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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

EDWARD CHERRY; THE SUNSHINE  
STATE LAND TRUST COMPANY, LLC;  
FLORIDA LAND TRUST SERVICES, LLC;  
GROWTH CAPITAL FUNDING, LLC; ZION  
PARTNERS IRREVOCABLE TRUST, LLC;  
ZION PARTNERS IRREV TRUST, LLC;

Defendants/Appellants,

vs.

CASE NO. 2012 CACE 26987 (12)

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

Plaintiff/Appellee.

THIS IS NOT AN

**NOTICE OF APPEAL**

OFFICIAL COPY

NOTICE IS GIVEN that Defendants/Appellants, EDWARD CHERRY; GROWTH CAPITAL FUNDING, LLC; ZION PARTNERS IRREVOCABLE TRUST, LLC; and ZION PARTNERS IRREV TRUST, LLC, by and through their undersigned attorneys, and Defendants/Appellants, THE SUNSHINE STATE LAND TRUST COMPANY, LLC, and FLORIDA LAND TRUST SERVICES, LLC, by and through their undersigned attorneys, do hereby appeal to the Fourth District Court of Appeal that certain ORDER GRANTING TEMPORARY INJUNCTION AND ASSET FREEZE WITHOUT NOTICE entered September 25, 2012 at 2:35 p.m. by the Honorable Michael L. Gates. A copy of said Order is attached hereto. The nature of the order is a non-final order being a temporary injunction without notice.

2012 OCT -4 PM 2:35

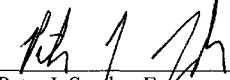
From Article 11 of Debt.org

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Cherry *et al.* v. Office of the Attorney General  
Case No. 2012 CACE 26987 (12)

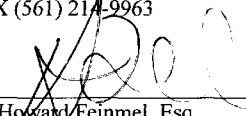
On behalf of Defendants/Appellants, EDWARD CHERRY; GROWTH CAPITAL FUNDING, LLC; ZION PARTNERS IRREVOCABLE TRUST, LLC; and ZION PARTNERS IRREV TRUST, LLC:

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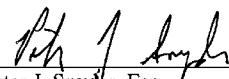
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing was forwarded by e-mail to the attorneys on the attached service list, this 4 day of October, 2012.

  
Peter J. Snyder, Esq.  
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Cherry *et al.* v. Office of the Attorney General  
Case No. 2012 CACE 26987 (12)

**SERVICE LIST**

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL  
CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

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

Plaintiff,  
vs.

Case No. 12-26987

EDWARD CHERRY,  
LAWRENCE DIODATO,  
PAUL GELLENBECK,  
SHANE FRANKOVIC,  
ANTHONY C. PINTSOPOULOS,  
THE FIDELITY LAND TRUST COMPANY, LLC,  
THE SUNSHINE STATE LAND TRUST COMPANY, LLC,  
FLORIDA LAND TRUST SERVICES, LLC,  
GROWTH CAPITAL FUNDING, LLC,  
ZION PARTNERS IRREVOCABLE TRUST, LLC,  
ZION PARTNERS IRREV TRUST, L.L.C.,  
AUGUST BELMONT AND COMPANY, LLC,  
ESQUIRE LITIGATION SUPPORT, LLC,  
ESQLITIGATIONSUPPORT.COM, LLC,  
CLICK MEDIA CONSULTING, LLC doing  
business as FLORIDA HOME RESCUE MISSION,  
and AMERICAN FEDERAL TRUST, LLC,

Defendants.

**ORDER GRANTING**  
**TEMPORARY INJUNCTION AND ASSET FREEZE WITHOUT NOTICE**

This matter coming to be heard by the Court on Plaintiff's Motion for Temporary Injunction and Asset Freeze Without Notice, and the Court having reviewed the pleadings, evidence and argument, it is hereby **ORDERED AND ADJUDGED:**

1. The purpose of a temporary injunction is to preserve the status quo pending the final outcome of the case, and the trial court has broad discretion in granting temporary injunctions. *Brock v. Brock*, 667 So. 2d 310, 311 (Fla. 1<sup>st</sup> DCA 1995).

2. Generally, a temporary injunction requires a showing that (1) irreparable harm will result if the temporary injunction is not entered; (2) an adequate remedy at law is unavailable; (3) there is a substantial likelihood of success on the merits; and (4) entry of the temporary injunction will serve the public interest. *Sacred Family Investments, Inc. v. Doral Supermarket, Inc.*, 20 So. 3d 412, 415 (Fla. 3d DCA 2009).

3. However, because Florida Statutes Section 501.207(1)(b) expressly authorizes the enforcing authority to seek injunctive relief, Plaintiff "does not have to establish irreparable harm, lack of an adequate legal remedy or public interest." *Millenium Communications & Fulfillment, Inc. v. Office of the Attorney General*, 761 So. 2d 1256, 1260 (Fla. 3d DCA 2000).

Therefore, Plaintiff need only show a substantial likelihood of success on the merits: "The Department's sole burden at a temporary injunction hearing under FDUTPA is to establish that it has a clear legal right to a temporary injunction." *Id.*

4. To prevail on an action under the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), the plaintiff must show that "the alleged practice was likely to deceive a consumer acting reasonably in the same circumstances." *Office of Attorney General, Department of Legal Affairs v. Wyndham International, Inc.*, 869 So. 2d 592, 598 (Fla. 1st DCA 2004).

5. To establish individual liability under FDUTPA, the plaintiff must show that the "individual defendant actively participated in or had some measure of control over the corporation's deceptive practices." *KC Leisure v. Haber*, 972 So.2d 1069, 1073 (Fla. 5<sup>th</sup> DCA

2008); *Office of the Attorney General v. Wyndham Int'l, Inc.*, 869 So. 2d 592, 598 (Fla. 1<sup>st</sup> DCA 2004) (“individual defendant may also be held liable for consumer redress under the [FTC] Act if they participated directly in the deceptive practices or acts or they possessed the authority to control them.”).

**FACTUAL FINDINGS**

6. Having reviewed the affidavits and other documents and evidence submitted in support of the Motion, the Court makes the following factual findings.

7. Defendants are making false promises and representations to consumers in order to induce consumers to transfer title to their homes to Defendants for no consideration and to pay Defendants thousands of dollars in advance fees for services Defendants cannot deliver.

8. Defendants' unfair, deceptive and/or unconscionable acts and practices include but are not limited to the following:

a. Falsely guaranteeing that Defendants will legally quiet the homeowner's "upside-down mortgage" through actions pursuant to Florida Statutes, Chapter 65 so that at the end of a 120 day process the homeowner will have equity in the home;

b. Misrepresenting to homeowners that an assignment of mortgage is not good or effectual in law or equity against creditors or any subsequent purchasers unless the assignment of mortgage is recorded; and

c. Misrepresenting to homeowners that the homeowner's mortgage is not enforceable against the Defendants as a subsequent purchaser for a valuable consideration, notwithstanding the fact that Defendants do not pay any consideration to the homeowner for the deed transfer of title.

9. Defendants misrepresent to consumers that Defendants (or their nominees) are *bona fide* transferees for value of the title of the mortgagors (the homeowners) so that the mortgagees' failure to record their assignments of mortgage under Chapter 701 voids the homeowners' mortgages.

10. Defendants' misrepresentations are unfair and/or deceptive and are likely to mislead consumers acting reasonably. The acts and practices described above are in violation of the Florida Deceptive and Unfair Trade Practices Act Section 501.201 *et seq.*

11. In addition, Defendants' conduct also violates Section 501.1377(3) which prohibits any person providing foreclosure-related rescue services from charging an up-front advance fee prior to the completion of the services and requires a statutorily prescribed written consumer agreement. Defendants' acts and practices come within the scope of Section 501.1377 and Defendants' collection of upfront advance fees for foreclosure-related rescue services and failure to provide the statutorily-required written agreements constitute violations of that section. *See* § 501.1377(4), (5), Fla. Stat. (requiring specific written agreement). A violation of Section 501.1377 is a *per se* violation of FDUTPA. § 501.1377(7), Fla. Stat. ("A person who violates any provision of this section commits an unfair and deceptive trade practice as defined in part II of this chapter [FDUTPA]."). Therefore, Defendants' collection of upfront advance fees and the omission of the statutorily-required written agreements constitute separate and independent violations of FDUTPA.

12. Defendants have continued to market and advertise their services to consumers in the State of Florida. If Defendants are not enjoined, Florida consumers will continue to be deceived into engaging the Defendants to save their homes, despite the fact that Defendants cannot legally render the promised services.

13. The need to prevent additional harm to consumers that may result from the actions of the Defendants necessitates immediate action to enjoin the continued deception of Florida consumers. Based upon the Defendants' pattern of deceptive and/or unfair conduct,

consumers will continue to suffer irreparable damage in the form of the loss of their homes and loss of money due to their reliance on Defendants' false promises and misrepresentations.

14. In addition, there is a substantial likelihood that Defendants may dissipate or disperse assets, thus preventing consumers who have been injured by Defendants from receiving equitable relief in the form of restitution. Therefore, preservation of the status quo can best be accomplished by issuance of a freeze order precluding waste, dissipation or distribution of the Defendants' assets.

15. Under the circumstances of this case, a temporary injunction *without notice* is warranted. Under the facts of this case, the time required to notice a hearing on a temporary injunction would exacerbate the injuries suffered by consumers who are trusting Defendants with their family homes through Defendants' use of an egregiously frivolous quiet title legal theory. Service and hearing would only further damage the consumers who have been so far victimized by Defendants' conduct through continued payment of advance fees and permit Defendants to victimize new consumers. In addition, whatever consumer monies are still retained by Defendants would likely be dissipated should notice be given.

**TEMPORARY INJUNCTION AND ASSET FREEZE**

Based upon the evidence submitted and the foregoing factual findings, the Court makes the following rulings:

16. Plaintiff's Motion for Temporary Injunction and Asset Freeze Without Notice is GRANTED.

17. The Defendants and their officers, employees, affiliates, agents, representatives, attorneys or any other person or entity acting through or on their behalf from are temporarily ENJOINED from destroying, mutilating, concealing, altering, or disposing of, in any manner,



any information which has any connection to Defendants' operations, including books, records, papers, consumer files and personal and financial information contained therein, computer disks, computer memory retention devices or the like, computer, documents, correspondence, obligations or other property of the Defendants herein until further order of this Court.

18. Defendants Edward Cherry, Lawrence Diodato, Paul Gellenbeck, Shane Frankovic, Anthony C. Pintsopoulos, The Fidelity Land Trust Company, LLC, The Sunshine State Land Trust Company, LLC, Florida Land Trust Services, LLC, Growth Capital Funding, LLC, Zion Partners Irrevocable Trust, LLC, Zion Partners Irrev Trust L.L.C., August Belmont and Company, LLC, Esquire Litigation Support, LLC, EsqLitigationSupport.Com, LLC, Click Media Consulting, LLC doing business as Florida Home Rescue Mission and American Federal Trust, LLC their officers, affiliates, agents, servants, employees, attorneys and those persons in active concert or participation with the them who receive actual notice of this injunction, are temporarily ENJOINED from:

- a. engaging in, rendering, or otherwise providing services to Florida homeowners directly or indirectly by which Defendants claim to cancel or otherwise void previously recorded mortgages so that the mortgages are not enforceable against Defendants or any other party because the mortgage assignments were not recorded;
- b. soliciting, advertising, representing or otherwise offering directly or indirectly to Florida homeowners services by which Defendants claim to cancel or otherwise void previously recorded mortgages so that the mortgages are not enforceable against Defendants or any other party because the mortgage assignments were not recorded; and
- c. lecturing or otherwise disseminating information to the public, for the purpose of trade or commerce, on the mechanism, procedure and/or theory by which Defendants claim to cancel

or otherwise void previously recorded mortgages so that the mortgages are not enforceable against Defendants or any other party because the mortgage assignments were not recorded.

19. The Defendants are temporarily ENJOINED from wasting, dissipating or otherwise distributing all financial assets until further order of this Court.

20. The Defendants are temporarily ENJOINED from transferring, conveying, encumbering, disposing of or otherwise alienating the asset, deposits, or other funds on deposit or available (including through line of credit or loan) with any bank, savings and loan, or other financial institution in the State of Florida until further order of this Court.

21. Any and all financial institutions on who receive notice of this Court's Order shall suspend all debits, transfers or withdrawals from any account, brokerage account or investment account and/or access to safe deposit box or boxes under the control or in the name of any of the Defendants until further order of this Court.

22. The Defendants are ORDERED to produce to the Plaintiff within thirty (30) days from the date of this Order unredacted copies of (1) all deeds from consumers for real property located in Florida or in any other state and (2) all statements, records, documents or other materials from January 1, 2011 to the date of this Order from all banks or other financial institutions located in Florida and/or in any other state and/or outside the continental United States, through or in which funds from consumers have been directly or indirectly deposited, credited or otherwise transferred to, by or on behalf of any Defendant and/or any other person or entity under the direct or indirect control or direction of any Defendant.

23. The Court determines that giving due regard for the public interest, no bond is required to be posted, pursuant to Florida Rule of Civil Procedure 1.610(b).

24. A hearing shall be held within 5 days after the Defendants apply for a hearing on a motion to dissolve or modify the temporary equitable relief granted by the Court.

25. Prior to the filing of the Complaint in this action, Defendant Cherry filed for Chapter 7 Bankruptcy in the Southern District of Florida, Case No. 12-24343-JKO but the filing does not stay this enforcement action pursuant to 11 U.S.C. § 362(b) as only equitable relief is sought at this time as to Defendant Cherry.

26. No attorneys or law firms are defendants in this action and the issues in this proceeding do not deal with the practice of law but rather with misrepresentations made to consumers by non-attorneys through or on behalf of business entities, which are not law firms, for the purpose of trade or commerce.

**SO ORDERED.**

ORDERED, APPROVED and ENTERED in Chambers in Broward County, Florida this

25 day of September, 2012.

Dated: 9/25/12 Time: 2:35 p.m.

MICHAEL L. GATES  
Circuit Judge

SEP 25 2012

By: [Signature]  
Circuit Court Judge

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