

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

**STATE OF OHIO, ex rel.
MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO
State Office Building, 11th Fl.
615 West Superior Avenue
Cleveland, Ohio 44113-1899**

Plaintiff,

-vs-

**NEIL WOLFE
2243 WHITE MARSH DRIVE
TWINSBURG, OHIO 44087**

and

**NEIL CONSTRUCTION
COMPANY, INC.
2243 WHITE MARSH DRIVE
TWINSBURG, OHIO 44087**

Defendants.

CASE NO. CV-2017-11-4755

JUDGE JAY WELLS

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

JURISDICTION

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 R.C. 1345.07 and R.C. 4722.07.

2. The actions of Defendants, hereinafter described, have occurred in the State of Ohio, County of Summit, and as set forth below, are in violation of the Consumer Sales Practices Act, (“CSPA”), R.C. 1345.01 et seq. and the Home Construction Service Suppliers Act (“HCSSA”), R.C. 4722.01 et seq. Jurisdiction over the subject matter lies with this Court pursuant to the CSPA, R.C. 1345.04 and the HCSSA, R.C. 4722.07.

3. Defendants have solicited consumers for home improvement goods and services in Ohio. Defendants’ business is incorporated, and is located in Summit County.

4. Defendants are “suppliers,” as that term is defined in R.C. 1345.01(C), as Defendants are engaged in the business of effecting “consumer transactions” by offering home improvement goods and services for a fee, within the meaning of R.C. 1345.01(A). Defendants are also “home construction service suppliers” engaged in “home construction services” as those terms are defined in the HCSSA, R.C. 4722.01(B) and (D) because Defendants contracted with owners to construct residential buildings for compensation.

5. Defendants have performed shoddy work in the construction of a major home improvement addition contracted with consumers and failed to obtain required permits and/or licenses. In addition to providing home improvement and repair services, Defendants sometimes contracted with consumers to construct entirely new residential buildings, above the value of \$25,000. At all times herein, consumers received and relied upon statements and misrepresentations made by Defendant Wolfe, personally and in writing, who knew or should have known of the acts, or failure to act, and who allowed,

caused or ratified such incomplete or shoddy workmanship. Defendants, throughout the original contract construction periods, and even after the intervention of the Ohio Attorney General's Office in attempts to resolve and conclude this dispute; failed to complete the contracts, failed to properly or completely install home improvement or addition projects, and performed shoddy, unworkmanlike services in those parts of the construction that were performed.

PLAINTIFF'S CAUSE OF ACTION

COUNT ONE

FAILURE TO DELIVER

6. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Five (1-5) of this Complaint.

7. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Administrative Code 109:4-3-09, by accepting money from consumers for goods and services and failing to make full delivery or a refund.

COUNT TWO

PERFORMING SUBSTANDARD WORK

8. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Five (1-5) of this Complaint.

9. Defendants have committed unfair and 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.

10. Such acts and practices 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 THREE
FAILURE TO GAIN PERMITS/LICENCES

11. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Five (1-5) of this Complaint.

12. Defendants accepted deposits on contracts and did so without having required permits or being licensed to perform the work contracted for, in violation of the CSPA, R.C. 1345.02(G).

13. Such acts and practices 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
UNSATISFIED JUDGMENTS

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

15. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by engaging in consumer transactions while

having unsatisfied judgments and legal obligations owed to consumers arising out of previous consumer transactions.

16. Such acts and practices 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).

PLAINTIFF'S SECOND CAUSE OF ACTION: VIOLATIONS

OF THE HCSSA

COUNT ONE

FAILURE TO DELIVER

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

18. Defendants violated the HCSSA, R.C. 4722.03(A)(3)(f), by entering into home construction services contracts with owners, failing to deliver services in accordance with the terms and conditions of the contract, and failing to provide a full refund within a reasonable time period.

COUNT TWO

PERFORMING SERVICES IN AN UNWORKMANLIKE MANNER

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

20. Defendants violated the HCSSA, R.C. 4722.03(A)(3)(d), by entering into home construction services contracts with owners, and failing to perform the services in a workmanlike manner.

COUNT THREE
NOT PROVIDING SERVICE CONTRACTS WITH REQUIRED
INFORMATION

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

22. Defendants violated the HCSSA, R.C. 4722.02, by entering into home construction services contracts with owners, and not including required information in the contracts, including: a) Defendants' taxpayer identification number, b) the owner's address and telephone number, c) the address or location of the property where the home construction service was to be performed, d) the anticipated start and completion dates of the home construction services, e) a copy of Defendants' certificate of service showing general liability coverage in an amount of not less than 250,000, and f) dated signatures of the Defendants and owners.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. **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 participate with Defendants, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains, from further violation of the CSPA, R.C. 1345.01 et seq., and the HCSSA, R.C. 4722.01 et seq., and from engaging in further consumer transactions and home construction services until all consumer and owner restitution awarded under this action has been paid.

2. **ISSUE** a declaratory judgment declaring that each act or practice complained of in this Complaint violates the CSPA, and the Substantive Rules contained in the Ohio Administrative Code in the manner set forth in this Complaint, and the HCSSA R.C. 4722.01 et seq., in the manner set forth therein.

3. **IMPOSE** upon Defendants civil penalties in the amount of Twenty-Five Thousand Dollars (\$25,000.00) for each violation pursuant to R.C. 1345.07(D) and R.C. 4722.07(D);

4. **ORDER** Defendants pursuant to R.C. 1345.07(B) and R.C. 4722.07(A)(3) to reimburse consumers who have been injured by the acts and practices of which Plaintiff complains;

5. As a means of ensuring compliance with this Court's Order and with the consumer protection laws of Ohio, **ORDER** Defendants, their successors or assigns, under this or any other name, to maintain in their possession and control for a period of five (5) years all business records relating to Defendants' solicitation or effectuation of business in Ohio and to permit the Ohio Attorney General or his representative, upon reasonable twenty-four (24) hour notice, to inspect and/or copy any and all of said records and further **ORDER** that copies of such records be provided at Defendants'

expense to the Ohio Attorney General upon request of the Ohio Attorney General or his representatives;

6. **GRANT** Plaintiff his costs in bringing this action;
7. **GRANT** such further relief as justice and equity require.

Respectfully submitted,

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



THOMAS D. McGUIRE (0007121)
REBECCA F.SCHLAG (0061897)
Senior Assistant Attorney General
Consumer Protection Section
State Office Bldg., 11th Fl.
615 W. Superior Ave.
Cleveland, OH 44113-1899
(216) 787-3030

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amended Complaint was served via regular mail and via electronic mail to dominic@advattys.com upon Dominic Vitantonio, counsel for Defendant, at 6449 Wilson Mills road, Mayfield Village, Ohio 44143, on this 25th day of July, 2018.

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**



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