

IN THE COURT OF COMMON PLEAS
MARION COUNTY, OHIO

STATE OF OHIO ex rel.)	
ATTORNEY GENERAL)	
DAVE YOST)	Case No:
30 E. Broad St., 14 th Floor)	
Columbus, Ohio 43215)	
)	Judge:
Plaintiff,)	
v.)	
)	
DEREK BARKLEY,)	COMPLAINT AND REQUEST FOR
1835 Marseilles-Galion Rd. W.)	DECLARATORY JUDGMENT,
Morral, OH 43337)	INJUNCTIVE RELIEF, CONSUMER
)	RESTITUTION, CIVIL PENALTIES,
and)	AND OTHER APPROPRIATE RELIEF
)	
BARKLEY CONSTRUCTION, LLC)	
1835 Marseilles-Galion Rd. W.)	
Morral, OH 43337)	
)	

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 Consumer Sales Practices Act, (“CSPA”), R.C. 1345.01 *et seq.*
2. The actions of Derek Barkley and Barkley Construction, LLC (“Defendants”), hereinafter described, have occurred in Marion and other counties in the State of Ohio and, as set forth below, are in violation of the CSPA, R.C. 1345.01 *et seq.*, and its Substantive Rules, Ohio Adm. Code 109:4-3-01 *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(C)(1), (3), and (6), in that Defendants reside in Marion County, this is the county where they conducted activity giving rise to the claims for relief, and the county in which all or part of the claims for relief arose.

DEFENDANTS

5. Defendant Derek Barkley is a natural person residing at 1835 Marseilles-Galion Rd. W., Morral, Ohio 43337.
6. Defendant Barkley Construction, LLC is a domestic Limited Liability Company registered with the Ohio Secretary of State on May 3, 2021.
7. Defendant Barkley, at all times relevant to this action, controlled and directed the business activities and sales conduct of Barkley Construction, LLC, causing, personally participating in, or ratifying the acts and practices of the same, including the conduct giving rise to the violations described herein.
8. Defendants are each a “supplier,” as they engaged in the business of effecting “consumer transactions” by soliciting “consumers” either directly or indirectly for home improvement and construction goods and services for a fee, for purposes that were primarily for personal, family or household use, as those terms are defined in R.C. 1345.01(A), (C), and (D).

STATEMENT OF FACTS

9. Defendants engaged in the business of providing home improvement and construction goods and services to consumers for work on their residences.

10. Defendants represented to consumers that they would undertake and complete home improvement and construction goods and services and failed to deliver some of those goods and services within eight weeks.
11. Defendants accepted monetary deposits from consumers for the purchase of home improvement and construction goods and services and failed to deliver those goods and provide the services.
12. Defendants represented to consumers that they would provide the contracted goods and services within an estimated time and then failed to provide such goods and services in the time promised.
13. In some cases, Defendants have refused to refund consumers' deposits or payments despite consumers' requests for refunds.
14. In some cases, after receiving payment, Defendants began to perform home improvement and construction work, but then failed to complete the work.
15. In some cases, Defendants provided shoddy and substandard home improvement and construction services to consumers and then failed to correct such services.
16. Defendants did not provide consumers with refunds of deposits paid when Defendants did not perform the contracted work.

PLAINTIFF'S CAUSE OF ACTION: VIOLATIONS OF THE CSPA

COUNT I- FAILURE TO DELIVER

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

18. 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

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

20. 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.

21. 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, R.C. 1345.01 *et seq.*, and its Substantive Rules OAC 109:4-3-01 *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 him, 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.*, and its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*

- C. ORDER Defendants, pursuant to R.C. 1345.07(B), to pay actual 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. ISSUE AN INJUNCTION prohibiting Defendants from engaging in business as a Supplier in any consumer transactions in this state until such time as Defendants have satisfied all monetary obligations ordered by this Court, and any other Court in Ohio in connection with a consumer transaction.
- F. GRANT Plaintiff its costs incurred in bringing this action, including, but not limited to, the costs 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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