

Complaint

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IN THE MATTER OF

WEST COAST CREDIT CORPORATION t/a FIDELITY
FINANCE CO., INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2600. Complaint, Nov. 19, 1974 - Decision, Nov. 19, 1974*

Consent order requiring a Seattle, Wash., money lender, among other things to cease instituting collection lawsuits except in the county where the defendant either resides or where the contract was signed, and using promissory notes, etc., containing provisions governing the choice of forum county in the event of suit.

Appearances

For the Commission: *Randall H. Brook.*

For the respondent: *Betty B. Fletcher and Jonathan Blank, Preston, Thorgrimson, Ellis, Holman & Fletcher, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent West Coast Credit Corporation, a corporation doing business as Fidelity Finance Co., Inc., has violated Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint.

PARAGRAPH 1. Respondent is a Washington corporation with its principal office located at 2005 Fifth Ave., Seattle, Wash.

PAR. 2. Respondent is engaged in the business of extending loans to consumers at various offices located throughout the State of Washington. Allegations below of respondent's present acts and practices include past acts and practices.

PAR. 3. In the course of its business, respondent extends loans to persons resident in Wash. and Idaho, and receives payments from, pursues collection activities against, and institutes legal actions against, debtors resident in Wash., Idaho, Oreg. and other states. Thus respondent maintains a course of business in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course of collecting allegedly defaulted obligations, respondent regularly resorts to use of judicial process in matters not resolved by private settlement. The defendant debtors in such cases are

predominantly low-income or middle-income persons not represented by counsel. Respondent usually obtains default judgments.

PAR. 5. Respondent commences collection lawsuits in the Superior Court of King County, Wash. In many such suits defendants reside, and have incurred the underlying obligations, outside of King County, in places up to 300 or more miles from the court. Courts located in the county where defendants reside or where they signed the contracts sued upon could be used for these suits. Through this use of distant or inconvenient forum, respondent effectively deprives defendants of a reasonable opportunity to appear, answer and defend the lawsuits. Therefore, such use of a distant or inconvenient forum is unfair.

PAR. 6. Almost all the defendants described in Paragraph Five would be entitled under state venue laws to be sued in the county of their residence and to move for a change of venue to that county, except for them having previously waived this right. Respondent elicits and causes such waiver by requiring borrowers to sign a form promissory note containing the following "venue waiver" provision:

The undersigned agree the venue of any action instituted hereon, at election of payee hereof, may be laid in King County.

PAR. 7. The venue waiver provision is not a bargained-for part of the promissory note and is not generally understandable to persons without legal background or experience. By requiring borrowers to waive statutory venue provisions, respondent effectively deprives them of rights otherwise available to move for a change of forum. Therefore, such use of venue waiver provisions is unfair.

PAR. 8. For its superior court lawsuits, respondent uses confusingly worded summonses which give defendants inadequate and misleading directions as to the proper procedure for responding. These summonses have the tendency to mislead defendants into defaulting. Thus respondent effectively deprives defendants of a reasonable opportunity to appear, answer and defend the lawsuits. Therefore, such use of confusingly worded summonses is unfair and deceptive.

PAR. 9. The acts and practices alleged above are all to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been

served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent West Coast Credit Corporation, a corporation doing business as Fidelity Finance Co., Inc., is a Washington corporation with its principal office located at 2005 Fifth Ave., Seattle, Wash.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent West Coast Credit Corporation, a corporation doing business as Fidelity Finance Co., Inc., and its successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the extension or collection of credit obligations of consumers, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Instituting suits except in the county where the defendant resides at the commencement of the action, or in the county where the defendant signed the contract sued upon. This provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions involving real property or fixtures attached to real property, that suit be instituted in a particular county. The term "county" includes the equivalent political subdivision where no county exists.

2. Using promissory notes or other contracts containing any provision which governs or purports to govern choice of forum county in the event of suit.

It is further ordered, That, where respondent learns subsequent to institution of a suit that Paragraph 1 above has not been complied with, it shall forthwith terminate the suit and vacate any default judgment entered thereunder. In lieu of such termination, respondent may effect a change of forum to a county permitted by Paragraph 1; Provided, That respondent gives defendant notice of such action and opportunity to defend equivalent to that which defendant would receive if a new suit were being instituted. In all cases respondent shall provide defendants with a clear explanation of the action taken and of defendants' rights to appear, answer and defend in the new forum.

It is further ordered, That, where respondent terminates a suit or vacates a judgment pursuant to the preceding paragraph, it shall give notice to such termination or vacation to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. Section 603), which respondent has been informed or has reason to know has recorded the suit or judgment in its files. Additionally, respondent shall furnish such notice to any other person or organization upon request of the defendant.

It is further ordered, That when respondent institutes suit in any superior court in Washington State, it shall attach, to any summons served upon defendants, a notice or explanation to defendants which gives clear and adequate directions as to the proper procedure for responding to the summons without defaulting. The notice or explanation shall use clear and unconfusing language, and shall appear clearly, conspicuously, and in type at least as large as typewriter pica type. Should superior court rules or procedures change respondent shall forthwith modify the notice accordingly. The initial form of the notice, and any modifications thereof, shall be subject to approval by the Seattle Regional Office or other authorized representative of the Federal Trade Commission.

It is further ordered, That respondent prepare and maintain a summary of Washington superior court suits instituted, pending, terminated, or acted upon subsequent to judgment. This summary shall contain each defendant's 1) name, 2) address, and 3) county of residence; 4) county where the contract sued upon was signed by the defendant, if the suit was not instituted in the residence county; 5) date served; 6) date filed; 7) docket number; 8) name and location of court in which filed; 9) amount claimed; and 10) whether a default judgment has been entered. Where a suit has been instituted in a county other than where

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defendant resides or signed the contract, the reason for this choice of forum shall be explained. This summary shall cover a continuous two-year period commencing with service upon respondent of this order. A summary of suits instituted in King County Superior Court shall be prepared for the year immediately prior to this service, including only items 1-4 and 10, above. A copy of this summary shall be submitted to the Federal Trade Commission on a semiannual basis except that the summary of activity for the year preceding service of this order upon respondent shall be submitted within sixty days after service.

It is further ordered, That respondent shall forthwith deliver a copy of this order to each of its branches, subsidiaries, and operating divisions.

It is further ordered, That respondent notify the Commission at least thirty days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent herein shall within sixty days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

DILLINGHAM DEVELOPMENT COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2601. Complaint, Nov. 19, 1974 - Decision, Nov. 19, 1974

Consent order requiring a Los Angeles, Calif., developer and seller of recreational land in Calif., and Nev., among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act