

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA**

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

Plaintiff,

CASE NO. :

vs.

**SUN STATE TREES & PROPERTY
MAINTENANCE, INC. a/k/a A SUN STATE
TREE SERVICE & PROPERTY MAINTENANCE, INC.**

Defendant.

**COMPLAINT FOR INJUNCTION, DAMAGES,
CIVIL PENALTIES AND OTHER STATUTORY RELIEF**

This is an action for injunctive relief, declaratory judgment, damages, costs, attorneys fees, and penalties brought under the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Florida Statutes (2004). The State of Florida, Office of the Attorney General, Department of Legal Affairs (Attorney General), sues the Defendant, Sun State Trees & Property Maintenance, Inc., a/k/a A Sun State Tree Service & Property Maintenance, Inc., and alleges:

THE PARTIES

1. The Office of the Attorney General, Department of Legal Affairs, is the statutorily empowered enforcing authority for Florida's Deceptive and Unfair Trade Practices Act.
2. Section 501.160(8), Florida Statutes (2004) specifically empowers the Attorney General to enforce the prohibition against unconscionable pricing of commodities during an official state of emergency.
3. Attorney General Charlie Crist has reviewed this matter and determined that this

enforcement action serves the public interest. A copy of the determination of public interest is attached hereto as Exhibit "A".

4. The Defendant, Sun State Trees & Property Maintenance, Inc. a/k/a A Sun State Tree Service & Property Maintenance, Inc. (Sun State) is engaged in trade and commerce within Florida, within the meaning of Section 501.203(8), Florida Statutes (2004). Sun State is in the tree service and removal business.
5. Sun State is located at 295 Lyman Road, Casselberry, Seminole County, Florida. Sun State has conducted business since at least May 15, 1999.
6. Sun State offers goods, services, and other things of value to consumers of the State of Florida. During the State of Emergency declared on August 10, 2004 by Governor Bush to protect the citizens of the State of Florida, Sun State has offered tree service and removal services to consumers in Seminole and Orange County.

JURISDICTION AND VENUE

7. Section 26.012, Florida Statutes (2004) grants this court jurisdiction over this action for equitable and legal relief.
8. This court has personal jurisdiction over Sun State because it does business in Florida and is located in Florida.
9. This court has subject matter jurisdiction. This action seeks equitable relief, a declaratory judgment, penalties, damages, costs and attorney's fees.

DEFENDANT'S UNLAWFUL COURSE OF BUSINESS

10. On August 10, 2004, the Governor of the State of Florida, Jeb Bush, signed Executive Order 04-182, declaring a sixty day State of Emergency throughout the State of Florida

declaring that then Tropical Storms Charley and Bonnie threatened Florida with a major disaster.

Section 8 of Executive Order 04-182 provides:

In accordance with Sections 501.160(2) and 501.160(3), Florida Statutes, I hereby place all persons on notice that it is unlawful for any person to rent or sell, or offer to rent or sell at an unconscionable price, any essential equipment, services, or supplies whose consumption or use is necessary because of the emergency. Such services shall include, without limiting the generality of the foregoing, any rental of hotel, motel, or other transient lodging facilities, and any rental of storage facilities. In accordance with Sections 501.160 (1)(b), Florida Statutes, any price exceeding the average price for such essential equipment, services, or supplies for the thirty (30) days immediately proceeding the date of this Executive Order shall create a presumption that the price is unconscionable unless such increase is caused by actual costs incurred in connection with such essential equipment, services, or supplies, or is caused by national or international economic trends.

(Executive Order No. 04-182, attached as Exhibit "B").

11. On August 13, 2004, Hurricane Charley struck Florida with winds exceeding 145 miles per hour, crossing Florida from coast to coast leaving devastation in its wake. Homes were destroyed. People were killed. Hospitals and nursing homes were critically damaged. Almost two million citizens were evacuated. Thousands of people were without electricity or water. Hurricane Charley followed Tropical Storm Bonnie which struck Florida only a day before.
12. During a State of Emergency, services like removal of damaged trees, repair of roofs, and home repair are necessary as a result of the emergency.
13. During this State of Emergency, Sun State has engaged, and continues to engage in unconscionable pricing practices, and unconscionable, deceptive and unfair acts and practices in trade and commerce by charging unconscionable prices for tree removal

services.

14. For example, on August 15, 2004, Jeff Anderson, a Sun State employee, examined hurricane-damaged trees at the homes of Bruce Stephenson and his neighbor, Charles Modell in Winter Park, Orange County, Florida. One tree, located on Mr. Modell's property, had fallen through the roof of Mr. Stephenson's house. Two trees, located in Mr. Stephenson's back yard, were resting on Mr. Stephenson's roof. A fourth tree, located in Mr. Stephenson's front yard, was partially split and a portion of that tree was on the ground.
15. Mr. Stephenson and Mr. Modell asked Mr. Anderson to provide an estimate for the removal of these four trees.
16. Sun State required \$30,000 to provide the service. Mr. Anderson gave Mr. Stephenson an invoice in the amount of \$15,000 and gave Mr. Modell an invoice in the amount of \$15,000, splitting the cost of the service between the two neighbors. (See attached Exhibits "C" [Mr. Stephenson's invoice] and "D" [Mr. Modell's invoice].)
17. Sun State proceeded to remove Mr. Modell's tree from Mr. Stephenson's house on August 15, 2004, and arranged to come back to Mr. Stephenson's house the next day to remove the remaining trees.
18. On August 16, 2004, Mr. Stephenson and Mr. Modell confronted Mr. Anderson by telephone about the cost of Sun State's services. Mr. Stephenson and Mr. Modell informed Mr. Anderson that they believed the cost of \$30,000 for Sun State's services was price gouging and insurance fraud. Mr. Anderson told Mr. Stephenson and Mr. Modell that he would talk with his supervisor.

19. Later that morning, Mr. Stephenson and Mr. Modell met with Joel Choate, Mr. Anderson's supervisor. They informed Mr. Choate that they believed the cost of \$30,000 for Sun State's services was price gouging and insurance fraud. Mr. Choate then offered to complete the job by removing the two trees still resting on Mr. Stephenson's roof for a total cost of \$11,000 - \$19,000 less than the original charge. The price of \$11,000 included the cost of the removal of Mr. Modell's tree from Mr. Stephenson's house by Sun State on August 15, 2004.
20. Mr. Choate prepared a second invoice for Mr. Stephenson in the amount of \$11,000 for the removal of the three trees, backdating the invoice to August 15, 2004. (A copy of the second invoice is attached as Exhibit "E"). This invoice replaced the invoices in the amount of \$15,000 originally given to Mr. Stephenson and Mr. Modell by Sun State.
21. Mr. Choate wrote "void " on Mr. Modell's invoice for \$15,000. (See Exhibit "D").
22. The average price in the Central Florida trade area during the 30 day period preceding the declaration of the State of Emergency for the service of removing the three trees was approximately \$3,359.14.

COUNT I - PRICE GOUGING (\$30,000 OFFER).

23. The Attorney General re-alleges and incorporates by reference paragraphs 1 through 22.
24. Florida's Deceptive and Unfair Trade Practices Act, in Section 501.204(1), Florida Statutes (2004), declares unconscionable acts in the conduct of any trade or commerce unlawful.
25. Florida's Price Gouging law, Section 501.160 (2), Florida Statutes (2004) makes it unlawful for:

a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency. This prohibition remains in effect until the declaration expires or is terminated.

26. “"Commodity" means any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency.” Sec. 501.160(1)(a), Fla. Stat. (2004).
27. Tree removal service is a “commodity” during the State of Emergency.
28. The price for a “commodity” is *prima facie* unconscionable if the amount charged grossly exceeds the average price at which the same or similar “commodity” was readily obtainable in the trade area during the 30 days immediately prior to a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the sale of the commodity or national or international market trends. §501.160(1)(b), Fla. Stat. (2004)
29. Sun State’s original offer to charge \$30,000 for removal of trees at the homes of Mr. Stephenson and Mr. Modell is unconscionable. It grossly exceeds the price at which the same service was readily obtainable in the Central Florida trade area in the 30 days immediately prior to the declaration of the State of Emergency.
30. Sun State’s conduct in charging unconscionable prices for tree removal to Mr. Stephenson and Mr. Modell demonstrates that Sun State’s regular practice is to violate

Florida's price gouging and other laws.

31. Unless this court enjoins Sun State from charging unconscionable prices during the State of Emergency, Sun State's continued activities will result in irreparable injury to the consuming public.

WHEREFORE, the State of Florida, Office of the Attorney General, Department of Legal Affairs, prays for judgment:

A. Permanently enjoining Sun State from charging or attempting to charge unconscionable prices for commodities during the State of Emergency. More specifically, the Department of Legal Affairs asks the court to temporarily and permanently enjoin Sun State from charging a price for tree removal services that exceeds the average price at which the same or similar service was readily obtainable in the Central Florida trade area during the 30 days immediately prior to a declaration of a state of emergency;

B. Awarding the Department of Legal Affairs actual damages and interest on behalf of consumers injured by the unfair competition or deceptive or unfair acts or practices of Defendants in accordance with section 501.207(1)(c), Florida Statutes (2004);

C. Assessing against Defendant Sun State civil penalties in the amount of one thousand dollars (\$1,000) for each violation of section 501.160, Florida Statutes (2004) in accordance with section 501.164, Florida Statutes (2004);

D. Assessing against Defendant Sun State civil penalties in the amount of ten thousand dollars (\$10,000) for each violation of Chapter 501, Part II, pursuant to section 501.2075, Florida Statutes (2004) and civil penalties in the amount of twenty thousand dollars (\$20,000) for each violation victimizing a senior citizen;

- E. Awarding reasonable attorney's fees and costs to the Department of Legal Affairs pursuant to sections 501.2105, and 501.2075, Florida Statutes (2004);
- F. Awarding restitution for consumers injured by Sun State's unlawful actions;
- G. Requiring that Defendant Sun State disgorge all revenue generated as a result of the unconscionable, unfair and deceptive practices set forth in this complaint;
- H. Declaring the practices described in this complaint unlawful; and
- I. Granting such other relief as this court deems just and proper.

COUNT II - PRICE GOUGING (\$11,000 CHARGE).

- 32. The Attorney General re-alleges and incorporates by reference paragraphs 1 through 28.
- 33. Sun State's charge of \$11,000 for removal of trees at the homes of Mr. Stephenson and Mr. Modell is unconscionable. It grossly exceeds the price at which the same service was readily obtainable in the Central Florida trade area in the 30 days immediately prior to the declaration of the State of Emergency.
- 34. Sun State's conduct in charging unconscionable prices for tree removal to Mr. Stephenson demonstrates their regular practice is to violate Florida's price gouging and other laws.
- 35. Unless this court enjoins Sun State from charging unconscionable prices during the State of Emergency their continued activities will result in irreparable injury to the consuming public.

WHEREFORE, the State of Florida, Office of the Attorney General, Department of Legal Affairs, prays for judgment:

- A. Permanently enjoining Sun State from charging or attempting to charge

unconscionable prices for commodities during the State of Emergency. More specifically, the Department of Legal Affairs asks the court to temporarily and permanently enjoin Sun State from charging a price for tree removal services that exceeds the average price at which the same or similar service was readily obtainable in the Central Florida trade area during the 30 days immediately prior to a declaration of a state of emergency;

B. Awarding the Department of Legal Affairs actual damages and interest on behalf of consumers injured by the unfair competition or deceptive or unfair acts or practices of Defendants in accordance with section 501.207(1)(c), Florida Statutes (2004);

C. Assessing against Defendant Sun State civil penalties in the amount of one thousand dollars (\$1,000) for each violation of section 501.160, Florida Statutes (2004) in accordance with section 501.164, Florida Statutes (2004);

D. Assessing against Defendant Sun State civil penalties in the amount of ten thousand dollars (\$10,000) for each violation of Chapter 501, Part II, pursuant to section 501.2075, Florida Statutes (2004) and civil penalties in the amount of twenty thousand dollars (\$20,000) for each violation victimizing a senior citizen;

E. Awarding reasonable attorney's fees and costs to the Department of Legal Affairs pursuant to sections 501.2105, and 501.2075, Florida Statutes (2004);

F. Awarding restitution for consumers injured by Sun State's unlawful actions;

G. Requiring that Defendant Sun State disgorge all revenue generated as a result of the unconscionable, unfair and deceptive practices set forth in this complaint;

H. Declaring the practices described in this complaint unlawful; and

I. Granting such other relief as this court deems just and proper.

COUNT III -
UNFAIR AND DECEPTIVE TRADE PRACTICES.

36. The Attorney General re-alleges and incorporates by reference paragraphs 1 through 22.
37. Section 501.204(1), Florida Statutes (2004), declares unconscionable acts or practices in the conduct of any trade or commerce to be unlawful.
38. Exploiting the desperate need for services to cure the damages created by the wide spread devastation of a major hurricane to extract prices grossly in excess of the value or normal charge for a service is an unconscionable act and practice.
39. Sun State has committed acts or practices in trade or commerce that shock the conscience, engaged in representations, acts, practices or omissions that are material, and that are likely to mislead consumers acting reasonably under the circumstances; or Sun State has committed acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers. Thus, Sun State has engaged in unfair or deceptive acts or practices in the conduct of trade or commerce in violation of section 501.204(1), Florida Statutes (2004).
40. The acts and practices of Sun State have injured and will likely continue to injure and prejudice the public.
41. Sun State has willfully engaged in the acts and practices when Sun State knew or should have known that said acts and practices were unfair or deceptive or prohibited by rule.
42. Unless the court enjoins Sun State from engaging further in the acts and practices described in this complaint, Sun State's continued activities will irreparably injure the

public. There is no adequate remedy at law for the injuries.

RELIEF REQUESTED

WHEREFORE, the State of Florida, Office of the Attorney General, Department of Legal Affairs, prays for judgment:

- A. Permanently enjoining Sun State from charging or attempting to charge unconscionable prices for tree removal services;
- B. Awarding the Department of Legal Affairs actual damages and interest on behalf of consumers injured by the unfair competition or deceptive or unfair acts or practices of Defendants in accordance with section 501.207(1)(c), Florida Statutes (2004);
- C. Assessing against Sun State civil penalties in the amount of ten thousand dollars (\$10,000) for each violation of Chapter 501, Part II, pursuant to section 501.2075, Florida Statutes (2004) and civil penalties in the amount of twenty thousand dollars (\$20,000) for each violation victimizing a senior citizen;
- D. Awarding reasonable attorney's fees and costs to the Department of Legal Affairs pursuant to sections 501.2105, and 501.2075, Florida Statutes (2004);
- E. Awarding restitution for consumers injured by Sun State's unlawful actions;
- F. Requiring that Defendant Sun State disgorge all revenue generated as a result of the unconscionable, unfair and deceptive practices set forth in this complaint;
- G. Declaring the practices described in this complaint unlawful; and
- H. Granting such other relief as this court deems just and proper.

Respectfully submitted,

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