PR

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

2005 APR 21 P 2:01

ANN HARBIN, Individually and d/b/a HARBIN RESEARCH SERVICES, EMERSON ENTERPRISES, CRED-X, INC. d/b/a THE CREDIT CORPORATION OF AMERICA and STATEWIDE HEATING AND AIR CONDITIONING SERVICE,	)	
Plaintiffs,	)	
v.	)	Civil Action No.:2002-769
PITNEY BOWES INC; PITNEY BOWES CREDIT CORPORATION,	)	
Defendants.	)	

THIRD AMENDED AND RESTATED CLASS ACTION COMPLAINT

COME NOW the Plaintiffs, individually and on behalf of a class of all persons or entities throughout the United States who are similarly situated, and file this Third Amended and Restated Complaint against the Defendants, PITNEY BOWES INC ("PITNEY BOWES"), and PITNEY BOWES CREDIT CORPORATION ("PITNEY BOWES CREDIT"). Plaintiffs adopt and incorporate all allegations of the original complaint and each subsequent Amended and Restated Complaint. In support thereof, the Plaintiffs state the following:

NATURE OF THE CASE

1. Through a fraudulent, unlawful and unfair course of conduct, Defendants have, over the course of years, charged unnecessary ValueMax fees to Plaintiffs and Defendants' other customers which are a fraud, unnecessary, mischaracterized, unconscionable, and not collectable.

2. Plaintiffs leased equipment from Defendants. Plaintiffs entered into lease agreements

with Defendants pursuant to which Defendants provided postage metering equipment to Plaintiffs. On the back of the lease, in pale, small print is a provision which states that if Defendants request Plaintiffs to provide proof of insurance covering damage to the leased equipment and Plaintiffs fail to provide such proof upon request, then Defendants will include Plaintiffs in their risk management program. Defendants never requested Plaintiffs to provide proof of insurance as provided in the lease agreement; nevertheless, Defendants "force-placed" insurance onto Plaintiffs' account without adequate notice, and placed a charge on Plaintiffs' invoices under the misleading label of "ValueMAX." Furthermore, Plaintiffs were not placed in a "risk management" program, but were placed in the "ValueMax" program, which is a profit center for Defendants, and ValueMax in no way remotely resembles a "risk management" program.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action. All Defendants do business in the State of Alabama and have received and continue to receive substantial revenue and profits from the ValueMax charges in the State of Alabama and all other states. All Defendants transact business in Montgomery County, Alabama and have received and continue to receive substantial revenue and profits from the ValueMax charges in Montgomery County, Alabama and have further made material omissions and misrepresentations in Montgomery County, Alabama.

4. Venue in this case is proper in Montgomery County, Alabama, in that a substantial portion of the conduct of the Defendants which forms the basis of this action occurred in Montgomery County, Alabama, and some of Plaintiffs reside and/or have their principal place of business in Montgomery County, Alabama.

PARTIES

5. Plaintiffs Ann Harbin d/b/a Harbin Research Services and Emerson Enterprises are resident citizens of Montgomery County, Alabama. Plaintiffs Cred-X, Inc. d/b/a The Credit Corporation of America and Statewide Heating and Air Conditioning Service are resident citizens of Kanawha County, West Virginia.

6. Defendant PITNEY BOWES INC. is a Delaware corporation which is qualified to do business and is doing business in the State of Alabama and which has its principal place of business at One Elmcroft Road World Headquarters, Stamford, Connecticut 06926-0700. Pitney Bowes' appointed agent for service of process in Alabama is The Corporation Company, 2000 Interstate Park Drive, Ste. 204, Montgomery, Alabama 36109.

7. Defendant PITNEY BOWES CREDIT CORPORATION is a Delaware corporation which is qualified to do business and is doing business in the State of Alabama and which has its principal place of business at 27 Waterview Drive, Shelton, Connecticut 06484. Pitney Bowes' appointed agent for service of process in Alabama is The Corporation Company, 2000 Interstate Park Drive, Ste. 204, Montgomery, Alabama 36109.

8. The Defendants acted in concert by marketing and collecting money from the "ValueMAX" program through the coordinated inter-corporate relationship. Each Defendant was and is an active participant in the misleading, unlawful, fraudulent, and unconscionable practices described herein.

9. At all relevant times, each Defendant was an agent, representative and/or employer of each other Defendant. In committing the acts alleged herein, the Defendants acted within the scope of their agency and/or employment and were acting with the consent, permission, authorization

and knowledge of all other Defendants and perpetrated and/or conspired with and/or aided and abetted the unlawful and fraudulent acts described herein.

10. Plaintiffs bring this action as a nationwide class action pursuant to Rule 23(b)(3) of the Alabama Rules of Civil Procedure. This class is more specifically defined as follows: all persons and entities who paid a ValueMax fee to Pitney Bowes Credit Corporation between January 1, 1999 and December 31, 2004; but excluding (1) customers who are currently in bankruptcy; (2) customers whose obligations to Pitney Bowes have been modified or discharged in bankruptcy; (3) customers for whom Pitney Bowes has repaired or replaced their equipment through ValueMax; and (4) any person who, in accordance with any court approved notice, properly executes and submits a timely request for exclusion from the class.

FACTUAL ALLEGATIONS

11. Plaintiffs leased equipment from Defendants. Defendants have engaged in the unfair, unlawful, fraudulent, wrongful and deceptive practice of adding and/or force-placing "ValueMax" charges on Plaintiffs' and class members' accounts. While Defendants characterize the "ValueMax" charge as a "risk management program," no such risk management program exists, and the "ValueMax" charge and program do not remotely resemble a "risk management program". Moreover, Plaintiffs assert that "ValueMax" is liability insurance.

12. The Risk of Loss provision contained in each of Defendants' Lease Terms and Conditions either states the following or contains similar language:

> **Loss or Damage** - You are responsible for Equipment loss, damage or destruction from any cause, whether or not insured, from the time the Equipment is shipped by Vendor to you until it is returned to us. **You shall, at your expense, provide and maintain protection against loss, damage or destruction to the Equipment, for its full replacement value, naming us as the loss payee. Such protection and**

> **coverage (and written evidence thereof delivered to us *at our request*) must be satisfactory to us, and may be provided under your own insurance policy.** If you fail to provide such evidence, we will have the right, but no obligation, to include the Equipment under our own risk management program for the loss, damage or destruction to the Equipment for its full replacement value, and to charge our then applicable periodic fee. That fee will be reflected on our invoice to you and will be in addition to your Total Quarterly Payments. If we have included the Equipment under our program as described above and you have paid the applicable fee, and any loss, damage or destruction to the Equipment occurs that does not result from your gross negligence or willful misconduct, we shall, at our option (provided your are not in default under this Lease, including the payment of any such fees invoiced by us), either repair or replace the Equipment and your Lease obligations will remain unchanged. The arrangements contemplated by this Section do not constitute insurance. Title to the Equipment, whether repaired or replaced, will at all times remain with us. No loss, of, or damage to, the Equipment shall relieve you of any of your obligations under this Lease.

(Emphasis added).

Despite Defendants' statement that customers will be enrolled in a "risk management program," such statement is false and misleading, because no "risk management program" exists at Pitney Bowes and the "ValueMax" charge and program do not remotely resemble a "risk management program". In fact, Defendants have never undertaken to quantify any risk associated with Plaintiffs' leased equipment, nor do Defendants take into account the risk to the equipment when setting the "ValueMax" charge. Furthermore, despite Defendants' statement that Plaintiffs must only produce proof of insurance pursuant to Defendants' request, Defendants never requested proof of insurance from Plaintiffs and unilaterally imposed the "ValueMax" insurance charge on Plaintiffs' account. Finally, none of Defendants are licensed to sell insurance anywhere in the United States.

13. As a result of Defendants' conduct, Defendants have concealed and suppressed from Plaintiffs the true fact that no "risk management program" exists and that Defendants are adding and/or force-placing property and casualty insurance on Plaintiffs' and Defendants' customers'

accounts irrespective of any general property and casualty insurance policy that Plaintiffs or any of Defendants' customers may possess.

14. The entire scheme and artifice regarding "ValueMax" was engineered and practiced by Defendants so as to charge to Plaintiffs a fee separate from the charges for Plaintiffs' leased postage metering equipment. The "ValueMax" charge represents no actual corresponding "risk" expense to the Defendants and thereby increased the profits made by the Defendants. Furthermore, the "ValueMax" charge is insurance, despite the fact that the loss ratios for such insurance are extremely low. Additionally, many of Defendants' customers possess a general property and casualty insurance policy that would cover the loss of the leased equipment.

Therefore, Defendants' customers were not enrolled in a "risk management program" and clearly paid for unnecessary force-placed insurance and/or purchased insurance without receiving the benefit of the insurance. It is apparent that Defendants considered "ValueMax" to be a profit enhancer.

15. Defendants' policy and practice of charging customers for "ValueMax" has dramatically increased the profits of the Defendants throughout the entire United States. Defendants have defrauded countless customers based upon its practice of force-placing insurance denominated as "ValueMax" on customer's accounts.

16. Plaintiffs have been damaged in that Plaintiffs have been required to pay such a "ValueMax" fee or charge.

17. Defendants and their wholly owned and affiliated entities, under common management and control, acted in concert with one another to impose the "ValueMax" charges asserted herein. The conduct of Defendants as described above and the common ownership and

control of the various Defendants' affiliates establishes a common nexus between them. Defendants and its affiliated entities are linked in a manner that allows them to jointly introduce a product into the stream of commerce.

PLAINTIFFS, INDIVIDUALLY AND ON BEHALF OF THE PUTATIVE CLASS, MAKE NO CLAIMS PURSUANT TO FEDERAL LAW AND FURTHER MAKE NO CLAIMS WHICH WOULD GIVE RISE TO ANY FEDERAL CAUSE OF ACTION. PLAINTIFFS' CLAIMS ARE BASED SOLELY UPON APPLICABLE STATE LAW. ADDITIONALLY, PLAINTIFFS ON BEHALF OF THEMSELVES AND PUTATIVE CLASS MEMBERS, DO NOT MAKE ANY CLAIM FOR RELIEF, INCLUDING BOTH EQUITABLE RELIEF AND MONETARY DAMAGES, IN EXCESS OF $74,500.00 IN THE AGGREGATE FOR EACH PLAINTIFF OR CLASS MEMBER. UNDER NO CIRCUMSTANCES WOULD THE TOTAL AMOUNT OF RELIEF, INCLUDING BOTH EQUITABLE RELIEF AND MONETARY DAMAGES, EXCEED $74,500.00 IN THE AGGREGATE FOR EACH PLAINTIFF OR CLASS MEMBER. EVEN IF PLAINTIFFS AND CLASS MEMBERS RECOVERED UNDER EACH COUNT OF THE THIRD AMENDED AND RESTATED COMPLAINT, THE TOTAL RECOVERY FOR PLAINTIFFS AND PUTATIVE CLASS MEMBERS WOULD NOT EXCEED $74,500 IN THE AGGREGATE FOR EACH PLAINTIFF OR CLASS MEMBER.

FIRST CAUSE OF ACTION

MISREPRESENTATION

18. Plaintiffs adopt, re-allege and incorporate herein each and every allegation in Paragraphs 1 through 17, as though fully set forth herein.

19. At all times material hereto, the Defendants were under a duty to not misrepresent the true nature of the "ValueMax" charge. Defendants intentionally, recklessly or negligently misrepresented that "ValueMax" was a legitimate charge, when in fact, it is a profit enhancer to Defendants, constitutes insurance under state law, and is not a "risk management program". Defendants presented its "ValueMax" charges to customers as alleged in Paragraphs 11 through 19 hereinabove.

20. The Defendants intentionally misled their customers as to the true nature and purpose

of their "ValueMax" charges for the purpose of persuading customers to pay such charges without question or negotiation. Defendants further misrepresented to their customers that "ValueMax" was not insurance and that ValueMax is a "risk management program". At the time Defendants made these representations to Plaintiffs, Defendants knew that these representations were false.

21. Specifically, Defendants misrepresented to and/or suppressed from Plaintiffs the following information:

a. By deceptively placing "ValueMax" charges on Plaintiffs' and other customers' invoices so that these charges would be paid without their conscious permission, Defendants have engaged in unfair and fraudulent business practices;

b. By concealing and suppressing from Plaintiffs and other customers the true nature of the "ValueMax" charge, that the "ValueMax" charge is not necessary or may be obtained from other sources at a lesser rate;

c. By charging the "ValueMax" fees without having been qualified by any State Department of Insurance, Defendants have violated various State insurance rules and regulations and have engaged in unlawful business practices;

d. By engaging in a pattern and practice of untruthful statements, false representation, concealment, and intent to mislead in advertisements and in other public descriptions of "ValueMax", all of which have been part of a scheme to mislead Plaintiffs and other customers into paying unnecessary "ValueMax" charges, Defendants have engaged in unfair, deceptive, untrue or misleading advertising;

e. By charging grossly excessive, above-market fees for "ValueMax", and by concealing from Plaintiffs and others that adequate insurance may already be in place or may be obtained from

r. By failing to disclose that "ValueMax" is not a risk management program;

s. By misrepresenting that "ValueMax" is a risk management program;

t. By failing to disclose that Defendants do not possess a risk management program.

22. By intentionally, recklessly or negligently misrepresenting the nature of its "ValueMax" charges and concealing material information concerning such charges, the Defendants have taken advantage of Plaintiffs, who based upon such misrepresentations, were misled into paying such charges.

23. Defendants' misrepresentations have damaged Plaintiffs for which the Plaintiffs seek restitution of all "ValueMax" charges paid as a result of such misrepresentation.

WHEREFORE PREMISES CONSIDERED, Plaintiffs seek to recover compensatory and punitive damages and are entitled to damages in an amount which do not exceed $74,500.00 in the aggregate for each Plaintiff or class member.

SECOND CAUSE OF ACTION

SUPPRESSION

24. Plaintiffs adopt, re-allege and incorporate herein each and every allegation in Paragraphs 1 through 23, as though fully set forth herein.

25. Defendants suppressed or concealed from their customers the true nature of its "ValueMax" charges as set out in paragraphs 11-23 hereinabove, with the result that customers paid such charges without question or negotiation. At the time Defendants suppressed this information from Plaintiffs, Defendants knew or should have known that they were under a duty to communicate the true nature of its "ValueMax" charges.

26. By suppressing the nature of its "ValueMax" charges and not disclosing material

WHEREFORE PREMISES CONSIDERED, Plaintiffs seek to recover compensatory damages and are entitled to damages in an amount which do not exceed $74,500.00 in the aggregate for each Plaintiff or class member.

FOURTH CAUSE OF ACTION

CONSPIRACY

31. Plaintiffs adopt, re-allege and incorporate herein each and every allegation in Paragraphs 1 through 30, as though fully set forth herein.

32. Defendants conspired and combined among themselves and unnamed third parties to do the acts complained herein. Plaintiffs have been charged and paid ValueMax fees to Defendants and its affiliated entities, for which Plaintiffs have been damaged.

WHEREFORE PREMISES CONSIDERED, Plaintiffs seek to recover and are entitled to compensatory and punitive damages in an amount which does not exceed $74,500.00 in the aggregate for each Plaintiff or class member.

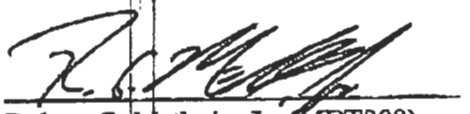
FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF

33. Plaintiffs adopt, re-allege and incorporate herein each and every allegation in Paragraphs 1 through 32, as though fully set forth herein.

34. Plaintiffs respectfully request that this Honorable Court enjoin Defendants from adding the ValueMax charge and/or any other similar charge to Plaintiffs' invoices due to the wrongful and illegal conduct set forth herein as well as the fact that none of Defendants are licensed to sell insurance anywhere in the United States.

PLAINTIFFS DEMAND A TRIAL BY STRUCK JURY



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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on all counsel of record by placing a copy of same in the United States mail, first class, postage prepaid, and properly addressed on this the 19th day of January, 2005:

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