

IN THE COURT OF COMMON PLEAS

RICHLAND COUNTY, OHIO

2016 MAY 31 AM 10:37

LINDA H. FRARY
CLERK OF COURTS

STATE OF OHIO ex rel.)
OHIO ATTORNEY GENERAL)
MICHAEL DEWINE)
30 E. Broad Street, 14th Floor)
Columbus, Ohio 43215)

CASE NO.

16 CV 553

JUDGE:

Plaintiff,

v.

JAMES McCLANAHAN, individually)
and dba JM CONSTRUCTION)
HOME IMPROVEMENT)
2282 Lake Galion Rd. E.)
Galion, Ohio 44833)

**COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, CIVIL
PENALTIES, AND OTHER
APPROPRIATE RELIEF**

Defendant.

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through Attorney General Michael DeWine, having reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq.
2. The actions of Defendant James McClanahan dba JM Construction Home Improvement, hereinafter described, have occurred in Richland County and other counties in the State of Ohio, and as set forth below are in violation of the Consumer Sales Practices Act, R.C. 1345.01 et seq. ("CSPA") and its Substantive Rules.
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to the CSPA, R.C. 1345.04.

4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) in that some of the transactions complained of herein, and out of which this action arose, occurred in Richland County, Ohio.

STATEMENT OF FACTS

5. Defendant James McClanahan is a natural person residing at 2282 Lake Galion Rd. East, Galion, Ohio 44833.
6. At all times relevant to this action, Defendant James McClanahan ("Defendant") directed and controlled all business activities of JM Construction Home Improvement ("JM Construction"), a business located at 2282 Lake Galion Rd. East, Galion, Ohio 44833.
7. Defendant's business, JM Construction, is not registered with the Ohio Secretary of State.
8. Defendant is a "supplier" as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting "consumer transactions" by soliciting consumers either directly or indirectly for home remodeling, repair, and construction for a fee, within the meaning of R.C. 1345.01(A).
9. Defendant accepted payment from consumers for the purchase of home improvement goods and services, and failed to deliver those goods and services within eight weeks.
10. On at least one occasion, Defendant began to provide contracted services after receiving initial payment from the consumer, but failed to complete the work.
11. On at least one occasion, Defendant performed shoddy and substandard home repair work, and then failed to correct such work.
12. After accepting consumers' payments and failing to deliver the services, Defendant failed to refund consumers' payments or deposits.

PLAINTIFF'S CAUSE OF ACTION:

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT ONE
FAILURE TO DELIVER

13. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twelve (1-12) of this Complaint.
14. Defendant has committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A) and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods and services, and then permitting eight-weeks to elapse without making shipment or delivery of the goods or services ordered, making a full refund, advising the consumer of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing goods or services of equal or greater value as a good faith substitute.

COUNT TWO
SHODDY, INCOMPLETE, OR SUBSTANDARD WORK

15. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twelve (1-12) of this Complaint.
16. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by performing home improvement services in an incomplete, shoddy, or substandard matter, and then failing to correct or complete such work.
17. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT THREE
FAILURE TO REGISTER OR REPORT FICTITIOUS BUSINESS NAMES

18. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twelve (1-12) of this Complaint.
19. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to register or report his use of a fictitious business name to the Ohio Secretary of State as required by R.C. 1329.
20. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. ISSUE A DECLARATORY JUDGMENT declaring that the acts or practices described herein violate the CSPA and its Substantive Rules in the manner set forth in this Complaint.
- B. ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to R.C. 1345.07, enjoining Defendant under his own name or any other name, and all persons acting on behalf of Defendant directly or indirectly, through any corporate or private device, partnership or association, jointly and severally, from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq.
- C. ISSUE AN INJUNCTION prohibiting Defendant from acting as a “supplier” as that term is defined in R.C. 1345.01(C) by engaging in any consumer transactions in the State of

Ohio until Defendant has satisfied all monetary obligations I ordered pursuant to this litigation.

- D. ORDER Defendant, pursuant to R.C. 1345.07(B), to pay restitution to all consumers damaged by Defendant's unlawful acts or practices.
- E. ASSESS, FINE AND IMPOSE upon Defendant a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein, pursuant to R.C. 1345.07(D).
- F. GRANT the Ohio Attorney General his costs in bringing this action.
- G. ORDER Defendant to pay all court costs.
- H. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General



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