

11-1564

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

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STATE OF WEST VIRGINIA ex rel.
DARRELL V. McGRAW, JR.,
ATTORNEY GENERAL,

CATHY S. LEE, CLERK
KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

v.

CIVIL ACTION NO.10-C-994

CAVALRY SPV I, LLC,
CAVALRY SPV II, LLC; CAVALRY INVESTMENTS LLC;
CAVALRY PORTFOLIO SERVICES, LLC;
MICHAEL GODNER; STEVE ANDERSON;
DON STRAUCH; and CHRISTIAN PARKER,

Defendants.

**ORDER GRANTING TEMPORARY INJUNCTION AGAINST CERTAIN DEFENDANTS
AND DENYING MOTIONS TO DISMISS**

On the 22nd and 23rd days of August, 2011, and the 9th day of September, 2011, came the Plaintiff, State of West Virginia ex rel. Darrell V. McGraw, Jr. ("the State" or "Attorney General"), by counsel, Norman Googel, Assistant Attorney General, and also came the Defendants, Calvary SPV I, LLC ("SPV I"), Calvary SPV II, LLC ("SPV II"), Calvary Investments, LLC ("Calvary Investments"), Calvary Portfolio Services, LLC ("CPS"), Michael Godner, Steve Anderson, Don Strauch and Christian Parker, by their counsel, Leah P. Macia and Nicholas B. Mooney, II, of Spilman Thomas & Battle, PLLC, for a hearing on the Attorney General's Motion For Temporary Injunction and the motions to dismiss filed by the Defendants.

More specifically, the Defendants, SPV I, SPV II, Calvary Investments, and CPS (collectively "the LLC Defendants") filed a combined motion to dismiss, and the individual

Defendants, Michael Godner, Steve Anderson, Don Strauch and Christian Parker (collectively "the Individual Defendants") also filed a combined motion to dismiss. The Attorney General filed a motion for temporary relief as authorized by W. Va. Code § 46A-7-110 seeking to enjoin the LLC Defendants from collecting or continuing to collect debts arising from the time that they were not licensed to collect debts in West Virginia. The Attorney General also asked the Court to order the Defendants to comply with the investigative subpoena issued on January 25, 2010.

Whereupon, the Court proceeded to hear and consider the testimony of Angela B. White, Paralegal, Attorney General's Consumer Protection Division, for the State, the testimony of Ann Thomas, Cavalry's Compliance Counsel, the pleadings of record, and the arguments of counsel, upon the basis of which the Court finds as follows:

1. The Attorney General has presented some credible evidence that the Defendants SPV I, SPV II, and Calvary Investments have violated portions of the West Virginia Consumer Credit and Protection Act by collecting debts originally owed to others at times when they were not licensed to do so by the State Tax Department beginning in about 1996 up until the time they became licensed in October, 2010.

2. SPV I became licensed and bonded with the State Tax Department to collect debts on October 13, 2010.

3. SPV II became licensed and bonded with the State Tax Department to collect debts on October 12, 2010.

4. Calvary Investments became licensed and bonded with the State Tax Department to collect debts on October 7, 2010.

5. CPS was licensed and bonded with the State Tax Department to collect debts at all relevant times in question.

6. The Attorney General has not properly served the Individual Defendants and, therefore, this Court has not obtained jurisdiction over them.

7. The Court reserves its ruling on the substantive grounds of the Individual Defendants' motion to dismiss, which will be addressed at another time.

Upon the basis of the foregoing, it is therefore ORDERED as follows:

1. The LLC Defendants' motion to dismiss should be, and it hereby is, DENIED.

2. The Individual Defendants shall remain named parties to this case but shall not be required to answer subpoenas, participate in investigation, appear at hearings or trial, or take any action to defend this case until such time as they are properly served and brought into the jurisdiction of this Court.

3. The Court RESERVES its ruling on the substantive grounds of the Individual Defendants' motion to dismiss, which will be addressed at another time.

4. The Attorney General's motion for temporary injunction against the LLC Defendants should be, and it hereby is, GRANTED against SPV I, SPV II, and Calvary Investments, but not CPS.

5. The Defendants SPV I, SPV II, and Calvary Investments should be, and they hereby are, ENJOINED from engaging in any actions to collect debts acquired prior to the date that they became licensed, including but not limited to, (i) collecting or continuing to collect payments arising from oral or written agreements; (ii) prosecuting or continuing to prosecute pending collection suits; (iii) collecting or continuing to collect payments arising from judgments already entered in lawsuits; and (iv) placing or continuing to place liens or

attachments on personal or real property, including garnishment of wages, arising from judgments already entered in lawsuits. In addition, SPV I, SPV II, and Calvary Investments are hereby ORDERED to release all garnishments of wages and liens or attachments filed against real or personal property prior to the time that they became licensed to collect debts in West Virginia.

6. Notwithstanding all of the foregoing, SPV I, SPV II, and Calvary Investments may receive or continue to receive payments made voluntarily by consumers to them without solicitation or effort on their part. Provided, however, all such money received shall be placed in an escrow account and the LLC Defendants shall make appropriate periodic reports accounting for such funds to the Attorney General.

7. The Attorney General's request for an Order compelling the LLC Defendants to comply with his investigative subpoena should be, and it hereby is, GRANTED.

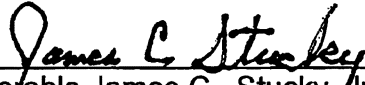
8. The Defendants SPV I, SPV II, Cavalry Investments, and CPS, but not the individual Defendants, shall comply in full with the Attorney General's investigative subpoena by producing all documents and information requested by the subpoena to the Attorney General within 60 days after entry of this Order.

9. SPV I, SPV II, and/or Cavalry Investments will send an explanatory letter to all consumers who may be affected by this Order informing them of the existence of this Order so that they may decide whether to voluntarily continue to make payments to these entities as a result of any judgments, settlement agreements, or other collection activities initiated prior to the time that they became licensed to collect debts in West Virginia. The content of the letter will be the product of mutual agreement between SPV I, SPV II, Cavalry Investments and the Attorney General.


10. This Order shall remain in effect until further or final Order of this Court.


The Clerk is directed to forward certified copies of this Order to all parties or their counsel of record.

Entered this 7 day of Oct, 2011.


Honorable James C. Stucky, Judge
Circuit Court of Kanawha County

Prepared by:


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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, GATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 13th
DAY OF October, 2011.

CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Approved by:

Leah Macia (WV #7742)
Nicholas Mooney (WV #7204)
Spilman Thomas & Battle, PLLC
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