

COMMON PLEAS COURT

15 FEB 23 AM 10:18

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

FILED
DAVID B. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

STATE OF OHIO, ex rel.
MICHAEL DEWINE
Ohio Attorney General
Cleveland Regional Office
615 W. Superior Avenue, 11th Floor
Cleveland, Ohio 44113-1899

Plaintiff,

-vs-

JOHN M. CAPONE, dba
Empire Landscaping & Irrigation
1332 Mattingly Road
Hinckley, OH 44233

Defendant

CASE NO.

JUDGE

JOYCE V. KIMBLER, JUDGE

COMPLAINT AND REQUEST FOR
INJUNCTIVE AND DECLARATORY
RELIEF, CONSUMER RESTITUTION
AND CIVIL PENALTIES

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, R.C. 1345.01 et seq.

2. The actions of Defendant John M. Capone ("Defendant Capone") dba Empire Landscaping & Irrigation, hereinafter described, have occurred in Medina County as well as other counties around the State of Ohio, and are in violation of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., its Substantive Rules O.A.C. 109:4-3-01 et seq., and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 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)(1) and (3), in that Defendant resides in Medina County and some of the transactions complained of herein, and out of which this action arises, occurred within Medina County, Ohio.

DEFENDANT

5. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through four (1-4) of this Complaint.

6. Defendant John M. Capone is a natural person whose last known address is 1332 Mattingly Road, Hinckley, OH 44233.

7. At all times relevant to this action, Defendant Capone used the fictitious name Empire Landscaping & Irrigation 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 Empire Landscaping & Irrigation.

8. Defendant John Capone has used other fictitious names in the past to perform substantially similar services, including J.C. & Sons Landscaping; Empire Landscaping and J.C. & Sons Landscaping & Irrigation;

9. Defendant is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant was, at all times relevant herein, engaged in the business of effecting “consumer transactions” by providing services to individuals for purposes which were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

10. Defendant, as described below, was at all relevant times hereto a “seller” engaged in the business of effecting home solicitation sales by soliciting and selling home improvements to “buyers” at the buyers’ personal residences in Medina County as well as other counties in the State of Ohio, for purposes which were primarily personal, family or household within the meaning specified in R.C. 1345.21(A) and (E).

STATEMENT OF FACTS

11. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through nine (1-10) of this Complaint.

12. At all times relevant to this action, Defendant solicited consumers for landscaping and home improvement services in Medina County, Ohio as well as other counties within the State of Ohio.

13. Defendant solicited and sold these home improvement goods and services at the residences of Ohio consumers.

14. Defendant accepted payments for landscaping and home improvement contracts, failed to perform the contracted services, and failed to refund the payments made by those consumers.

15. After receiving payment, Defendant would sometimes commence the home improvement project, but then fail to complete the contracted work.

16. Defendant did not properly notify consumers of their cancellation rights, nor provide consumers with the appropriate notice of cancellation or with a timely refund when requested.

17. Defendant's failure to perform contracted home improvement services in a proper manner has resulted in harm to consumers and required these consumers to incur additional expenses to have Defendant's contracted work completed and/or corrected.

COUNT I
FAILURE TO DELIVER GOODS AND/OR SERVICES
OR ISSUE REFUNDS

18. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through seventeen (1-17) of this Complaint.

19. Defendant has 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 landscaping and home improvement services to consumers, receiving payments for these contracted services, and then failing to deliver the contracted services or to refund the monies paid within a reasonable time.

COUNT II
PERFORMING SUBSTANDARD/SHODDY WORK

20. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through nineteen (1-19) of this Complaint.

21. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing substandard work and then failing to correct such work.

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

COUNT III
VIOLATIONS OF THE HOME SOLICITATION SALES ACT

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. Defendant engaged in home solicitation sales pursuant to the HSSA, R.C. 1345.21 et seq., in that Defendant procured the sale of consumer goods or services at the residences of consumers.

25. Defendant violated the HSSA, R.C. 1345.23(B) by failing to include appropriate cancellation language in the contracts entered into with consumers, or to give consumers the appropriate “notice of cancellation” required by R.C. 1345.23(B)(2) or otherwise informing consumers of how and when to give notice of cancellation as required by R.C. 1345.23(B)(3).

26. These actions constitute deceptive acts and/or practices in violation of the HSSA and the Direct Solicitations Rule, O.A.C. 109:4-3-11(A)(5), and the Ohio CSPA, R.C. 1345.02(A).

27. The acts and practices described above 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 IV
FAILURE TO GAIN PERMITS OR LICENSES

28. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-seven (1-27) of this Complaint.

29. Defendant accepted payments from consumers and began work at consumer residences without securing the requisite permits or licenses to perform the contracted work, in violation of the Consumer Sales Practices Act, R.C. 1345.02(A.) Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

30. The acts and practices described above 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 V
FAILURE TO REGISTER WITH THE
OHIO SECRETARY OF STATE

31. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through thirty (1-30) of this Complaint.

32. Defendant committed unfair or deceptive acts or practices in violation of R.C. 1345.02(A) and R.C. 1329.01 by failing to register with or report the fictitious business name Empire Landscaping & Irrigation to the Ohio Secretary of State.

33. The acts and practices described above 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 VI
SOLICITING NEW CONSUMER TRANSACTIONS AFTER FAILING TO PAY
JUDGMENTS ARISING FROM CONSUMER TRANSACTIONS

34. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through thirty-three (1-33) of this Complaint.

35. Defendant has had multiple judgments rendered against him in various Northeast Ohio Municipal and Common Pleas Courts, arising from consumer transactions and totaling several thousand dollars in judgments, yet Defendant has continued to solicit new consumer transactions without satisfying those judgments.

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

37. Such acts and practices have been previously determinations 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:

- A. ISSUE** a declaratory judgment declaring that each act or practice complained of herein violates the CSPA in the manner set forth in the Complaint.
- B. ISSUE** a permanent injunction enjoining Defendant, under this or any other names, his agents, servants, representatives, salesmen, employees, successors and assigns and all persons acting in concert or participation with Defendant, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from any further violations of the CSPA, R.C. 1345.01 et seq. and the HSSA, R.C. 1345.21 et seq.;
- C. ENJOIN** Defendant John M. Capone from acting as a supplier in Ohio until all Judgment ordered remuneration has been paid and Defendant has produced satisfaction of judgments for all outstanding judgments against him;

- D. IMPOSE** upon Defendant civil penalties in the amount of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation of the Consumer Sales Practices Act pursuant to R.C. 1345.07(D);
- E. ORDER** that all contracts entered into between Defendant and Ohio consumers by unfair or deceptive acts or practices in violation of the CSPA be rescinded with full restitution to the consumers;
- F. GRANT** Plaintiff his costs in bringing this action;
- G. ORDER** Defendant to pay all court costs;
- H. GRANT** such further relief as justice and equity require.

Respectfully submitted,

MICHAEL DeWINE
OHIO ATTORNEY GENERAL



REBECCA F. SCHLAG (0061897)

Senior Assistant Attorney General

THOMAS D. McGUIRE (0007121)

Consumer Protection Section

Cleveland Regional Office

615 W. Superior Ave., 11th FL

Cleveland, OH 44113-1899

(216) 787-3030

Trial counsel for Plaintiff State of Ohio

Rebecca.Schlag@OhioAttorneyGeneral.gov

Thomas.McGuire@OhioAttorneyGeneral.gov