

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO, ex rel.)	CASE NO. CV-2015-05-2806
MICHAEL DEWINE)	
Ohio Attorney General)	JUDGE THOMAS PARKER
Cleveland Regional Office)	
615 W. Superior Avenue, 11 th Floor)	
Cleveland, Ohio 44113-1899)	
)	
Plaintiff,)	
)	
-vs-)	<u>PLAINTIFF'S FIRST AMENDED</u>
)	<u>COMPLAINT AND REQUEST FOR</u>
)	<u>INJUNCTION AND DECLARATORY</u>
MAC CONTRACTING, INC.)	<u>RELIEF, CONSUMER RESTITUTION</u>
8261 Diagonal Road)	<u>AND CIVIL PENALTIES</u>
Streetsboro, OH 44241)	
)	
and)	
)	
BRETT MCCLAFFERTY)	
8261 Diagonal Road)	
Streetsboro, OH 44241)	
)	
Defendants)	

Now comes Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Michael DeWine, and hereby amends its Complaint as a matter of course pursuant to Rule 15(A) of the Ohio Rules of Civil Procedure.

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, 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 ("CSPA"), R.C. 1345.01 et seq.

2. The actions of Defendants, MAC Contracting, Inc. ("Defendant MAC") and Brett McClafferty ("Defendant McClafferty") (referred to collectively as "Defendants"), hereinafter described, have occurred in the State of Ohio, and in Summit County as well as other counties around the State of Ohio as set forth below, and are in violation of the Ohio CSPA, R.C. 1345.01 et seq., its Substantive Rules O.A.C. 109:4-3-01 et seq.

3. This Court has jurisdiction over the subject matter of this action pursuant to R.C. 1345.05 of the CSPA.

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 arises, occurred within Summit County, Ohio.

DEFENDANTS

5. Defendant Brett McClafferty is a natural person whose last known address is 8261 Diagonal Road, Streetsboro, OH 44241.

6. Defendant Mac Contracting, Inc. is an Ohio corporation, registered with the Secretary of State, with its principal place of business located at 8261 Diagonal Road, Streetsboro, OH 44241.

7. Defendant Brett McClafferty is the Director, Sole Organizer and Statutory Agent of Mac Contracting, Inc., and directed, supervised, approved, controlled, formulated, authorized, ratified, caused, personally participated in, benefitted from and/or otherwise participated in the

day to day activities and practices of the business entity herein described as Defendant Mac Contracting, Inc.

8. Defendants are “suppliers” as that term is defined in R.C. 1345.01(C) as Defendants at all times relevant herein, engaged in the business of effecting “consumer transactions” which were primarily personal, family or household, by soliciting services and performing the services of roofing and repair work for “individuals” from Summit County and other counties within the State of Ohio, within the meaning specified in R.C. 1345.01(A) and 1345.01(D).

STATEMENT OF FACTS

9. At all times relevant to this action, Defendants solicited consumers for roof repair and related home improvement services in Summit County, Ohio as well as other counties within the State of Ohio.

10. Defendants primarily solicited and sold home improvement goods and services at the residences of buyers.

11. Defendants advertised their business which included signage which claimed they were “BBB Accredited,” when indeed Mac Contracting, Inc. has never had such accreditation.

12. Defendants solicited home improvement services from Ohio consumers, including consumers residing within the City of Macedonia, without registering as a contractor, as Macedonia requires.

13. Defendants have accepted payments for roof repair, have failed to provide those ordered repairs, and have failed to provide refunds to all consumers.

14. Defendants received many of these payments through insurance claims filed on behalf of the consumers, taking these claim checks as payment for the purpose of roofing repair.

Defendants then failed to complete the project and failed to refund the payments to the consumers.

15. Defendants executed contracts with consumers for roofing projects, and permitted more than eight weeks to elapse without providing the services contracted for, 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 similar goods or services of equal or greater value as a good faith substitute.

16. Numerous complaints about Defendants have been registered with the Ohio Attorney General's Office and the Better Business Bureau of Greater Cleveland. Several examples of complaints filed with the Ohio Attorney General's Office are included in paragraphs 16-17 below, by way of illustration, only. By listing these examples Plaintiff is in no way limiting his request for relief in this complaint to only these named consumers.

17. Consumer Tom Lonczak contracted with Mac Contracting Inc. on or about October 8, 2013 for roof replacement, giving Mac Contracting Inc. a check for the project in the amount of Five Thousand Twelve Dollars and twenty-five cents (\$5,012.25). Defendants permitted eight weeks to elapse without providing the services contracted for, 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 similar goods or services of equal or greater value as a good faith substitute as required by the CSPA, R.C. 1345.02.

18. On or about October 25, 2013, Consumer George Nelson was approached by a representative of Mac Contracting, Inc. at his home who performed (with consumer's permission) an inspection of Nelson's roof and reported finding storm damage. Nelson made a damage claim with his insurance company, and the insurance company prepared a check for

Three Thousand Seven Hundred Eighty-eight Dollars and twenty-seven cents (\$3,788.27) on the claim, which Nelson and his wife endorsed and delivered to the Mac representative. Defendants permitted eight weeks to elapse without providing the services contracted for, 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 similar goods or services of equal or greater value as a good faith substitute as required by the CSPA, R.C. 1345.02.

19. On or about March 22, 2014, Consumer Rick Bergman signed an Initial Scope of Damage & Contingency Agreement with Defendant Mac Contracting, Inc. for a roof repair project. Thereafter, Consumer Bergman made a claim to his insurance company, Pekin Insurance, for the damage and repair, and received an insurance check from Pekin in the amount of Five Thousand Two Hundred Forty-three dollars and eight cents (\$5,243.08), which the consumer promptly endorsed and delivered to Defendant Mac Contracting, Inc. The date of that check was June 18, 2014, and the Contract with Defendant Mac Contracting, Inc. was executed June 19, 2014. Thereafter, Defendants permitted eight weeks to elapse without providing the services contracted for, 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 similar goods or services of equal or greater value as a good faith substitute as required by the CSPA, R.C. 1345.02.

20. Defendants' failure to perform contracted home improvement services in a proper manner has resulted in harm to consumers who have had to wait an exceptionally long time for the project work to be completed or for their payments to be refunded.

COUNT ONE
FAILURE TO DELIVER

21. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty (1-20) of this Complaint.

22. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-09, by selling roof repair services to consumers, receiving insurance payments for these services, and then failing to deliver the contracted services or to refund the insurance payments to consumers within eight weeks.

COUNT TWO
FAILURE TO GAIN PERMITS OR LICENSES

23. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-two (1-22) of this Complaint.

24. Defendants failed to register as contractors with the City of Macedonia, despite having contracted with a consumer residing within the Macedonia city limits.

25. Defendants have accepted money on multiple projects in 2013 and did so without having duly registered with the City of Macedonia as required before the work contracted for could be performed, in violation of the Ohio CSPA, R.C. 1345.02(A). Defendants' violations of law in this regard occurred after State ex rel. Brown v. Martz, Tri-County Landscaping was placed in the Attorney General's Consumer Protection Public Inspection File, pursuant to R.C. 1345.05(A)(3).

COUNT THREE**CLAIMING ACCREDITATION THE BUSINESS DOES NOT HAVE**

26. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-five (1-25) of this Complaint.

27. Defendants have advertised their business by way of signage which indicates that Mac Contracting, Inc. is a “BBB Accredited Business” when in fact Mac Contracting, Inc. has never been accredited by the Better Business Bureau. Claiming sponsorship, approval or affiliation that the supplier does not have is an unfair act or practice pursuant to R.C. 1345.02(B)(9).

28. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FOUR**SOLICITING NEW CONSUMER TRANSACTIONS AFTER FAILING TO PAY
JUDGMENTS ARISING FROM CONSUMER TRANSACTIONS**

29. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-eight (1-28) of this Complaint.

30. Defendant is involved with numerous lawsuits in various courts around Northeast Ohio, some of which are based upon consumer transactions. On November 4, 2014 the Stow Municipal Court rendered judgment against Defendants Brett M. McClafferty and Mac Contracting Inc. in Case Number 2014 CVI 216, styled *Lynn Wang v. Brett M. McClafferty, et al.*, in the amount of \$3,000.00 plus interest at a rate of 3%. The basis of that Municipal Court case stemmed from a consumer transaction. Since November 4, 2014, Defendants have

continued to solicit new consumer transactions without satisfying this judgment.

31. These actions constitute deceptive acts and/or practices in violation of R.C. 1345.02.

32. Such acts and practices have been previously determined by Ohio Courts to violate the CSPA, R.C. 1345.01 et seq. Defendants 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:

A. ISSUE a permanent injunction enjoining Defendants, under these or any other names, their agents, servants, representatives, salesmen, employees, successors and assigns and all persons acting in concert or participation with Defendants, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains;

B. ISSUE a declaratory judgment declaring that each act or practice complained of in this Complaint violates the CSPA, and its Substantive Rules in the manner set forth in this Complaint;

C. IMPOSE upon Defendants civil penalties in the amount of Twenty-Five Thousand Dollars (\$25,000.00) for each appropriate violation of the CSPA pursuant to R.C. 1345.07(D);

D. ORDER that all contracts from 2013 to present entered into between Defendants and Ohio consumers by unfair or deceptive acts or practices be rescinded with full restitution to the damaged consumers;

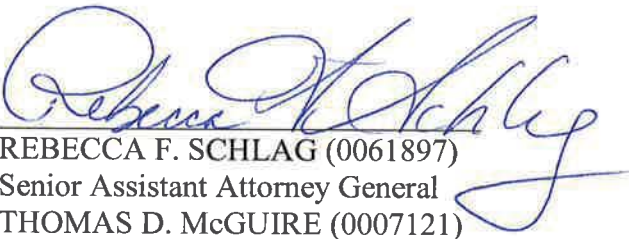
E. ENJOIN Defendants, as a means of ensuring compliance with this Court's Order

and with the consumer protection laws of Ohio, from engaging in any consumer transactions as suppliers in this state until such time as Defendants have satisfied all monetary obligations ordered pursuant to litigation;

- F. GRANT** Plaintiff his costs in bringing this action;
- G. ORDER** Defendants to pay all court costs associated with this matter;
- H. GRANT** such further relief as justice and equity require.

Respectfully submitted,

MICHAEL DeWINE
OHIO ATTORNEY GENERAL



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