

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

COMMON PLEAS COURT
BELMONT CO. OH.

2014 SEP 30 AM 9 00

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

Plaintiff,

v.

SCARLET & GREY
CONTRACTING, LTD.
51710 National Rd. E.
Saint Clairsville, Ohio 43950

and

SCARLET & GRAY
BUILDERS, LTD.
51710 National Rd. E.
Saint Clairsville, Ohio 43950

and

KELSON HESS, individually
and dba SCARLET & GREY
CONTRACTING, INC. and
dba SCARLET & GRAY
BUILDERS, LTD.
43128 Ohio Avenue
Beallsville, Ohio 43716

Defendants.

CYNTHIA K. MCGEE
CLERK OF COURT

Case No: 14CV295

Judge: JOHN M SOLOVAN, II

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

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through its counsel, 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 R.C. 1345.01 *et seq.*
2. The actions of Defendants Scarlet & Grey Contracting, Ltd., Scarlet & Gray Builders, Ltd., and Kelson Hess ("Defendants"), hereinafter described, have occurred in Belmont County and other counties in the State of Ohio and, as set forth below, are in violation of the Consumer Sales Practices Act ("CSPA"), R.C.1345.01, *et seq.*
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(2) and (3).

DEFENDANTS

5. Defendant Hess is a natural person who resides at 43128 Ohio Avenue Beallsville, Ohio 43716 the State of Ohio.
6. The principle place of business for Defendant Scarlet & Grey Contracting, Ltd. was located at 51710 National Rd. E. Saint Clairsville, Ohio 43950.
7. The principle place of business for Defendant Scarlet & Gray Builders, Ltd. is 51710 National Rd. E. Saint Clairsville, Ohio 43950.
8. Defendants are "suppliers," as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting "consumer transactions" by soliciting consumers either directly or indirectly for the repair, constructions, assembly and/or installation of various home

improvement goods or services for a fee, that were primarily for personal, family, or household use, within the meaning of R.C. 1345.01(A).

9. Defendants Scarlet & Grey Contracting, Ltd. and Scarlet & Gray Builders, Ltd. are both registered as Domestic Limited Liability Companies with the Ohio Secretary of State.

STATEMENT OF FACTS

10. Scarlet & Grey Contracting, Ltd. filed for bankruptcy in the United States Bankruptcy Court in the Southern District of Ohio on June 11, 2014. The bankruptcy case is still pending.
11. Defendant Hess at all times pertinent hereto controlled and directed the business activities and sales conduct of Defendants Scarlet & Grey Contracting, Ltd. and Scarlet & Gray Builders, Ltd., causing, personally participating in, or ratifying the acts and practices of Defendants Scarlet & Grey Contracting, Ltd. and Scarlet & Gray Builders, Ltd, including the conduct giving rise to the violations described herein.
12. Consumers reported having direct contact with Defendant Hess and, in some instances, at the direction of Defendant Hess, made personal checks for goods and services out to Defendant Hess instead of Defendant Scarlet & Grey Contracting, Ltd.
13. Defendants accepted monetary deposits from consumers for the purchase of home improvement goods and services and failed to deliver some of those goods and services within eight weeks.
14. Defendants have refused to refund consumers' deposits or payments despite consumers' requests for refund.
15. After receiving payment, Defendants sometimes began work but failed to complete the work.

16. Defendants performed substandard and shoddy work in the construction and repair of home improvement goods and services.
17. Defendants' failure to perform contracted home improvement services in a proper manner has resulted in harm to consumers and required the consumers to pay additional money to have the Defendants work corrected and/or completed.
18. The Ohio Attorney General's Office has received several consumer complaints regarding Defendants. Examples of consumer complaints are included in paragraphs 19 and 20. By listing these examples, Plaintiff is not limiting his request for relief in this Complaint to these consumers.
19. Several consumers have complained that Defendants collected deposits for half of the contract price with the balance to be paid upon completion, but Defendants did not finish the work or demanded more money before finishing the work.
20. Other consumers have complained that Defendants were hired to perform work on their roofs, and due to shoddy work, the roofs have leaked and new contractors had to be hired to fix the substandard work.
21. Defendant Hess claims that he is no longer conducting business under the name of Scarlet & Grey Contracting, Ltd. as the business's bankruptcy is pending.
22. Defendant Hess continues to operate his business under the name of Scarlet & Gray Builders, Ltd.

COUNT 1- FAILURE TO DELIVER

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

24. Defendants 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 or 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 similar goods or services of equal or greater value as a good faith substitute.

COUNT II- PERFORMING SUBSTANDARD/SHODDY WORK

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through twenty-four (1-24) of this Complaint.
26. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing shoddy and substandard work and then failing to correct such work.
27. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such decisions were available for public inspections pursuant to R.C. 1345.05(B)(2).

PRAYER FOR RELIEF

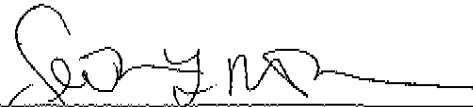
WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. ISSUE A DECLARATORY JUDGMENT that each act or practice complained of herein violates the CSPA and its Substantive Rules in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION enjoining the Defendants, their agents, servants, employees, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership, or other

- association, under these or any other names, from engaging in the acts and practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 *et seq.*
- C. ORDER Defendants, pursuant to R.C. 1345.07(B) to pay all actual damages, including non-economic damages, to all consumers injured by the conduct of the Defendants as set forth in this Complaint.
- D. ASSESS, FINE and IMPOSE upon Defendants a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation of the CSPA, described herein pursuant to R.C. 1345.07(D).
- E. ORDER AN INJUNCTION prohibiting Defendants from engaging in any consumer transactions in this state until such time as Defendants have satisfied all monetary obligations ordered pursuant to this litigation.
- F. GRANT Plaintiff its costs incurred in bringing this action.
- G. ORDER Defendants to pay all court costs associated with this matter.
- 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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