

From: [AGO - CAP](#)
To: [REDACTED]
Subject: Public Record Request 2024-01245
Date: Tuesday, February 13, 2024 4:55:21 PM
Attachments: [2024-02-07 Berman PRA request.pdf](#)
[2024-02-08 Jandl clarification ltr to Berman.pdf](#)
[2024 02 13 response to Berman.pdf](#)
[2024 02 13 response to Berman - Redacted BatesNumbered.pdf](#)

Dear Elizabeth Berman,

Please see attached in response to your Public Records Act request.

Thank you,

Crystal Baldwin
Consumer Assistance Program
Office of the Attorney General
Mailing Address:
109 State Street
Montpelier, VT 05609-1001

Hotline: 800-649-2424

Website: ago.vermont.gov/cap



STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

February 13, 2024

Via email to [REDACTED]

Elizabeth Berman
Vermont, United States

Re: Public Records Request

Dear Elizabeth Berman,

I write in response to your Public Records Act request dated February 7, 2024, and received by our office and further clarified on February 8, 2024, requesting “records of civil or criminal charges involving any of the following: Peter Liska, Peter J Liska, Fox Capital LLC, Big Apple Restaurant Supply, Big Apple Equipment Repair, Restaurant Outfitters USA,” including “19-1-12 Wncv State of Vermont vs Restaurant Outfitters” and “any complaints filed with the Consumer Assistance Program against: Artisan Culinary Kitchen, LLC, G.L.S., LTD. Co., Sophia Group, LLC, Burlington Restaurant Supply, Neft, Inc, Kathryn Keough.”

Attached are the files pertaining to your request (Attachment “2024 02 13 CAP response to Berman – Redacted_BatesNumbered.pdf”, pages PRR000001-000029).

Personal information has been redacted pursuant to 1 V.S.A. § 317(c)(7).

To the extent you feel information has been withheld in error, you may appeal to the Deputy Attorney General, Robert McDougall. Such appeal should be in writing:

Robert McDougall
Deputy Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

Regarding Consumer Assistance Program consumer complaints, in addition to the spreadsheet produced, there is one original consumer complaint on file. If you would like to obtain this original complaint, we estimate that searching for, reviewing, and redacting the document will come to approximately 45 minutes. Note that there is no charge for the first 30 minutes. At 15

minutes, billed according to the Secretary of State's fee schedule for the rate of other staff time (\$.45 a minute), the cost to obtain this file is an estimated \$6.75.

To receive this complaint copy, we ask that you please respond with your intent to pay the requested amount to proceed further with processing your request. Upon receipt of your payment, the records will be made available for you. Note, if the actual time to produce the records is less, we will issue a credit.

You may submit payment as follows:

Online (preferred payment method): <https://appengine.egov.com/apps/vt/ago/onlinepayment>

Checks are also accepted when mailed to:

Attn: Business Office
State of Vermont
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

Thank you for contacting the Vermont Attorney General's Office.

Sincerely,

Crystal Baldwin
Consumer Assistance Program
Office of the Attorney General
State of Vermont

Matter #	Matter Name	Opened Date	Matter Summary	Claimed Losses	Process Code	Status Code	Matter Type
CAP09-05-1510	ROBERT BAKER (BURLINGTON RESTAURANT SUPPLY)	5/29/2009	CONSUMER PURCHASED NEW DELI CASE FOR \$2800 AND GAVE HALF. THE FIRST NIGHT IT BROKE AND SPOILED ALL FOOD. REPAIRS HAVE NOT BEEN FOLLOWED THROUGH WITH.	\$300.00	REG - Complaint sent to business for a response	ULB - Unable To Locate Business	Legacy Matter
CAP06-02-178	CINDY MCKINSTRIE (BURLINGTON RESTAURANT SUPPLY)	2/10/2006	PROBLEMS WITH SINK AND OTHER UNITS PURCHASED. NO REFUND RECEIVED.	\$2,000.00	REG - Complaint sent to business for a response	NBR - No Business Response After Repeated Attempts	Legacy Matter
CAP06-01-107	HENRY GEBO (BURLINGTON RESTAURANT SUPPLY)	1/4/2006	COOLER WAS KEPT OUTSIDE AND WASN'T IN GOOD CONDITION.	\$4,300.00	REG - Complaint sent to business for a response	ULB - Unable To Locate Business	Legacy Matter
CAP05-10-165	GARY LEBARON (BURLINGTON RESTAURANT SUPPLY)	10/5/2005	10/18 ORDERED FROM BIZ ON JULY 18TH OF 2005 AND STILL HAVE NOT RECEIVED THE MERCHANDISE. RAH	\$2,655.00	REG - Complaint sent to business for a response	RES - Resolved	Legacy Matter
CAP05-08-243	CYNTHIA MCKINSTRIE (BURLINGTON RESTAURANT SUPPLY)	8/23/2005	REFERRED TO LIBBY WOODCOCK, US DEPT OF JUSTICE, RUTLAND VIA FAX. COMPLAINT NOT SENT TO BRS	\$0.00	REF - Referral	REF - Referral	Legacy Matter

Matter #	Matter Name	Opened Date	Matter Summary	Claimed Losses	Process Code	Status Code	Matter Type
CAP05-08-151	CINDY MCKINSTRIE (BURLINGTON RESTAURANT SUPPLY)	8/4/2005	na	\$3,000.00	INF - Informational file - no mediation requested	INF - No Resolution Requested	Legacy Matter
CAP05-06-134	MAUREEN BROWN (BURLINGTON RESTAURANT SUPPLY)	6/3/2005	na	\$4,637.91	INF - Informational file - no mediation requested	INF - No Resolution Requested	Legacy Matter
CAP05-06-133	MARY STAPLES (BURLINGTON RESTAURANT SUPPLY)	6/3/2005	COMPLAINT SENT TO US ATTORNEY WOODCOCK.	\$4,600.00	REF - Referral	REF - Referral	Legacy Matter
CAP05-04-364	BETSY VICK (BURLINGTON RESTAURANT SUPPLY)	4/18/2005	na	\$12,000.00	INF - Informational file - no mediation requested	INF - No Resolution Requested	Legacy Matter

WILLIAM H. SORRELL
ATTORNEY GENERAL
JANET C. MURNANE
DEPUTY ATTORNEY GENERAL
WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



TEL: (802) 828-3171
FAX: (802) 828-2154
TTY: (802) 828-3665
CIVIL RIGHTS: (802) 828-3657

<http://www.atg.state.vt.us>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

2012 JAN -5 P 1:45

FILED

January 5, 2012

Claire Mee, Clerk of Court
Washington Superior Court
65 State Street
Montpelier, VT 05602

By delivery in hand

Re: *State v. Restaurant Outfitters USA, LLC, et al.*

Dear Ms. Mee:

Enclosed for filing with the Court in the above matter please find:

1. An original and one copy of the State of Vermont's original Consumer Fraud Complaint, with one affidavit and two exhibits attached.
2. A Motion for Temporary Restraining Order.
3. A proposed Temporary Restraining Order.

I understand that a hearing on the Motion for Temporary Restraining Order has been scheduled for 2:00 p.m. on Thursday, January 12, 2012.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elliot Burg".

Elliot Burg
Assistant Attorney General

Enc.

VT SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2012 JAN - 5 P 1:44

STATE OF VERMONT,)
Plaintiff)
)
v.)
)
RESTAURANT OUTFITTERS USA, LLC,)
and PETER LISKA,)
Defendants)
)
KEVIN M. McLAUGHLIN, as SHERIFF)
of CHITTENDEN COUNTY,)
Third-Party Trustee)

FILED
CIVIL DIVISION
Docket No. 19-1-12 Wncv

CONSUMER FRAUD COMPLAINT

NOW COMES the State of Vermont, by and through its Attorney General, William H. Sorrell, pursuant to the Vermont Consumer Fraud Act, 9 V.S.A. chapter 63, and hereby makes the following Complaint:

I. Introduction

1. The Vermont Attorney General brings this suit under the Vermont Consumer Fraud Act in response to consumer fraud violations by Restaurant Outfitters USA, LLC, and Peter Liska, for receiving money from customers for equipment that Defendants did not deliver. The Attorney General seeks temporary, preliminary and permanent injunctive relief, the appointment of a master to appropriately dispose of available assets to injured customers, civil penalties, fees and costs, and other appropriate relief, as well as a related temporary order directed to the Chittenden County Sheriff.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

II. Parties and Jurisdiction

1. Defendant Restaurant Outfitters USA, LLC (“Restaurant Outfitters”), is a Vermont limited liability corporation with places of business at 1 Tigan Street, Winooski, Vermont, and 1335 Shelburne Road, South Burlington, Vermont.

2. Restaurant Outfitters is engaged in the business of selling equipment and supplies to restaurants.

3. Defendant Peter Liska resides at [REDACTED] 05401. He is listed as a member-manager of Fox Capital, LLC, which in turn is one of two members of Restaurant Outfitters USA, LLC.

4. On information and belief, at all times relevant to this lawsuit, Defendant Liska was responsible, or was among the individuals responsible, for the business practices complained of herein, or had knowledge and authority with respect to such practices.

5. Kevin M. McLaughlin is the Sheriff of Chittenden County, Vermont. His office, which is located at 70 Ethan Allen Drive in South Burlington, Vermont 05402, has taken control of Restaurant Outfitters’ warehouse and inventory in Winooski, Vermont.

6. The Vermont Attorney General is charged with enforcing Vermont’s Consumer Fraud Act, 9 V.S.A. chapter 63.

7. Jurisdiction is proper pursuant to 9 V.S.A. § 2458(a), because Defendants have conducted their business throughout the State of Vermont, including in Washington County.

III. Statutory Scheme

8. The Vermont Consumer Fraud Act prohibits “unfair or deceptive acts or practices in commerce.” 9 V.S.A. § 2453(a).

9. The Attorney General is authorized to “make rules and regulations... relating to... unfair or deceptive acts or practices in commerce” when “necessary and proper to carry out the purposes of [the Vermont Consumer Fraud Act].” 9 V.S.A. § 2453(c).

10. One such rule is Vermont Consumer Fraud Rule 105 (“CF 105”), <http://www.atg.state.vt.us/assets/files/CF%20105.pdf>. Under CF 105.01,

It shall constitute an unfair and deceptive trade act and practice in commerce under 9 V.S.A. § 2453(c) for a seller or solicitor:

...

(b) To fail to deliver by the delivery date goods ordered by mail or otherwise on which payment has been made or undertaken, in the form of a deposit, down payment or total payment where a definite delivery date has been set unless the seller can show circumstances beyond his control and not within his knowledge at the time the order was accepted which prevented the seller from meeting the delivery date;

...

(d) To accept money from a consumer for goods ordered by mail, telephone, or otherwise and then, unless a later delivery date is specifically agreed upon in writing by the buyer and seller, to permit six weeks to elapse without:

(1) Making shipment or delivery of the goods ordered, as long as such goods conform to samples submitted or to specifications upon which the sale is consummated or induced, or to the representations made prior to securing the order; or

(2) Making a full refund; or

(3) Advising the consumer of the duration of an extended delay and offering to send him an immediate refund, or to send or deliver the ordered goods when they become available, whichever the consumer so requests, and, in such case, to act according to the consumer’s request; or

(4) In the case of mail orders and/or mail delivery, furnishing substitute goods of equivalent or superior value and quality as a good faith substitute. In such case, the consumer shall have the right to return such goods, and if the consumer should return the goods to the seller, the seller shall, within fourteen days of the seller’s receipt of the goods, refund the amount of money paid by the consumer, including all shipping costs.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

11. The Consumer Fraud Act authorizes the Court to “restrain by temporary or permanent injunction” the use of any unfair or deceptive trade practice, and to render “any other temporary or permanent relief, or both, as may be in the public interest,” including, but not limited to, the imposition of civil penalties of up to \$10,000 per violation, an order of restitution of cash or goods to affected consumers, and reimbursement of the State’s fees and costs. 9 V.S.A. § 2458(a) and (b).

12. Under the Consumer Fraud Act, in most situations, businesses are considered “consumers.” 9 V.S.A. § 2451a(a).

IV. Factual Allegations

13. On the Restaurant Outfitters website, www.restaurantoutfittersusa.com, which has now been shut down, Defendants advertised Restaurant Outfitters as a “full service commercial food service equipment dealer.” They also represented on the website that the company offered a complete inventory of restaurant supply equipment for sale and lease.

14. On information and belief, Defendants also advertised Restaurant Outfitters as a seller of restaurant supplies and commercial food service equipment on the website Craigslist, as well as through a listing in the “restaurant equipment” directory of the Burlington-Middlebury Area Yellow Pages telephone book.

15. Defendants have agreed to deliver equipment to their customers on or before the definite date given for delivery and took payment for the equipment, but failed to deliver the equipment by the promised date.

16. Defendants have also failed to deliver equipment at all for which the customer paid them or offer, or in the alternative, to provide or offer a full refund or furnish substitute goods of equivalent or superior value.

17. Defendant Liska has admitted to the Office of the Attorney General that there are a number of small businesses to which Defendants owe equipment or inventory, and has provided a list of such businesses (Exhibits 1 and Affidavit of Michael Powers).

18. Among the listed businesses are 12 “Customers with product in warehouse,” 6 “Customers with orders not yet completed,” 5 “Customers who have judgements [sic] against [Restaurant Outfitters],” 4 businesses with “Customer Service Issues,” and 4 “Customers with store credit from buy outs,” as well as several employees and contractors to whom money is owed.

19. Defendants, or one or more of them, have been sued in Vermont courts by dissatisfied customers.

20. Other customers have filed complaints with the Attorney General’s Office.

21. As a result of one or more of these cases, Defendants’ equipment warehouse at 1 Tigan Street, Winooski, Vermont, and inventory located therein have been seized by the Chittenden County Sheriff’s Department. Defendant is prohibited from entering the premises during this seizure.

22. Said inventory is the subject of a \$5,000 writ of execution in one civil case and a pre-judgment writ of attachment of over \$14,000 in another.

23. The Chittenden County Sheriff’s Department plans to hold an auction on January 13, 2012, to satisfy these obligations and then return the remaining inventory to Defendants.

24. On information and belief, the total value of the inventory in the warehouse is sufficient to discharge these obligations and expenses and leave substantial equipment remaining to turn over to customers who have already purchased it, or to liquidate.

25. In July 2004, Defendant Liska was charged with several counts of criminal fraud in the United States District Court for the District of Vermont involving the conversion to his own use of funds paid by consumers for furniture, and false promises to order furniture and related goods. On October 16, 2006, he pled guilty to one count of interstate transportation of stolen property, for which he was sentenced to a term of imprisonment of 12 months and one day and required to make restitution in the amount of \$292,643.00.

26. There is a risk that such remaining inventory, some of which has already been paid for by Defendants' customers, may then be disposed of in a manner that does not take into account Defendants' obligations to their customers.

27. According to Norman R. Blais, counsel to Chittenden County Sheriff Kevin M. McLaughlin, Sheriff McLaughlin "would not oppose an order issued by a court of competent jurisdiction that would compel the department to continue possession of apparent Restaurant Outfitters goods and equipment after the auction so that an orderly process can take place to determine the competing interests of all parties to such property." (Exhibit 2 hereto.)

IV. First Cause of Action (Failure to Deliver Goods)

28. The allegations set forth in paragraphs 1 to 28 are incorporated by reference herein.

29. Defendants have violated CF 105, and thus the Consumer Fraud Act, by failing to deliver goods ordered by the agreed upon delivery date after taking payments from customers, and failing to deliver goods at all after taking such payments, without in either case making appropriate substitute arrangements, such as offering a full refund.

V. Second Cause of Action (Unfair and Deceptive Trade Practices)

30. The allegations set forth in paragraphs 1 to 28 are incorporated by reference herein.

31. Defendants caused substantial and unavoidable injury to their customers with no offsetting benefit to consumers or competition and thus violated the Vermont Consumer Fraud Act's ban on unfair trade practices, 9 V.S.A. § 2453(a).

32. Defendants also misrepresented, directly or by implication, that the equipment they sold to their customers would be delivered promptly or as promised and thus violated the Vermont Consumer Fraud Act's ban on unfair trade practices, 9 V.S.A. § 2453(a).

RELIEF REQUESTED

WHEREFORE the State of Vermont respectfully requests that the Court grant the following relief:

A. Temporary, preliminary and permanent orders prohibiting Defendants from selling or otherwise disposing of inventory that is not sold or otherwise disposed of by lawful order of this Court;

B. Appointment of a special master to oversee the distribution or liquidation of Defendants' inventory among their customers to whom they owe equipment or money;

C. An order requiring Defendants to pay restitution to all consumers harmed by the actions described in this Complaint;

D. An order enjoining Defendants from engaging or participating in the sale of any consumer or business goods in the State of Vermont unless they first provide the Vermont Attorney General's Office with an appropriate surety bond or other security;

E. Civil penalties in the amount of \$10,000 for each violation of the Vermont Consumer Fraud Act;

F. Reimbursement to the State for the reasonable value of its services and its expenses in investigating and prosecuting this action; and

G. Such other relief as the Court may deem just and necessary.

DATED at Montpelier, Vermont this 3rd day of January, 2012.

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 

Elliot Burg
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
(802) 828-2153
eburg@atg.state.vt.us

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

**STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT**

STATE OF VERMONT,
Plaintiff

v.

RESTAURANT OUTFITTERS USA, LLC,
and PETER LISKA,
Defendants

KEVIN M. McLAUGHLIN, as SHERIFF
of CHITTENDEN COUNTY,
Third-Party Trustee

CIVIL DIVISION
Docket No. _____

AFFIDAVIT OF MICHAEL POWERS

NOW COMES Michael Powers, and being duly sworn, does depose and say:

1. I am an investigator in the Vermont Office of the Attorney General.
2. On November 29, 2011, Peter Liska sent a facsimile to Assistant Attorney General Rob McDougall in the Vermont Office of the Attorney General. The facsimile consists of a fax cover sheet followed by a list of customers of Restaurant Outfitters USA, which comprise Exhibit 1 to the Consumer Fraud Complaint in this case.
3. The customer list included those persons and businesses that, according to the document, had outstanding orders and/or were due refunds from Restaurant Outfitters USA.
4. On December 1, 2011, Peter Liska met with Assistant Attorney General McDougall and me, at which time we discussed the situation of Restaurant Outfitters, and Mr. Liska acknowledged that the list in Exhibit 1 was what he had faxed us.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609


Michael T. Powers

Subscribed and sworn to before me at Montpelier, Vermont, this 5th day of

January, 2012.


Notary Public

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Exhibit 1

PO Box 64721
Burlington, VT 05406
802-881-0311 V
802-735-8893 C



Fax

To: Robert McDougall From: Peter Liska

Fax: Pages: 3

Phone: Date: 11-29-2011

Re: Customer Information cc:

Urgent For Review Please Comment

Please Reply Please Recycle

Mr. McDougall:

Attached is a list of outstanding customer orders and refunds as can be verified with records in my possession. When the Writ of possession took place on October 31, 2011 and forced the business to cease operation, there were a number of customer transactions in progress, most of them without any delay or other problems.

Since October 31, 2011 the situation has become overwhelming and many new problems have developed which we can not address without having access to the business. I am frustrated that we can not take care of our customers and on top may have to deal with a complaint from your office on a Consumer Fraud.

I will provide you with additional information regarding money owed to Vendors, employees and and other customer issues I can locate.

Restaurant Outfitters USA

12-28-2011

Customers status report:**A. Customers with product in warehouse.**

1. Blue Bird Tavern
2. Granville General Store
3. Dellveneris Bakery
4. Eaton's Sugar House
5. Fireworks Restaurant
6. Dover Forge Restaurant
7. Chris Cozi
8. Habanero's
9. Dan Newcomb
10. Orchard House Catering**
11. Café Window**
12. Baan Thai Cuisine**

B. Customers with orders not yet completed.

1. Twin City Lane
2. Venue
3. Four Corners of the Earth**
4. Henderson's Café
5. Animal Farm**
6. Granville General Store

** Denotes a balance due by customer

C. Customers who have judgements against ROUSA

1. Maple Kisses	Writ of possession	\$ 5,300
2. Lace	Writ of attachment	\$ 14,753
3. Healthy Living	Small Claims	\$ 3,000
4. Hayyat Usamah	Small Claims	\$ 1,934
5. Waterpower	Small Claims	\$ 440

D. Customers who are owed refunds.

- | | |
|---------------------------|----------|
| 1. Three Station Inn | \$ 278 |
| 2. Claremont Soup Kitchen | \$ 2,000 |
| 3. William Bullock, Jr. | ? |

Mr. Bullock took \$ 5,680 worth of new and pre-owned equipment, but not in satisfaction of his refund. Apparently he wants to return this equipment for cash.

SUMMARY:

This list represent the majority of outstanding customer orders. There are some customers who's records are in the warehouse who traded in old equipment for purchases to be made in the future. There are also several customers with outstanding service issues which have not been resolved. Those records are in the warehouse as well.

Elliot Burg

From: Blaislaw [blaislaw@sover.net]
Sent: Wednesday, January 04, 2012 4:29 PM
To: Elliot Burg
Cc: dgamelin@dps.state.vt.us
Subject: Chittenden County Sheriff's Department/ Restaurant Outfitters

Dear Elliot,

Please have this email serve as confirmation of the telephone conversation that we had today regarding the property that is currently being held by the Chittenden County Sheriff's Department.

The department seized certain restaurant equipment apparently belonging to Restaurant Outfitters as the result of the execution upon a judgment and a possessory writ of attachment. A Notice of Sheriff's Sale of Personal Property has been posted and a copy of such notice published in a local newspaper. The sale is to take place on January 13, 2012.

I have instructed the sheriff that, once funds are received from the auction that would be sufficient to satisfy the judgment and the costs associated with the judgment, and an amount equivalent to the value of property associated with the writ of attachment, there is no longer any legal justification for the continued possession of the property.

I also understand that there is an issue regarding whether there are other competing customers who may have purchased equipment from this company and were merely waiting for the goods to be shipped to them. I want to re-iterate that the sheriff has no desire to sell property at auction which does not belong to Restaurant Outfitters, but at the present, we have no way of determining the legal interests of any competing claimants.

Finally, I want to confirm that the sheriff would not oppose an order issued by a court of competent jurisdiction that would compel the department to continue possession of apparent Restaurant Outfitters goods and equipment after the auction so that an orderly process can take place to determine the competing interests of all parties to such property.

Thank you for your attention to this matter.

Norman R. Blais

Law office of Norman R. Blais
289 College St.
Burlington VT 05401
802-865-0095

3. Peter Liska owns 20% of Fox Capital, LLC. Peter Liska is on the payroll of Restaurant Outfitters USA, LLC and receives no additional compensation from the company.

4. There is no evidence or proof that Peter Liska has pierced the corporate veil for his own personal benefit or gain. Further there is no evidence or proof that the business transaction being alleged by the plaintiff in this complaint has personally benefitted Peter Liska.

5. While Peter Liska will answer and contest the plaintiff's complaint, he should not be personally responsible in these proceedings.

WHEREFORE, the named defendant, Peter Liska prays that the Court will remove him as a defendant in these proceedings.

Restaurant Outfitters USA, LLC

9/26/2024

DATED

By: 
Peter Liska

VT SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2012 JAN -5 P 1:44

STATE OF VERMONT,)
Plaintiff)
)
v.)
)
RESTAURANT OUTFITTERS USA, LLC,)
and PETER LISKA,)
Defendants)
)
KEVIN M. McLAUGHLIN, as SHERIFF)
of CHITTENDEN COUNTY,)
Third-Party Trustee)

FILED
CIVIL DIVISION
Docket No. 19-112Wncw

MOTION FOR TEMPORARY RESTRAINING ORDER

NOW COMES Plaintiff State of Vermont, pursuant to 9 V.S.A. § 2458(a) and V.R.C.P. 65(a), to move this Court for a temporary restraining order ("TRO") to (1) enjoin Defendants Restaurant Outfitters USA, LLC, Peter Liska and anyone else associated with the business, from selling or otherwise disposing of restaurant equipment that is or will be in their possession, or of taking any action that would diminish the value of such equipment, until the Court can rule on the appropriate disposition of such equipment for the benefit of customers to whom they owe refunds or equipment delivery; and (2) require the Chittenden County Sheriff's Department to continue possession of such equipment as remains in the warehouse at 1 Tigan Street, Winooski, Vermont, following the auction scheduled for January 13, 2012, so that an orderly process can take place to determine all parties' interests to such property.

In support of this Motion, the State directs the Court's attention to the following Memorandum.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

MEMORANDUM

I. Facts

Defendant Restaurant Outfitters USA, LLC (“Restaurant Outfitters”), is a Vermont limited liability corporation with places of business in Winooski and South Burlington, Vermont. The company has engaged in selling equipment and supplies to restaurants and, on information and belief, has been run by Defendant Peter Liska.

Defendants advertised Restaurant Outfitters on the company’s website, www.restaurantoutfittersusa.com, as a “full service commercial food service equipment dealer”; the website has now been shut down. On information and belief, Defendants also promoted the business as a seller of restaurant supplies and commercial food service equipment via the website Craigslist and through its listing in the “restaurant equipment” directory of the Burlington-Middlebury Area Yellow Pages telephone book.

The reason for this lawsuit is that Defendants dealt with a number of small businesses that were their customers in a manner that violated the Vermont Consumer Fraud Act’s prohibitions on unfair and deceptive trade practices, by taking payments for equipment and agreeing to deliver promptly or by a set date but failing to do so.

In fact, Defendant Liska has admitted that there are a number of small businesses to which Defendants owe equipment or inventory and has provided a list of such businesses to the Attorney General’s Office. The list includes 12 “Customers with product in warehouse,” 6 “Customers with orders not yet completed,” 5 “Customers who have judgements [sic] against [Restaurant Outfitters],” 4 businesses with “Customer Service Issues,” and 4 “Customers with store credit from buy outs.” See Exhibit 1 to Consumer Fraud Complaint and Affidavit of Michael Powers.

In addition, Defendants, or one or more of them, have been the subject of a number of civil cases brought in the Vermont courts by dissatisfied customers, and of a number of complaints filed by customers with the Attorney General's Office.

As the result of two such court cases—one involving a \$5,000 judgment and the other a writ of attachment of more than \$14,000, Defendants' equipment warehouse in Winooski, Vermont and inventory located there were seized by the Chittenden County Sheriff's Department. Defendant has been prohibited from entering the premises during this seizure.

The Attorney General's Office has been informed by counsel for the Sheriff's Department that the Department plans to hold an auction at the warehouse on January 13, 2012, to satisfy these obligations and related expenses, and that when the auction is over, the Department will make the remaining inventory available to Defendants. On information and belief, the total value of the inventory in the warehouse is sufficient to discharge these obligations and expenses and leave substantial equipment remaining to turn over to customers who have already purchased it, or to liquidate.

The problem is that there is a risk that such remaining inventory, some of which has already been paid for by Defendants' customers, may then be disposed of in a manner that does not take into account Defendants' obligations to their customers. Indeed, once the Chittenden County Sheriff turns over the remaining inventory to Defendants after his sale on January 13, there is nothing to prevent them from liquidating the goods and using the proceeds as they see fit. That would have the unfortunate effect of stripping harmed customers of the possibility of recouping their losses, even in part.

This risk is underscored by the fact that in July 2004, Defendant Liska was charged with several counts of federal criminal fraud in connection with another business; and on October 16, 2006, he pled guilty to one count of interstate transportation of stolen property, for which he was sentenced to a term of imprisonment of 12 months and one day and required to make restitution in the amount of \$292,643.00.

II. Argument

A. The Standards Applicable to the State of Vermont for the Issuance of a TRO Are Likelihood of Success on the Merits and No Adverse Effect on the Public.

The Vermont Consumer Fraud Act, 9 V.S.A. § 2458(a), authorizes this Court to “restrain by temporary or permanent injunction the use of [unfair and deceptive acts and practices in commerce].” The Act further authorizes the Court to provide for “any other temporary or permanent relief, or both, as may be in the public interest.” V.R.C.P. 65(a) sets out the procedure for issuing a temporary restraining order.

Four criteria ordinarily must be met in order to obtain any temporary injunctive relief. These criteria are that (1) the plaintiff will suffer irreparable harm if an injunction is not granted; (2) such irreparable harm outweighs any harm to the defendant; (3) the plaintiff has a likelihood of success on the merits; and (4) the public interest is not adversely affected by the granting of relief. *Ingraham v. University of Maine at Orono*, 441 A.2d 691, 693 (Me. 1980).

However, when the Attorney General seeks an order to restrain continuing violations of a state statute, he need not establish that the State will suffer irreparable harm if the injunction is not granted, or that the injury to the Plaintiff outweighs any harm to the Defendant caused by the issuance of the injunction. *See Caulo v. V.T. Books, Inc.*, No.

S1027-82 CnC (Chitt. Super. 1982) (“The court is also convinced that an orderly implementation of modern zoning ordinances requires that the remedy of injunction be available to the municipal authority without the necessity of showing irreparable harm.”); *Semke v. State*, 465 P.2d 441, 445 (Okla. 1970); *Hoffman v. Garden State Farms, Inc.*, 184 A.2d 4, 10 (N.J. Super. 1962); 43A C.J.S. *Injunctions* § 133 (1978 & Supp. 2001) (where injunction is authorized to require compliance with, or prevent violation of, a statute, “usually an injunction may be granted without a showing of irreparable injury.”).

As the District Court explained in *UV Industries, Inc. v. Posner*, 466 F. Supp. 1251, 1256 (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. [Citations omitted.] As the Supreme Court stated in *Hecht v. Bowles*, 321 U.S. 321, 331 ... (1944), “standards of the public interest not the requirements of private litigation measure the propriety and need for injunctive relief in these cases.”

One of the paramount purposes of the Consumer Fraud Act is to “protect the public...” 9 V.S.A. § 2451. Its authorization of temporary and permanent injunctive relief is intended to serve that end. These provisions would be undercut if the courts restrained violations of the Act only where unlawful activity would do irreparable harm or the balance of interests favored the State. Accordingly, the State need only establish that it has a likelihood of success on the merits and that the public interest will not be adversely affected by the granting of the relief requested. The Consumer Fraud Complaint and exhibits submitted in support of this Motion satisfy these two criteria.

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B. The State Is Likely to Succeed on the Merits.

The Consumer Fraud Act prohibits unfair and deceptive acts and practices in commerce. 9 V.S.A. § 2453(a). The Attorney General is authorized to “make rules and regulations... relating to... unfair or deceptive acts or practices in commerce” when “necessary and proper to carry out the purposes of [the Act].” 9 V.S.A. § 2453(c).

One such rule is Vermont Consumer Fraud Rule 105 (“CF 105”), <http://www.atg.state.vt.us/assets/files/CF%20105.pdf>. Under CF 105.01,

It shall constitute an unfair and deceptive trade act and practice in commerce under 9 V.S.A. § 2453(c) for a seller or solicitor:

...

(b) To fail to deliver by the delivery date goods ordered by mail or otherwise on which payment has been made or undertaken, in the form of a deposit, down payment or total payment where a definite delivery date has been set unless the seller can show circumstances beyond his control and not within his knowledge at the time the order was accepted which prevented the seller from meeting the delivery date;

...

To accept money from a consumer for goods ordered by mail, telephone, or otherwise and then, unless a later delivery date is specifically agreed upon in writing by the buyer and seller, to permit six weeks to elapse without:

Making shipment or delivery of the goods ordered, as long as such goods conform to samples submitted or to specifications upon which the sale is consummated or induced, or to the representations made prior to securing the order; or

Making a full refund; or

Advising the consumer of the duration of an extended delay and offering to send him an immediate refund, or to send or deliver the ordered goods when they become available, whichever the consumer so requests, and, in such case, to act according to the consumer’s request; or

In the case of mail orders and/or mail delivery, furnishing substitute goods of equivalent or superior value and quality as a good faith substitute. In such case, the consumer shall have the right to return such goods, and if the consumer should return the goods to the seller, the seller shall, within fourteen days of the seller’s receipt of the goods, refund the amount of money paid by the consumer, including all shipping costs.

Here, it is alleged that Defendants agreed to deliver equipment to their customers on or before the definite date given for delivery and took payment for the equipment, but failed to deliver the equipment by the promised date. *See* Consumer Fraud Complaint, ¶ 15. It is also alleged that Defendants failed to deliver equipment at all for which the customer paid them or offer, or in the alternative, to provide or offer a full refund or furnish substitute goods of equivalent or superior value. *Id.*, ¶ 16.

Moreover, Defendant Liska has admitted to the Office of the Attorney General that there are a number of small businesses to which Defendants owe equipment or inventory, and has provided a list of such businesses. *See* Exhibit 1 to Consumer Fraud Complaint and Affidavit of Michael Powers. Among the listed business are 12 “Customers with product in warehouse,” 6 “Customers with orders not yet completed,” 5 “Customers who have judgements [sic] against [Restaurant Outfitters],” 4 businesses with “Customer Service Issues,” and 4 “Customers with store credit from buy outs,” as well as several employees and contractors to whom money is owed.

The State is thus likely to succeed on the merits of its consumer fraud claim.

C. The Public Interest Will Not Be Adversely Affected by the Granting of the Requested Relief.

The public interest will not be adversely affected by an order which restrains Defendants from disposing of any inventory in storage.

D. In Any Event, Immediate and Irreparable Injury Will Occur If a TRO Is Not Issued.

If Defendants are permitted to take possession of any inventory remaining in storage after the sheriff’s sale on January 13, 2012, there is no assurance that they will maintain or liquidate it for the benefit of their customers. Put another way, there is no assurance that

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they will not dispose of the inventory for their own benefit, leaving their customers without any practical recourse. This risk is underscored by the fact that in July 2004, Defendant Liska was charged with several counts of criminal fraud in the United States District Court for the District of Vermont involving the conversion to his own use of funds paid by consumers for furniture, and false promises to order furniture and related goods; on October 16, 2006, he pled guilty to one count of interstate transportation of stolen property, for which he was sentenced to a term of imprisonment of 12 months and one day and required to make restitution in the amount of \$292,643.00. *See U.S.A. v. Keough, et al.*, No. 2:04cr98 (Indictment) (D. Vt., filed July 14, 2004).

Thus, although immediate and irreparable harm is not a prerequisite to the issuance of a temporary restraining order in these circumstances, it is nonetheless present in this case.

E. The Court Should Grant the State's Request for a Temporary Restraining Order.

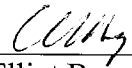
Once it is determined that the State is entitled to a Temporary Restraining Order, the issue remains as to the terms of that injunction. The State requests simply that Defendants be enjoined from selling or otherwise disposing of restaurant equipment that is or will be in their possession until the Court can rule on the appropriate disposition of said inventory among those of their customers to whom they owe refunds or equipment that has been paid for; and (2) require the Chittenden County Sheriff's Department to continue possession of said inventory after completion of the auction scheduled for January 13, 2012, so that an orderly process can take place to determine the competing interests of all parties to such property. As to the latter aspect of the order, the Department has agreed to those terms. *See* Exhibit 2 to Consumer Fraud Complaint.

III. Conclusion

The State of Vermont, based upon its Consumer Fraud Complaint and accompanying exhibits, has satisfied the applicable criteria for the issuance of a temporary restraining order, and urges the Court to issue the order as submitted.

Dated: 12/5/10

WILLIAM H. SORRELL
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STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

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STATE OF VERMONT,)
Plaintiff)
)
v.)
)
RESTAURANT OUTFITTERS USA, LLC,)
and PETER LISKA,)
Defendants)
)
KEVIN M. McLAUGHLIN, as SHERIFF)
of CHITTENDEN COUNTY,)
Third-Party Trustee)

FILED
CIVIL DIVISION
Docket No. 19-1.12 Wncw

TEMPORARY RESTRAINING ORDER

Plaintiff State of Vermont's Motion for Temporary Restraining Order was taken up by this Court on January 12, 2012. After considering the State's Consumer Fraud Complaint, accompanying exhibits, and the motion and accompanying memorandum, it appears to this Court that Defendants have violated the Vermont Consumer Fraud Act by selling restaurant equipment to customers without delivering said equipment to them; that the State is likely to prevail on the merits of its claim; that the public interest will not be adversely affected; and that immediate and irreparable injury will result to the public if the inventory remaining in their warehouse in Winooski, Vermont, is returned to them after a sheriff's auction scheduled for January 13, 2012, without the Court's making more specific provision for the disposition of that inventory and the protection of Defendants' customers.

Therefore, IT IS HEREBY ORDERED THAT:

1. Defendants Restaurant Outfitters USA, LLC, Peter Liska and anyone else associated with the business are enjoined from selling or otherwise disposing of restaurant

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equipment that is or will be in their possession, or of taking any action that would diminish the value of such equipment, until the Court can rule on the appropriate disposition of said inventory among those of their customers to whom they owe refunds or equipment that has been paid for.

2. Following the auction scheduled for January 13, 2012, the Chittenden County Sheriff's Department shall continue possession of all equipment that remains at the warehouse located at 1 Tigan Street, Winooski, Vermont, so that an orderly process can take place to determine the competing interests of all parties to such property.

Issued at _____ p.m. this 12th day of January, 2012.

Superior Judge

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