IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, TENNESSEE
FOR THE NINETEENTH JUDICIAL DISTRICT AT CLARKSVILLE, TENNESSEE

STATE OF TENNESSEE, Plaintiff, v. BRITLEE, INC. d/b/a The MILITARY ZONE a/k/a MILITARYZONE.COM, AND LAPTOYZ COMPUTERS AND ELECTRONICS; STUART L. JORDAN, individually and d/b/a BRITLEE, INC. and MILLENIUM FINANCE, INC.; MILLENIUM FINANCE, INC.; and ROME FINANCE COMPANY, INC., Defendants.	)	No. 50500795 Judge Ross Hicks

STATE OF TENNESSEE'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT ROME FINANCE COMPANY, INC.

Plaintiff, State of Tennessee (hereinafter referred to as "State"), by and through Robert E. Cooper, Jr., Attorney General and Reporter, on behalf of Mary Clement, Director, Division of Consumer Affairs of the Department of Commerce and Insurance, pursuant to Tenn. R. Civ. P. Rule 56 and the 19th Judicial District L.R.P. Rule 18, hereby moves this Court to deny Rome's request for summary judgment and to grant partial summary judgment in favor of the State as to its claim that Defendant Rome Finance Company, Inc. (hereinafter referred to as "Rome") has presented, or caused to be

presented to consumers, as part of a consumer transaction within the State of Tennessee, Rome's "Credit Application and Credit Agreement[s]" that contain provisions that restrict jurisdiction or venue to a forum outside of the State of Tennessee, in violation of Tenn. Code Ann. § 47-18-113(b). All Exhibits to this Motion are submitted and can be found in the separate filing of State's Summary Judgment Exhibits, and pursuant to Tenn. R. Civ. P. Rule 10.4 are adopted by reference into this Motion. Rome's "Credit Application and Credit Agreement" is attached as Exhibit A.

The State also moves that this Court order Rome to provide the State with copies of each and every Rome "Credit Application and Credit Agreement" that has been signed by a consumer in the State of Tennessee.

The State further moves that this Court order that all personally identifying information contained in Rome's "Credit Applications and Credit Agreements" referenced above be filed with the Court under seal to protect the consumers from possible identity theft.

The State further moves that this Court order that Rome pay civil penalties to the State of not more than $1,000 for each and every violation, pursuant to Tenn. Code Ann. § 47-18-108(b)(3).

The State further moves that this Court order that each Rome "Credit Application and Credit Agreement" that has been signed by a consumer in the State of Tennessee,

after July 1, 1999, constitutes a separate violation of Tenn. Code Ann. § 47-18-113(b).

The State further moves that this Court order Rome to immediately reimburse to the State its reasonable attorneys' fees, costs and expenses associated with the investigation and prosecution of this case against Rome, as authorized by Tenn. Code Ann. § 47-18-108(b)(4).

The State further moves that this Court order that Rome be permanently enjoined from including any clause in any Rome agreement or stipulation, verbal or written, restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state with respect to any claim arising under or relating to the Tennessee Consumer Protection Act and related acts set forth in Title 47 of the Tennessee Code Annotated.

The State further moves that this Court order any and all other relief that this Court deems appropriate as authorized under state law.

In support of its motion for partial summary judgment against Rome for, and limited to its violations Tenn. Code Ann.§ 47-18-113(b), the State has filed with this motion, the "States Statment of Undisputed Facts" and the "State's Memorandum of Law and Statement of Fact Supporting its Motion for Partial Summary Judgment against Rome Finance Company, Inc., and Opposing Rome Finance Company, Inc.'s Motion for Summary Judgment," and pursuant to Tenn. R. Civ. P. Rule 10.04, hereby adopts and

incorporates those documents into this Motion by reference. As grounds for this motion, the State would show to the court that there is no dispute as to any material fact or genuine issue for trial. In addition, the State hereby shows as follows:

1. In the State's First Amended Complaint, which was filed on October 10, 2005, the State alleged, in that Rome was violating the Tennessee Consumer Protection Act of 1977 (hereinafter referred to as "TCPA"), Tenn. Code Ann. § 47-18-101, *et seq.*, and more specifically Tenn. Code Ann. §§ 47-18-113(b) and 47-18-104(a), (b)(5), (b)(12), and (b)(27). See First Amended Complaint ¶ 70.

2. On February 7, 2007 Rome's attorneys hand delivered to the State Rome's Motion for Summary Judgment.

3. By filing its Motion for Summary Judgment with this Court, Rome acknowledged the jurisdiction of this Court.

4. In its Motion for Summary Judgment, Rome admits that "[t]he forum selection clauses in the Rome Credit Agreement provides that ... 'Gwinnett County, Georgia shall be deemed to be the place of exclusive jurisdiction, venue, discovery, and controlling law for resolution of disputes.'" See Rome's Motion for Summary Judgment, ¶ 4, page 2.

5. Rome cites cases and authorities to show that Tenn. Code Ann. § 47-18-113 has been interpreted to permit enforcement of forum selection clauses in certain cases. *See* Rome's Memorandum of Law and Authorities in Support of its Motion for Summary Judgment.

6. All of the cases and authorities that Rome cites which relate to Tenn. Code Ann. § 47-18-113 were decided prior to July 1, 1999, or were based upon cases and authorities that were decided prior to July 1, 1999.

7. Tenn. Code Ann. § 47-18-113(b) did not exist prior to July 1, 1999 when it was enacted by the Tennessee Legislature. *See* Tennessee Legislature Pub. Ch. 394, H.B. No. 1470, copy attached as Exhibit B.

8. Tenn. Code Ann. § 47-18-113(b) which became effective July 1, 1999, states:

> "Any provision in any agreement or stipulation, verbal or written, restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state with respect to any claim arising under or relating to the Tennessee Consumer Protection Act and related acts set forth in this title is void as a matter of public policy. Further, no action of a consumer or other person can alter, amend, obstruct or abolish the right of the attorney general and reporter to proceed to protect the state of Tennessee and consumers or other persons within this state or from other states who are victims of illegal practices of persons located, wholly or in part, in Tennessee's borders."

9. Beginning at a point unknown to the State, Rome began requiring

consumers, in the State of Tennessee, who wanted a loan from Rome to sign its "Credit Application and Credit Agreement," which contains the "forum selection clause." *See* Exhibit A.

10. Rome's "forum selection clause" is in direct violation of the plain language of Tenn. Code Ann. § 47-18-113(b), and is therefore against public policy and unlawful.

In support of this motion, the State of Tennessee, pursuant to Tenn. R. Civ. P. Rule 10.04, relies upon and hereby adopts and incorporates by reference into this Motion its First Amended Complaint, Rome's Answer to First Amended Complaint filed in the United States District Court for the Middle District of Tennessee on November 4, 2005 attached as Exhibit C, Rome's Motion for Summary Judgment, the "State's Memorandum of Law and Statement of Fact Supporting its Motion for Partial Summary Judgment against Rome Finance Company, Inc., and Opposing Rome Finance Company, Inc.'s Motion for Summary Judgment." Pursuant to the 19th Judicial District L.R.P. Rule 18, a copy of each unreported decision from the Tennessee Court of Appeals cited by the State in its Memorandum are also attached in Exhibit D and incorporated into this Motion by reference.

The injunctive relief sought empowers the State to seek enhanced penalties for future violations of the injunctive provisions through enforcement remedies available to the State under its consumer protection laws. Because no genuine issues of material facts

exist, the State is entitled to judgment on all issues raised in this Motion, the State's Statement of Undisputed Material Facts, the State's Memorandum of Law and Statement of Fact Supporting its Motion for Partial Summary Judgment against Rome Finance Company, Inc., and Opposing Rome Finance Company, Inc.'s Motion for Summary Judgment, and State's Summary Judgment Exhibitss as a matter of law.

The State's proposed order granting summary judgment is submitted and served contemporaneously with this filing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent February 16, 2007, via United States first class mail, postage prepaid, to the following:

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