

FILED - COMMON PLEAS
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CLINTON COUNTY
CYNTHIA R. BAILEY, CLERK

IN THE COURT OF COMMON PLEAS
CLINTON COUNTY, OHIO

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

Plaintiff,

v.

PHILLIP R. SHOLLER, JR.,
Individually, and
DBA SHOLLER'S FENCE, LLC
8877 S. State Route 73
Wilmington, Ohio 45177

and

SHOLLER'S FENCE, LLC
8877 S. State Route 73
Wilmington, Ohio 45177

Defendants.

Case No: 13000 277

Judge: John W. Rudduck

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 Sholler's Fence, LLC, and Phillip R. Sholler, Jr. ("Defendants"), hereinafter described, have occurred in Clinton 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.* and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 *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)(1) and (3), in that Defendants reside in Clinton County and Clinton County is the county in which Defendants conducted activity that gave rise to the claims for relief.

DEFENDANT

5. Defendant Phillip R. Sholler, Jr. ("Sholler") is a natural person residing at 8877 S. State Route 73, Wilmington, Ohio 45177.
6. Defendant Sholler's Fence, LLC is a domestic limited liability company that has been registered with the Ohio Secretary of State since January 31, 2013.
7. Defendant 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 home remodeling and repair goods and services for a fee, within the meaning of R.C. 1345.01(A).

8. Defendant Sholler at all times pertinent hereto controlled and directed the business activities and sales conduct of Defendant Sholler's Fence, LLC, causing, personally participating in, or ratifying the acts and practices of Defendant Sholler's Fence, LLC, including the conduct giving rise to the violations described herein.

STATEMENT OF FACTS

9. Defendants engaged in the business of providing goods and services to consumers, including installation of fencing, and failed to deliver some of those goods and services within eight weeks.
10. Defendants have refused to refund consumers' deposits or payments despite consumers' requests for refunds.
11. After receiving payment, Defendants sometimes began work but failed to complete the work.
12. Defendants provided shoddy and substandard home repair services to consumers and then failed to correct such services.
13. Defendants represented to consumers that they would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.
14. In at least one instance, Defendants failed to honor their maintenance warranty when asked to repair a fence.

15. At the time of the transactions, Defendants failed to notify consumers of their rights to cancel the transaction, or to provide consumers with notices of cancellation forms describing the consumers' rights to cancel the transactions.

PLAINTIFF'S FIRST CAUSE OF ACTION:

VIOLATIONS OF THE CSPA

COUNT I- FAILURE TO DELIVER

16. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-15 of this Complaint.
17. 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 and services and then permitting eight weeks to elapse without making shipment or delivery of the goods and services ordered, making a full refund, advising the consumers 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- SHODDY AND SUBSTANDARD WORK

18. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-17 of this Complaint.
19. 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.

20. The acts or practices described above 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).

COUNT III- FALSE REPRESENTATION OF WARRANTY

21. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-20 of this Complaint.

22. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(B)(10), by representing that the transactions involved a warranty when this representation was false.

23. The acts or practices described above 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).

PLAINTIFF'S SECOND CAUSE OF ACTION:

VIOLATION OF THE HSSA

COUNT 1:

FAILURE TO PROVIDE PROPER NOTICE OF THREE DAY RIGHT OF RESCISSION

24. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-23 of this Complaint.

25. Defendants violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to give proper notices to consumers of their right to cancel their transaction by a specific date.

26. The acts or practices described above 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

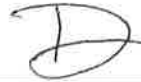
WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. ISSUE A DECLARATORY JUDGMENT that each act or practice complained of herein violates the CSPA, its Substantive Rules, and the HSSA, 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.*, its Substantive Rules, and the HSSA, R.C. 1345.21 *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 up to \$25,000.00 for each separate and appropriate violation of the CSPA described herein pursuant to R.C. 1345.07(D).
- E. GRANT Plaintiff its costs incurred in bringing this action.

- F. ORDER Defendants to pay all court costs associated with this matter.
- G. GRANT such other relief as the court deems to be just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General



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