

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

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

Plaintiff,

v.

BENNY R. BRYANT
7140 Hetzler Road
Middletown, Ohio 45042

and

B.R. BRYANT CUSTOM HOMES, LLC
c/o Timothy Tipton, Statutory Agent
4 Sycamore Creek Drive, Suite B
Springboro, Ohio 45066

Defendants.

Case No:

Judge:

**COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, CONSUMER
RESTITUTION, CIVIL PENALTIES,
AND OTHER APPROPRIATE RELIEF**

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through its counsel, 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 Home Construction Service Suppliers Act, ("HCSSA") R.C. 4722.01 *et seq.*
2. The actions of B.R. Bryant Custom Homes, LLC and Benny R. Bryant, individually and doing business as B.R. Bryant Custom Homes, LLC ("Defendants"), hereinafter described,

have occurred in Butler County and other counties in the State of Ohio and, as set forth below, are in violation of the HCSSA, R.C. 4722.01 *et seq.*

3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 109.16.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(1), (3) and (6) in that Butler County is the county where Defendants reside, conducted activity that gave rise to the claims for relief, and in which all or part of the claim for relief arose.

DEFENDANTS

5. Defendant Benny R. Bryant (“Bryant”) is a natural person residing at 7140 Hetzler Rd., Middletown, OH 45042.
6. Defendant B.R. Bryant Custom Homes, LLC (“Bryant Homes”) is a limited liability company registered with the Ohio Secretary of State on November 1, 2003. Defendant Bryant signed the Registration as the Company’s authorized representative. Timothy Tipton is listed as the Statutory Agent.
7. Defendants are “home construction service suppliers” engaged in “home construction services” because Defendants contracted with owners to construct a “residential building” for compensation as those terms are defined in the HCSSA, R.C. 4722.01(B), (D) and (F).
8. Defendant Bryant at all times pertinent hereto controlled and directed the business activities and sales conduct of Defendant Bryant Homes causing, personally participating in, or ratifying the acts and practices of Defendant Bryant Homes, including the conduct giving rise to the violations described herein.

STATEMENT OF FACTS

9. Defendants' business operated out of Defendant Bryant's home at 7140 Hetzler Rd., Middletown, Ohio 45042.
10. Defendants contracted with consumers to build custom-built homes, pole barns, and other residential buildings, the cost of which contracts exceeded \$25,000.
11. Consumers financed the cost of their contracts with Defendants in various ways, including obtaining loans from banks.
12. For some parts of the home construction contracts, Defendants included an "allowance" which is an estimated amount used when the exact cost is unknown.
13. Defendants did not include certain information required by law in their home construction contracts, including, but not limited to, Defendants' phone number and taxpayer identification number, the anticipated start and completion dates, and a copy of Defendants' certificate of general liability coverage in an amount not less than \$250,000.
14. Defendants required consumers to pay, and Defendants accepted, down payments for home improvement and repair services.
15. After receiving payment, Defendants began work on constructing consumers' residential buildings, but thereafter abandoned the worksites and failed to complete the work.
16. Defendants failed to provide refunds to consumers within a reasonable time for goods and services they were paid for, but did not provide.
17. Defendants' failure to perform home construction services in a proper manner has resulted in harm to consumers.

18. In at least one instance, Defendants did not use the full allowance for completion of part of the contract and did not return the unused amount to the consumer.
19. Defendants failed to reimburse consumers, per agreement, for certain costs that were paid up-front by consumers, including but not limited to, a septic survey, a water tap-in fee, permits, and cabinets and countertops.
20. Defendants failed to pay subcontractors, resulting in consumers having to pay subcontractors for work that was already paid for.
21. In some instances, because Defendants failed to pay the subcontractors, subcontractors have placed liens on consumers' homes.
22. In at least one instance, Defendant Bryant signed an affidavit stating that subcontractors had been paid when, in fact, the subcontractors had not been paid.

VIOLATIONS OF THE HCSSA

COUNT 1 - FAILURE TO PROVIDE SERVICE CONTRACTS CONTAINING ALL STATUTORILY REQUIRED INFORMATION

23. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in the preceding paragraphs of this Complaint.
24. 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' phone number and taxpayer identification number, the anticipated start and completion dates, and a copy of Defendants' certificate of general liability coverage in an amount not less than \$250,000.

COUNT 2 - FAILURE TO PROVIDE REFUND

25. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in preceding paragraphs of this Complaint.
26. Defendants violated the HCSSA, R.C. 4722.03(A)(3)(f), by failing to provide a refund within a reasonable time for goods or services that were not delivered in accordance with the terms and conditions of the contract and for which the supplier has received payment.

COUNT 3 – MISREPRESENTATION

27. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in preceding paragraphs of this Complaint.
28. Defendants violated the HCSSA, R.C. 4722.03(A)(8), by intentionally misrepresenting aspects of the transaction.

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 HCSSA, R.C. 4722.01 *et seq.*, in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION enjoining the Defendants, their agents, 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 HCSSA, R.C. 4722.01 *et seq.*
- C. ISSUE A PERMANENT INJUNCTION enjoining Defendants from engaging in business as a home construction service supplier in the State of Ohio until such time as they have

satisfied all monetary obligations ordered by this Court, and any other Court in Ohio in connection with a consumer transaction.

- D. ORDER Defendants, pursuant to R.C. 4722.07(B), to pay damages to all consumers injured by the Defendants' conduct as set forth in this Complaint.
- E. ASSESS, FINE and IMPOSE upon Defendants a civil penalty of up to \$25,000.00 for each separate and appropriate violation of the HCSSA described herein pursuant to R.C. 4722.07(D).
- F. GRANT Plaintiff its costs incurred in bringing this action, including but not limited to, the cost of collecting on any judgment awarded.
- 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,

DAVE YOST
Attorney General



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