75-1.1.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that summary judgment is granted in favor of the State against the defendants. It is further ordered and adjudged as follows:

1. The defendants, their managers, members, officers, agents and all persons acting in concert with them, are permanently enjoined from offering or paying any cash or monetary rebates to consumers in this State, and from directly or indirectly arranging, facilitating or otherwise participating in any such rebate schemes in this State. The defendants, their agents, successors and assignees, are further enjoined from collecting, or attempting to collect, any amount owed by a customer resulting from any obligation incurred under an Internet access rebate contract.

2. The defendants, their managers, members, officers, and agents are enjoined from directly or indirectly offering, facilitating or participating in any transaction which constitutes a device or subterfuge to evade the requirements of the Consumer Finance Act, G.S. § 53-164 *et seq.*; and from directly or indirectly engaging in any consumer lending activities in violation of the Consumer Finance Act or Chapter 24 of the General Statutes.

3. The defendants are enjoined from engaging in any unfair or deceptive practices in the marketing, soliciting, or offering of loans, cash advances, or rebates.

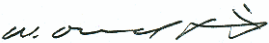
4. The Advance Internet Internet access rebate contracts with North Carolina consumers are declared void pursuant to G.S. § 53-166(d), and the defendants, their agents, successors and

assignees have no right to collect, receive or retain any funds paid or owed by consumers related to such rebate transactions.

5. The Advance Internet rebate contracts with North Carolina consumers are cancelled pursuant to G.S. § 75-15.1, and all funds collected by the defendants pursuant to such contracts shall be refunded to consumers.

6. Costs of this action are taxed to the defendants.

This the 10th day of ~~August~~ ^{June}, 2004.


Hon. W. Osmond Smith, III 8-31-04
Superior Court Judge