

**IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY,  
FLORIDA**

**STATE OF FLORIDA, OFFICE  
OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,**

Plaintiff,

vs.

**Case No.**

**COMMERCE COMMERCIAL LEASING, LLC,  
COURT SQUARE LEASING CORP.,  
DOLPHIN CAPITAL CORP.,  
IFC CREDIT CORP., NATIONAL CITY  
COMMERCIAL CAPITAL CORP., formerly  
known as, INFORMATION LEASING CORP.,  
IRWIN BUSINESS FINANCE, LIBERTY  
BANK LEASING, PATRIOT LEASING CO., INC.,  
POPULAR LEASING U.S.A., INC., PREFERRED  
CAPITAL LLC, STERLING NATIONAL BANK,  
and WELLS FARGO FINANCIAL LEASING, INC.**

Defendants.

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**MOTION FOR TEMPORARY INJUNCTION**

Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs, pursuant to § 501.207(1)(b), Fla. Stat. (2004), moves for a temporary injunction enjoining Defendants, Commerce Commercial Leasing, LLC, Court Square Leasing Corporation, Dolphin Capital Corporation, IFC Credit Corporation, National City Commercial Capital Corporation, formerly known as Information Leasing Corporation, Irwin Business Finance, Liberty Bank Leasing, Patriot Leasing Co., Inc., Popular Leasing U.S.A., Inc., Preferred Capital, LLC, Sterling National Bank, and Wells Fargo Financial Leasing, Inc., hereinafter referred to as the

“Leasing Companies,” their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in methods, acts or practices which are unconscionable, deceptive or unfair acts or practices, as more specifically set forth below.

The Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II (2004) (“the Act”), provides that “unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are... declared unlawful.” The Attorney General is the enforcing authority under the Act, and is authorized to seek injunctive relief under § 501.207(1)(b), Fla. Stat. (2004), when any person is violating, has violated or is likely to violate the Act.

The elements necessary for awarding a temporary injunction are: (1) the likelihood of irreparable harm; (2) the lack of an adequate remedy at law; (3) a substantial likelihood of success on the merits; and (4) public interest considerations. *See, e.g., Thompson v. Planning Comm’n of the City of Jacksonville*, 464 So. 2d 1231, 1236 (Fla. 1st DCA 1985). Because the Attorney General has statutory authority to bring actions for injunctions for violations of the Act, the elements of irreparable harm, lack of adequate remedy at law and public interest are presumed. *See Millennium Communications & Fulfillment, Inc. v. Office of the Attorney General*, 761 So. 2d 1256, 1260 (Fla. 3d DCA 2000). Thus, the Attorney General’s sole burden to obtain a temporary injunction is to prove that there is a clear legal right to the temporary injunction. *See id; see also Harvey v. Wittenberg*, 384 So. 2d 940, 941 (Fla 2d DCA 1969) (“[A] provision granting jurisdiction to the circuit courts to issue injunctions to enforce [an] act... is the equivalent of a legislative declaration that a violation of the statutory mandate constitutes an

irreparable public injury. . . .”) (citation omitted).

**The Attorney General Has a Clear Right to a Temporary Injunction**

This Court may issue an injunction against any person who “has violated, is violating or is otherwise likely to violate” the Act. § 501.207(1)(b), Fla. Stat (2004). The evidence shows that the defendant Leasing Companies have violated the Act, and continue to violate the Act, as further described below. Therefore, the Attorney General has a clear legal right to injunctive relief.

The affidavits attached hereto demonstrate that the defendant Leasing Companies have engaged in a pattern of procuring and seeking to enforce unconscionable “equipment rental” agreements (the “Agreements”) against small business consumers in Florida that had been entered into with NorVergence, a telecommunications company offering bundled communications services at reduced rates. *See* Exhibits 1-14 attached hereto. NorVergence aggressively marketed its services to small businesses with good credit ratings that were unlikely to have in-house legal or technology personnel. Through high-pressure sales tactics, NorVergence sales personnel conveyed to consumers that NorVergence was offering, for a limited time and to a few select companies, unlimited long distance, cell phone, and high speed Internet services at greatly reduced prices, that consumers would continue to receive services if anything happened to NorVergence, and that NorVergence was affiliated with Nortel, a well-known telecommunications company, and that it was a business partner of Qwest Communications.

During the course of sales presentations, NorVergence sales personnel further represented that consumers would have to rent a “Matrix box” provided by NorVergence and

available only through NorVergence, and that it was necessary for consumers to enter into the Agreement, which set forth the monthly payment to be made to NorVergence for the services provided and the terms for renting the Matrix box. Consumers were told that the Matrix box was incidental to and necessary for the provision of the telecommunications services, and that the cost of the equipment was included in the total cost of the bundled services provided by NorVergence. Consumers were thus induced into entering into sixty-month Agreements with monthly payments ranging from \$250 to over \$1400.

The Matrix box is merely a router, which is commercially available for \$500 to \$1200, and was of no value to consumers in the absence of the services offered by NorVergence. Notwithstanding its commercial value, the defendant Leasing Companies contend that the Agreements entered into with Florida consumers were non-cancellable lease agreements, which establish monthly obligations that varied from consumer to consumer and represented the bulk of the total contract price for the bundled services that were to be provided by NorVergence. The Leasing Companies thus contend that the sixty-month rental cost established by these agreements ranges from \$10,000 to in excess of \$90,000 for substantially identical equipment, although, in every case, it exponentially exceeds the commercial value of the equipment provided.

In addition to the unconscionable equipment cost term, the Agreement provides unconscionable performance terms, which are buried on the reverse page of the Agreement, in six-point type face, and state *inter alia* (1) that the consumer waives all defenses to demands for payment if the contract is assigned by NorVergence, even if the promised services are terminated or were never provided; (2) that all legal actions relating to the Agreement are venued

exclusively in the state where NorVergence had its principal offices, or if assigned, in the state where the assignee's principal offices are located; and (3) that the Agreement was a "finance lease" under Article 2A of the Uniform Commercial Code. The oppressive terms of the Agreement and the manner in which it was entered into render the Agreement procedurally and substantively unconscionable.

Although the defendant Leasing Companies were not present at the point of sale, each defendant either knew of, or actively participated in the drafting of the Agreement, and the Agreement was drafted in contemplation of immediate assignment to the Leasing Companies. In fact, as soon as "the ink was dry" on an Agreement NorVergence had entered into with a consumer, NorVergence immediately assigned it to one of the Leasing Companies. The defendant Leasing Companies knew or reasonably should have known the commercial value of the Matrix box, and thus the Leasing Companies knew or reasonably should have known of the monumental disparity between the rental cost terms of each Agreement and the actual value of the Matrix box to Florida consumers. In addition, because of the defendant Leasing Companies' involvement in the drafting of the Agreement, and NorVergence's immediate assignment of executed Agreements to them, the defendant Leasing Companies knew, or at least reasonably should have known that the Agreement set forth unconscionable performance obligations with respect to Florida consumers.

The majority of consumers that entered into these Agreements never received any of the services for which they contracted, and the few consumers who received services had their services abruptly interrupted after NorVergence was forced into bankruptcy by various creditors, including at least one of the defendant Leasing Companies. Despite having actual knowledge

that services were never provided, or were no longer provided, by NorVergence, the defendant Leasing Companies have refused to accept return of Matrix boxes and have aggressively demanded “lease” payments from Florida consumers through harassing letters and telephone calls. In making such demands, the defendant Leasing Companies represent to consumers that the Agreements are non-cancellable commercial equipment leases; that payments under the Agreement are exclusively for the rental of the Matrix box; and that payments are due and owing to the Leasing Companies regardless of whether services are or ever were provided by NorVergence. Much of the defendant Leasing Companies’ harassing conduct occurred while consumers were preoccupied by needed preparation for and recovery from hurricanes that ravaged Florida during the state’s historic tropical season.

When customers missed monthly payments, and in some cases after only one missed payment, the Leasing Companies accelerated payments and demanded payment for the full term of the agreements, in sums ranging from \$10,000 to in excess of \$90,000, all for substantially identical pieces of equipment valued at no more than \$1,200. Consumers who refused to acquiesce to these payment demands have been threatened with litigation, and in some cases, have been sued and thereby compelled to defend themselves in civil actions brought by defendant Leasing Companies, *inter alia*, in Pennsylvania, Iowa, and Washington state.

By undertaking these activities, the Leasing Companies have violated and are violating the Act by engaging in unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of § 501.204(1), Fla. Stat. (2004).

An act or practice is deceptive if it is a material misrepresentation, omission, or practice which is likely to mislead consumers acting reasonably under the circumstances. *FTC v. World*

*Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988). Misrepresentations of material fact made to induce the purchase of goods or services are deceptive acts or practices. *Colgate-Palmolive Corp. v. FTC*, 310 F.2d 89, 92 (1st Cir. 1962), *rev'd on other grounds*, 380 U.S. 274, 286-87 (1965); *FTC v. Sterling Drug, Inc.*, 317 F.2d 669, 674-75 (2d Cir. 1963). An act or practice is unfair if it offends public policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. *PNR, Inc. v. Beacon Property Mgmt. Inc.*, 842 So. 2d 773, 777 (Fla. 2003) (citation and internal quotation omitted).

An agreement is unconscionable if it is both procedurally and substantively unconscionable. *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 574 (Fla. 1st DCA 1999). Procedural unconscionability requires consideration of issues such as “the relative bargaining power of the parties and their ability to know and understand the disputed contract terms,” and may be shown where the disputed terms were “hidden in a maze of fine print and minimized by deceptive sales practices.” *Id.*; *accord, e.g., Bellsouth Mobility LLC v. Christopher*, 819 So. 2d 171, 173 (Fla. 4th DCA 2002). Substantive unconscionability may be shown “through the terms of the contract being unreasonable and unfair.” *Powertel*, 743 So. 2d at 574; *Bellsouth Mobility*, 819 So.2d at 173. The defendant Leasing Companies’ unreasonable attempts to enforce these Agreements against Florida consumers thus constitute unconscionable acts or practices and unfair or deceptive acts or practices within the meaning of § 501.204(1), Fla. Stat. (2004).

In addition, the defendant Leasing Companies’ attempts to enforce the Agreements constitute *per se* violations of the Act because the Agreement fails to comply with Rule 2-18, Florida Administrative Code. Rule 2-18.002, Fla. Admin. Code, obligates any seller of future consumer services to provide a statement describing the “Consumer’s Right of Cancellation,”

requiring the seller to inform consumers of their right to cancel the contract if services are no longer available. By participating in the drafting of the Agreement, by accepting assignments of Agreements with knowledge of its oppressive terms and lack of a statement describing the “Consumer’s Right of Cancellation,” and by aggressively seeking to enforce the Agreements notwithstanding consumer complaints demanding cancellation, the defendant Leasing Companies have repeatedly violated Rule 2-18, Fla. Admin. Code, and have thus committed repeated *per se* violations of Chapter 501, Part II, Fla. Stat. (2004), as provided for under § 501.203(3), Fla. Stat. (2004).

The foregoing demonstrates that the defendant Lease Companies have engaged in or are engaging in unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of § 501.204 (1), Fla. Stat. (2004), and that the defendant Lease Companies have repeatedly committed *per se* violations of the Act, as provided for under § 501.203(3), Fla. Stat., and, therefore, that the Attorney General is entitled to a temporary injunction pursuant to § 501.207(1)(b), Fla. Stat. (2004), requiring the Defendants to cease this illegal conduct immediately.

WHEREFORE, the Attorney General respectfully requests that this Court enter a temporary injunction enjoining Commerce Commercial Leasing, LLC, Court Square Leasing Corporation, Dolphin Capital Corporation, IFC Credit Corporation, National City Commercial Capital Corporation, formerly known as Information Leasing Corporation., Irwin Business Finance, Liberty Bank Leasing, Patriot Leasing Co. Inc., Popular Leasing U.S.A., Inc., Preferred Leasing LLC, Sterling National Bank, and Wells Fargo Financial Leasing, Inc., their officers, agents, servants, employees, attorneys and those persons in active concert or participation with

them who receive actual notice of the injunction, from engaging in methods, acts or practices which are unconscionable acts or practices or deceptive or unfair acts and practices. More specifically, Plaintiff asks the Court to temporarily enjoin the defendant Leasing Companies as follows:

(1) Prohibit the defendant Leasing Companies from engaging in any collection activities on the agreements assigned from NorVergence to the defendant Leasing Companies and which involve Florida consumers;

(2) Prohibit the defendant Leasing Companies from pursuing any collection actions already filed on the agreements assigned from NorVergence to the defendant Leasing Companies and which involve Florida consumers;

(3) Prohibit the defendant Leasing Companies from collecting any further payments from Florida consumers on the agreements assigned from NorVergence to the defendant Leasing Companies;

(4) Prohibit the defendant Leasing Companies from engaging in methods, acts or practices which are unconscionable acts or practices or deceptive or unfair acts and practices in violation of Chapter 501, Part II, Fla. Stat. (2004); and

(5) Grant such other relief as this relief as this Honorable Court deems just and proper.

Respectfully Submitted,

CHARLES J. CRIST, JR.  
ATTORNEY GENERAL

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