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IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

STATE OF OHIO ex rel. ATTORNEY GENERAL D. ANDREW WILSON 30 E. Broad Street, 14th Floor Columbus, Ohio 43215 Plaintiff, v. HURST TOTAL HOME, INC. c/o Jeffrey Hurst, President 2407 Beechknoll Pt. Dayton, OH 45458 and JEFFREY L. HURST 2407 Beechknoll Pt. Dayton, OH 45458 Defendants.	:	Case No. Judge **COMPLAINT AND REQUEST FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, CIVIL PENALTIES, CONSUMER DAMAGES, AND OTHER APPROPRIATE RELIEF**

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, through Attorney General D. Andrew Wilson, 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 the Attorney General by R.C. 1345.07 of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and R.C. 4722.07 of the Home Construction Service

Suppliers Act ("HCSSA"), R.C. 4722.01 et seq.

2. The actions described below of Defendant Hurst Total Home, Inc. ("Total Home") and Defendant Jeffrey L. Hurst ("Hurst") (collectively, "Defendants") have occurred in the State of Ohio, including in Montgomery County, and, as set forth below, are in violation of the CSPA, R.C. 1345.01 et seq., its Substantive Rules, Ohio Adm.Code 109:4-3-01 et seq., and 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. 1345.04 of the CSPA.

4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(1) and (3), in that Montgomery County is where Defendant Hurst resides and where Defendants conducted some of the activity that gave rise to Plaintiff's claims for relief.

DEFENDANTS

5. Defendant Total Home is an Ohio for-profit corporation registered with the Ohio Secretary of State, formerly located at 1410 Dayton Xenia Road, Suite A, Xenia, Ohio 45385.

6. Defendant Hurst is a natural person residing at 2407 Beechknoll Point, Dayton, Ohio 45458.

7. At all times relevant herein, Defendant Hurst controlled and directed the business activities and sales conduct of Defendant Total Home, causing, personally participating in, or ratifying the acts and practices of Defendant Total Home, including the conduct giving rise to the violations described herein.

8. Defendant Total Home's acts and practices, described herein, could not have occurred without the personal participation and direction of Defendant Hurst.

9. Within the meanings specified in R.C. 1345.01(A), (C), and (D), in some circumstances

Defendants are "suppliers" as Defendants were engaged in the business of effecting or soliciting "consumer transactions" by soliciting and selling home improvement goods or services to individual "consumers" for purposes that were primarily personal, family, or household.

10. Within the meanings specified in R.C. 4722.01(B), (D), and (E), in some circumstances Defendants are "home construction service suppliers" as Defendants contracted with "owners" to provide "home construction services," including construction of residential buildings and home remodels for contracted amounts over $25,000.00, and maintained a general liability insurance policy in an amount of not less than two hundred fifty thousand dollars.

STATEMENT OF FACTS

11. Defendants solicited consumers for the purchase of Defendants' home improvement goods and services, including general contracting and remodeling.

12. When consumers were interested in contracting with Defendants, Defendant Hurst personally met with consumers at their homes to provide them with the estimated cost of their desired project.

13. In some instances, Defendant Hurst prepared and signed, and Defendants entered into, contracts with consumers to provide home improvement goods and services, including door replacement.

14. In some instances, Defendants accepted down payments from consumers for home improvement goods and services.

15. In some instances, Defendants represented to consumers that they would provide the contracted-for home improvement goods and services within an estimated time and then

failed to provide such goods and services in the time promised.

16. In some instances, after receiving payment under a home improvement contract, Defendants provided some of the contracted-for work but then abandoned the worksite without completing performance.

17. Consumers who did not receive their contracted-for home improvement goods and services requested refunds of their upfront payments from Defendants by communicating with Defendant Hurst.

18. Defendant Hurst responded to consumer communications, promising to refund consumers' upfront payments for home improvement goods and services. In at least once instance, Defendant Hurst prepared and signed a form agreeing to refund a consumer's upfront payment.

19. Defendants failed to refund consumers' payments for home improvement goods and services despite the fact that consumers requested refunds and Defendant Hurst promised to provide them.

20. In some instances, Defendant Hurst prepared and signed, and Defendants entered into, home construction service contracts with consumers to provide home construction services, including, but not limited to, extensively remodeling existing structures, for costs greater than $25,000.

21. Defendants accepted deposits and payments from consumers prior to beginning the contracted-for work on the home construction service contracts.

22. In some instances, Defendants represented to consumers that they would provide the contracted-for work under home construction service contracts within an estimated time and then failed to provide such goods and services in the time promised.

23. In some instances, after receiving payment under a home construction service contract, Defendants provided some of the contracted-for work but then abandoned the worksite without completing performance.

24. In some instances, Defendants provided the contracted-for work under home construction service contracts in an unworkmanlike or incomplete manner and failed to correct such work.

25. Consumers who did not receive their contracted-for work under home construction service contracts requested refunds of their upfront payments from Defendants.

26. Defendants failed to refund consumers' payments despite consumers' requests for refunds.

27. Under both home improvement contracts and home construction service contracts, Defendant Hurst communicated with consumers on behalf of Defendant Total Home. When consumers were dissatisfied with Defendants' work, consumers communicated their concerns to Defendant Hurst.

28. Consumers were harmed by Defendants' actions under both home improvement contracts and home construction service contracts.

29. Defendant Hurst directly and personally participated in the solicitation and sale of home improvement and home construction services. His participation included, but is not limited to, the following:

    a. meeting with consumers at their residences to solicit and sell home improvement and home construction services;

    b. drafting the terms of the consumer contracts for the home improvement and home construction services, including the design specifications, cost, and payment schedule;

c. signing consumer contracts for the home improvement and home construction services on behalf of himself and/or Defendant Total Home;

d. communicating with consumers about their concerns, including work delays and poor workmanship;

e. promising completion dates for the home improvement and home construction services which he personally knew, or should have known, could not be honored; and

f. collecting deposits and payments from consumers for home improvement and home construction services, even when he personally knew, or should have known, that the amount of work completed pursuant to such contracts was inconsistent with the amount of payment collected.

FIRST CAUSE OF ACTION: VIOLATIONS OF THE CSPA

Count 1 – Failure to Deliver Home Improvement Goods and Services

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

31. Defendants engaged in unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), and the Failure to Deliver Rule, Ohio Adm.Code 109:4-3-09, by accepting money from consumers for home improvement goods or services, failing to make full delivery of the promised goods or services, and failing to provide refunds.

Count 2 – Refund Misrepresentations

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

33. Defendants engaged in unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by misrepresenting the status of consumers' refunds, including promising consumers refunds but not providing refunds.

34. Such acts and practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such decisions were made available for public inspection pursuant to R.C. 1345.05(A)(3).

Count 3 – Abandoning the Worksite After Partial Performance

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

36. Defendants engaged in unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by accepting payment from consumers and beginning work at consumers' residences but abandoning the worksite and failing or refusing to complete performance of the contracted work.

37. Such acts and practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such decisions were made available for public inspection pursuant to R.C. 1345.05(A)(3).

SECOND CAUSE OF ACTION: VIOLATIONS OF THE HCSSA

Count 1 – Failure to Provide Home Construction Service Contracts Containing All Statutorily Required Information

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

39. Defendants violated the HCSSA, R.C. 4722.02, by entering into home construction service contracts with owners and not including all of the required information in the contracts,

such as a copy of Defendants' certificate of general liability coverage in an amount not less than $250,000.00.

Count 2 – Failure to Deliver Home Construction Services

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

41. Defendants violated the HCSSA, R.C. 4722.03(A)(3)(f), by entering into home construction service 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 3 – Performing Home Construction Services in an Unworkmanlike Manner

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

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

PRAYER FOR RELIEF

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

A. ISSUE A PERMANENT INJUNCTION, pursuant to R.C. 1345.07(A)(2) or R.C. 4722.07(A)(2), enjoining Defendants, their agents, representatives, salespeople, employees, successors, or assigns, and all persons acting in concert and participation with them, directly or indirectly, from committing any unfair, deceptive, or unconscionable acts or practices that violate the CSPA, R.C. 1345.01 et seq., its Substantive Rules, Ohio Adm.Code 109:4-3-01 et seq., or the HCSSA, R.C. 4722.01 et seq., as appropriate,

including, but not limited to, violating the specific provisions alleged to have been violated herein.

B. ISSUE A DECLARATORY JUDGMENT, pursuant to R.C. 1345.07(A)(1) or R.C. 4722.07(A)(1), that each act or practice complained of herein violates the CSPA, R.C. 1345.01 et seq., its Substantive Rules, Ohio Adm.Code 109:4-3-01 et seq., or the HCSSA, R.C. 4722.01 et seq., as appropriate, in the manner set forth in this Complaint.

C. ORDER Defendants, pursuant to R.C. 1345.07(B) and R.C. 4722.07(B), to pay damages to all consumers injured by the conduct of Defendants.

D. ASSESS, FINE, AND IMPOSE upon Defendants a civil penalty of $25,000 for each separate and appropriate violation of the CSPA and the HCSSA pursuant to R.C. 1345.07(D) and 4722.07(D), respectively.

E. ISSUE AN INJUNCTION prohibiting Defendants from engaging in business as a supplier in any consumer transaction 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.

F. GRANT Plaintiff its costs 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.

H. GRANT such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,

D. ANDREW WILSON
Ohio Attorney General

/s/ Emily G. Dietz
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