

CONSUMER SERVICE ALLIANCE	§	IN THE DISTRICT COURT
OF TEXAS, INC.,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
CITY OF AUSTIN, TEXAS,	§	
<i>Defendant.</i>	§	250th JUDICIAL DISTRICT

PETITION IN INTERVENTION

Intervenor TitleMax of Texas, Inc. (*TitleMax*) respectfully files this Petition in Intervention. By this filing, TitleMax appears in this case as plaintiff, seeking declaratory and injunctive relief to prevent the defendant, the City of Austin, Texas (the *City*) from enforcing a new ordinance that is preempted by state law and amounts to a virtual prohibition against TitleMax’s current business operations in the City of Austin. In support, TitleMax respectfully shows as follows:

INTERVENTION

1. Plaintiff Consumer Service Alliance of Texas, Inc. (*CSAT*) filed this lawsuit on October 12, 2011. CSAT is a Texas non-profit corporation. CSAT is a trade association comprised of businesses that provide credit access services to consumers in Texas. CSAT advocates for the protection of financial choice based on informed decision-making and personal responsibility for Texas consumers. CSAT represents the interests of its members, which includes multiple credit access businesses that conduct business in Austin, Texas. TitleMax is a member of CSAT.

2. Intervenor TitleMax of Texas, Inc. is a Delaware corporation with its principal place of business in Savannah, Georgia. TitleMax is duly registered to conduct

business in Texas, and operates multiple stores located in Austin. TitleMax is a leading retailer of financial services, providing access to credit for its customers in the form of auto title loans.

3. Defendant, the City of Austin, is an incorporated city in Travis County, Texas. The City has answered CSAT's first amended petition and has appeared in this case.

4. CSAT's petition seeks declaratory and injunctive relief in order to prevent the City from enforcing the amendment to the Austin City Code, Chapter 4-12, Ordinance No. 20110818-075 (the **Ordinance**), which purports to regulate credit access businesses (**CABs**) that operate in the City. *See* Austin City Code Chapter 4-12. TitleMax now joins CSAT as an additional plaintiff in this case, also seeking to enjoin the enforcement of the Ordinance, and to obtain declaratory relief that the Ordinance is invalid. *See* Tex. R. Civ. P. 60 ("Any party may intervene by filing a pleading, subject to being stricken by the court for sufficient cause on the motion of any party.").

5. TitleMax has a justiciable interest in this controversy because it is a CAB whose business will be harmed by the Ordinance if it is allowed to go into effect. In fact, the Ordinance serves to virtually prohibit TitleMax's current business in the City. Because TitleMax challenges the validity of the very same Ordinance that CSAT is already challenging, its claims also arise from the same transaction or occurrence, and involve common questions of law or fact with CSAT's claims — namely, the validity (or invalidity) of the Austin Ordinance.

6. Venue over this case remains proper in Travis County under section 15.002(a) of the Texas Civil Practice & Remedies Code.

FACTS

7. On June 17, 2011, Governor Rick Perry signed House Bills 2592 and 2594, both of which amended Chapter 393 of the Finance Code (*CSO Act*). Those amendments included the creation of a new Subchapter G, which provides for the licensing and regulation of CABs. *See* Tex. Fin. Code § 393.601 *et seq.* (as amended). The effective date of the amendments to the CSO Act is January 1, 2012.

8. TitleMax is considered a CAB under the amended CSO Act. CABs are credit services organizations that assist consumers in obtaining extensions of consumer credit from third-party lenders. The amendments to the CSO Act require CABs to be licensed by the State of Texas and to conduct their business under the applicable provisions of the Texas Finance Code. As amended, the Finance Code and the CSO Act comprehensively regulate the field of business in which CABs operate.

9. The amendments to the CSO Act broadly authorize CABs to assess fees for their services on the terms agreed upon between the CABs and their customers:

A credit access business may assess fees for its services as agreed to between the parties. A credit access business fee may be calculated daily, bi-weekly, monthly or on another periodic basis.

See Tex. Fin. Code § 393.602(b) (as amended).

10. As the City Council admitted, the Texas Legislature refused to adopt other restrictions on the business of CABs. As further admitted by the City Council, some of those same restrictions – rejected by the Texas Legislature – comprise part of the Ordinance.

11. On August 18, 2008, the City passed the Ordinance. Like the amendments to the Texas CSO Law, the Ordinance also concerns the “Registration of Credit Access

Business” and “Miscellaneous Requirements for Credit Access Businesses.” Not only does the Ordinance regulate the same field of business regulated by the Texas CSO Law, the Ordinance also conflicts with the Texas CSO Law.

12. For example, there is a conflict between the penalty provisions of the Texas CSO Law versus the Ordinance. Pursuant to the Texas CSO Law, a company may be assessed an administrative penalty if it “knowingly and willfully violates or causes a violation of Chapter 393, or a rule adopted under Chapter 393.” Tex. Fin. Code § 14.251 (a-1) (as amended). However, pursuant to the Ordinance, a company “who violates [the ordinance] commits a Class C misdemeanor punishable by a fine not to exceed \$500.” And “each day that a violation occurs is a separate offense.” Austin City Code § 4-12-23. There is also a conflict between the required mental state for a violation of the Texas CSO Law versus the Ordinance. To be subject to a possible administrative penalty under the Texas CSO Law, a company must act both “knowingly and willfully.” On the other hand, the Ordinance expressly states that “[a] culpable mental state is not required for a violation of this chapter and need not be proved.”

13. Another example of the conflict is the fact that the Texas CSO Law broadly authorizes CABs to assess fees for their services on the terms agreed upon between the CABs and their customers:

A credit access business may assess fees for its services as agreed to between the parties. A credit access business fee may be calculated daily, biweekly, monthly, or on another periodic basis. A credit access business is permitted to charge amounts allowed by other laws, as applicable. A fee may not be charged unless it is disclosed.

See Tex. Fin. Code § 393.602(b) (as amended). However, the Ordinance conflicts with the Texas CSO Law because the Ordinance restricts the terms of the cash advance and the

repayment terms of the cash advance.

14. The Ordinance also conflicts with the Texas CSO Law with respect to the reporting requirements imposed on the CABs. The Texas CSO Law regulates the reporting requirements of the CABs. The Ordinance attempts to cover this same field. However, in doing so, the Ordinance conflicts with the Texas CSO Law. For example, the Texas CSO Law includes a provision whereby the information reported by the CABs must be kept confidential. *See* Tex. Fin. Code § 14.2015 (as amended). However, one of the conflicts in this area is the fact that the ordinance has no such confidentiality requirement.

15. Additionally, the Ordinance is preempted because it attempts to license and regulate the same activity that is the subject of the Texas CSO Law and other Texas statutes. The Ordinance imposes a penalty of up to \$500 per day for any violation. If the Ordinance is enforced, it will no longer be economically viable for many CABs to continue their current business in the City. It is TitleMax's expectation that enforcement of the Ordinance would create a virtual prohibition on TitleMax's current business, even though the Texas CSO Law expressly permits this exact type of activity.

CAUSES OF ACTION

COUNT ONE:

Cause of Action Number One: Declaratory Judgment

16. TitleMax incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

17. There is a real and substantial justiciable controversy between TitleMax and the City concerning its rights and obligations and the enforceability of the Ordinance.

18. TitleMax seeks a declaratory judgment pursuant to the Uniform Declaratory Judgments Act regarding the rights and obligations of the parties, including the following

declarations:

- a. That the Ordinance is preempted and unenforceable, in its entirety, because it conflicts with the Texas CSO Law and other Texas statutes that regulate the same activity;
- b.. That the Ordinance's Credit Restrictions are preempted and unenforceable because they conflict with the Texas CSO Law and other Texas statutes, that regulate the same activity; and
- c. That the Ordinance is preempted and unenforceable, in its entirety, because it amounts to a virtual prohibition against TitleMax conducting its current business in the City.

19. TitleMax seeks recovery of its attorney's fees pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code and Rule 131 of the Texas Rules of Civil Procedure.

COUNT TWO:

Cause of Action Number Two: Application for Injunctive Relief

20. TitleMax incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

21. TitleMax requests the Court to enter a temporary injunction and thereafter, a permanent injunction prohibiting the City from enforcing the Ordinance.

22. It is probable that TitleMax will prevail on the merits. The Ordinance is unenforceable for the reasons identified herein.

23. If TitleMax's application is not granted, TitleMax will suffer imminent harm because of the damage to its business. For example, if the Ordinance is enforced, it will restrict TitleMax's ability to provide services to its customers with respect to the extension of consumer credit in a manner expressly permitted by the Texas CSO Law. Enforcement of the ordinance will make TitleMax's service, which is expressly permitted under Texas CSO Law, so unprofitable that it will ultimately prohibit TitleMax from engaging in its current business in the City. This harm is irreparable and there is no adequate remedy at law because damages will be

difficult to calculate due to the nature of the damage to TitleMax's business.

24. Any harm associated with the entry of a temporary injunction is outweighed by any potential damage to TitleMax and its customers.

25. TitleMax is willing to post a bond.

REQUEST FOR ATTORNEY FEES

26. TitleMax incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

27. TitleMax is entitled to recover its reasonable attorney's fees as permitted by law, including reasonable fees for the cost of successfully making or responding to an appeal to the court of appeals and the Texas Supreme Court pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code. TitleMax is also entitled to its reasonable attorney's fees pursuant to Section 551.142 of the Texas Government Code and Rule 131 of the Texas Rules of Civil Procedure.

JURY DEMAND

28. TitleMax respectfully requests a trial by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff TitleMax respectfully requests the following relief:

- (1) that this matter be set down for trial by jury;
- (2) that, upon trial/hearing, the Court enter a judgment pursuant to the Uniform Declaratory Judgment Act declaring that the Ordinance is unenforceable because it is preempted and an unconstitutional prohibition on TitleMax's business in the City;

(3) that, upon trial/hearing, the Court enter a temporary injunction and, thereafter, a permanent injunction prohibiting the City from enforcing the Ordinance;

(4) that, upon trial/hearing, the Court award TitleMax its reasonable attorney's fees as permitted by law, including reasonable fees for the cost of successfully making or responding to an appeal to the court of appeals and the Texas Supreme Court;

(5) that, upon trial/hearing, the Court award TitleMax its costs of court; and

(6) for all such other relief, at equity or otherwise, to which TitleMax may show itself entitled.

Dated: April 30, 2012

Respectfully submitted,

/s/ Jennifer B. Poppe

Jennifer B. Poppe
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**Attorneys for Intervenor,
TitleMax of Texas, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2012, a true and correct copy of the foregoing document was served upon all counsel of record via email, as follows:

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Attorneys for Defendant

/s/ Jennifer B. Poppe_____

Jennifer B. Poppe

VERIFICATION

STATE OF TEXAS

§

COUNTY OF TRAVIS

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BEFORE ME, the undersigned authority, on this day personally appeared Don Thomas, who is known to me to be of lawful age. Being first duly sworn by me, upon his oath stated as follows:

My name is Don Thomas. I am Chief Financial Officer for TitleMax of Texas, Inc. I am over twenty-one (21) years of age and am fully competent and duly authorized to make this affidavit on behalf of TitleMax. I have read the *Petition in Intervention* of TitleMax. All of the factual statements contained therein are within my personal knowledge and are true and correct.

Further affiant sayeth not.



Don Thomas, Chief Financial Officer

SWORN TO and SUBSCRIBED BEFORE ME on the 30th day of April, 2012 to certify which witness my hand and seal of office.



Notary Public in and for the State of Georgia

My Commission Expires:

