

FILED
LORAIN COUNTY

2019 DEC -4 A 3:08

IN THE COURT OF COMMON PLEAS
COURT OF COMMON PLEAS
TOM ORLANDO LORAIN COUNTY, OHIO

19-CV-2000003

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

Plaintiff,

-vs-

THOMAS CUTURA
4491 Sir Richard Avenue
North Royalton, OH 44133

And

ASSURANCE ROOFING AND MORE,
LLC, c/o Statutory Agent
FRANCINE CUTURA
5493 Schueller Blvd.
Sheffield Lake, OH 44054

Defendants

JUDGE JUDGE RAYMOND J. EWERS

COMPLAINT AND REQUEST FOR
DECLARATORY AND INJUNCTIVE
RELIEF, CONSUMER DAMAGES,
CIVIL PENALTIES AND OTHER
APPROPRIATE RELIEF

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Dave Yost, 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 Defendants, hereinafter described, have occurred in Lorain 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., the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 et seq., and the Home Construction Service Suppliers Act ("HCSSA"), R.C. 4722.01 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(C)(3) in that some of the transactions complained of herein, and out of which this action arises, have occurred within Lorain County, Ohio.

DEFENDANTS

5. Defendant Thomas Cutura is a natural person residing at 4491 Sir Richard Avenue, North Royalton, OH 44133. Thomas Cutura has also held himself out by other names, including but not limited to, Thomas Southard and Thomas Cutura Vavro.

6. Defendant Assurance Roofing and More LLC is a limited liability company registered with the Ohio Secretary of State and according to documents filed with the Secretary of State's office, the statutory agent is Francine Cutura, 5493 Schueller Blvd., Sheffield Lake, OH 44054. The last known address for the business operation known as Assurance Roofing and More was 37063 Colorado Ave., Ste. 2, Avon, OH 44011-1523.

7. At all times relevant to this action, Defendant Thomas Cutura 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 various home improvement businesses including but not limited to Assurance Roofing and More,

LLC, and Assurance Roofing and Remodeling.

8. Defendant Thomas Cutura has also contracted with Ohio consumers for home improvement services under different business names, some of which are fictitious entities not registered with the Ohio Secretary of State. These business names include, but are not limited to, "Mid Ohio Cabinets, LLC" (not a registered LLC), Midwest Cabinets Direct, Midwest Cabinets, "Cabinets Direct LLC" (not a registered LLC), "Avon Cabinets Direct LLC" (not a registered LLC), Ohio Capital Cabinets, Avon Cabinets Direct Corp. and Avon Wholesale Cabinets, LLC.

9. Defendant Thomas Cutura has also represented himself as a home improvement services contractor to Ohio consumers on social media sites, including Facebook, using false names such as Linda Kitchens Velousky, and 7daykitchens.com

10. Defendants are "suppliers" as that term is defined in R.C. 1345.01(C) as Defendants were, 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).

11. Defendants are "sellers" engaging in "home solicitation sales" of "consumer goods or services" as those terms are defined in the HSSA, R.C. 1345.21(A), (C) and (E), because Defendants engaged in personal solicitations at the residences of consumers, including solicitations in response to or following invitations by consumers.

12. Defendants are "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 a residential building for compensation.

STATEMENT OF FACTS

13. Defendants Thomas Cutura and Assurance Roofing and More, LLC provide home

improvement and repair services to consumers in Ohio, including Lorain County.

14. Defendant Thomas Cutura solicits consumers at the consumers' residences, including in response to or following invitations from consumers.

15. Defendant Thomas Cutura entered into contracts with consumers to provide home improvement and repair services.

16. Defendant Thomas Cutura accepted down payments for home improvement and repair services.

17. In accepting payment for the contracted work, Defendant Thomas Cutura directed consumers as to whom to make the check payable to, and accepted checks made out to various registered and fictitious business entities, including but not limited to "Assurance Roofing," "Assurance," "Family Capital, LLC" and "Midwest Cabinets," regardless of whether the consumer contract was with those business entities or not.

18. For some home improvement and repair consumers, Defendants did not provide any services, or provide refunds for services not delivered.

19. For some home improvement and repair consumers, Defendants provided some services but did not provide the full services, or complete the work contracted for in a reasonable time.

20. For some home improvement and repair consumers, Defendants provided some services but those services were shoddy and unworkmanlike services.

21. For some home improvement and repair consumers, Defendants failed to take out the necessary permits required by local, county or state laws.

22. For some home improvement and repair consumers, Defendants failed to compensate a subcontractor which resulted in the subcontractor putting a lien on the consumers'

residence.

23. Defendant Thomas Cutura misrepresented his legal name and/or business name to some home improvement and repair consumers.

24. Defendants failed to respond to consumer telephone calls despite repeated consumer attempts.

25. Defendants failed to perform their home improvement and repair duties in a timely manner to Ohio consumers.

26. In some cases, Defendants accepted partial payment for the home improvement and repair services, and started performance of the services, but thereafter abandoned the work site and failed to complete performance.

27. Defendants have maintained a pattern of inefficiency, incompetence and/or continuous tactics to stall and evade their legal obligations to consumers.

28. In addition to providing home improvement and repair services, Defendants sometimes contracted with consumers to construct new residential structures which exceeded \$25,000 in cost.

29. Defendants accepted down payments for these structures, and the down payments exceeded ten percent (10%) of the contract price.

30. The contracts for these residential structures failed to include certain information such as Defendants' mailing address, taxpayer identification number, the owner's address and telephone number, the address or location of the property where the home construction service was to be performed, the anticipated start and completion dates, a copy of Defendants' certificate of general liability coverage in an amount not less than \$250,000, and the dated signatures of the Defendants and owners.

31. For some home construction services, Defendants failed to deliver the work contracted for, and failed to provide a full refund within a reasonable time period.

32. For some home construction services, Defendants did not perform the work in a workmanlike manner.

33. Defendants' failure to perform contracted home improvement services in a proper manner has resulted in harm to consumers.

34. The Attorney General's Office has received numerous consumer and owner complaints regarding Defendants' practices.

PLAINTIFF'S FIRST CAUSE OF ACTION: VIOLATIONS OF THE CSPA

COUNT I
FAILURE TO DELIVER

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

36. Defendants have 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 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 requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.

COUNT II
SHODDY AND SUBSTANDARD WORK

37. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through thirty-six (1-36) of this Complaint.

38. 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.

39. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.02. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III
FAILURE TO OBTAIN PERMITS OR LICENSES

40. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through thirty-nine (1-39) of this Complaint.

41. Defendants 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 CSPA, R.C. 1345.02(A).

42. The acts and 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 IV
ABANDONING THE WORKSITE AFTER PARTIAL PERFORMANCE

43. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through forty-two (1-42) of this Complaint.

44. Defendants accepted partial payment from consumers and began work at consumers' residences, but abandoned the work sites and refused to complete performance of the contracted work in violation of the CSPA, R.C. 1345.02(A).

45. The acts and 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 V
CONTINUALLY STALLING AND EVADING LEGAL OBLIGATIONS

46. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through forty-five (1-45) of this Complaint.

47. Defendants have maintained a pattern of inefficiency and incompetence in performing the home improvement services contracted for, and in continually stalling and evading their legal obligations to consumers, in violation of the CSPA, R.C. 1345.02(A).

48. The acts and 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 VI
SOLICITING NEW CONSUMER TRANSACTIONS AFTER FAILING TO PAY
JUDGMENTS ARISING FROM CONSUMER TRANSACTIONS

49. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through forty-eight (1-48) of this Complaint.

50. Defendant Thomas Cutura has had multiple judgments rendered against him, and in some cases, also against some of the business entities he did business as, in various Ohio courts, arising from consumer transactions and totaling over Ten Thousand Dollars, yet Defendant Cutura continued to solicit new consumer transactions without satisfying those judgments.

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

52. Such acts and practices have been previously determinations by Ohio Courts to

violate the CSPA, R.C. 1345.01 et seq. Defendant Cutura 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: VIOLATIONS OF THE HSSA

HSSA COUNT
FAILURE TO GIVE 3-DAY NOTICE OF CANCELLATION

53. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through fifty-two (1-52) of this Complaint.

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

55. Defendants violated the HSSA, R.C. 1345.23(B), by failing to include appropriate cancellation language in the contracts entered into with consumers, or giving consumers a separate, appropriately worded "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).

56. 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).

57. The acts and 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 THIRD CAUSE OF ACTION: VIOLATIONS OF THE HCSSA

HCSSA COUNT I
FAILURE TO PROVIDE SERVICE CONTRACTS CONTAINING ALL STATUTORILY
REQUIRED INFORMATION

58. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through fifty-seven (1-57) of this Complaint.

59. Defendants violated the HCSSA, R.C. 4722.02, by entering into home construction services contracts with owners, and not including all of the required information in the contracts, such as Defendants' mailing address, taxpayer identification number, the owner's address and telephone number, the address or location of the property where the home construction services were to be performed, the anticipated start and completion dates for the project, and providing a copy of Defendants' certificate of general liability coverage in an amount not less than \$250,000, and the dated signatures of the Defendants and owners on the contract.

HCSSA COUNT II
FAILURE TO DELIVER

60. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through fifty-nine (1-59) of this Complaint.

61. 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.

HCSSA COUNT III
PERFORMING SERVICES IN AN UNWORKMANLIKE MANNER

62. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through sixty-one (1-61) of this Complaint.

63. 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.

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, R.C. 1345.01 et seq., the HSSA, R.C. 1345.21 et seq., and the HCSSA, R.C. 4722.01 et seq., in the manner set forth in the Complaint;
- B. ISSUE A PERMANENT INJUNCTION** enjoining Defendants, under these or any other names, their agents, 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 and from any further violations of the CSPA, R.C. 1345.01 et seq., the HSSA, R.C. 1345.21 et seq., and the HCSSA, R.C. 4722.01 et seq.;
- C. ENJOIN** Defendants from acting as suppliers in Ohio until all Judgment-ordered remuneration has been paid and Defendants have produced satisfaction of judgments for all outstanding judgments against them related to consumer transactions;
- D. IMPOSE** upon Defendants civil penalties in the amount of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D) and 4722.07(D);
- E. ORDER** Defendants to reimburse all consumers found to have been damaged by Defendants' unlawful actions in violation of the CSPA;
- F. ORDER** Defendants to reimburse all consumers found to have been damaged by

the Defendants' unlawful actions in violation of the HCSSA;

- G. **ORDER** that all contracts entered into between Defendants and Ohio consumers by unfair or deceptive acts or practices in violation of the CSPA be rescinded with full restitution to the consumers;
- H. **GRANT** Plaintiff his costs in bringing this action including, but not limited to, the costs of collecting any judgment awarded;
- I. **ORDER** Defendants to pay all court costs; and
- J. **GRANT** such further relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

DAVE YOST
OHIO ATTORNEY GENERAL


REBECCA F. SCHLAG (0061897)
Senior Assistant Attorney General
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