

**IN THE COURT OF COMMON PLEAS
FRANKLIN 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.)	
)	
SHAWN MARIOTH,)	
2640 Wall Street)	
Centerburg, OH 43011)	
)	
and)	
)	
MARIOTH CUSTOM)	COMPLAINT AND REQUEST FOR
CONSTRUCTION LLC)	DECLARATORY JUDGMENT,
237 Flushing Way)	INJUNCTIVE RELIEF, CONSUMER
Sunbury, OH 43074)	RESTITUTION, CIVIL PENALTIES,
Defendants.)	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 Consumer Sales Practices Act, (“CSPA”), R.C. 1345.01 *et seq.*

2. The actions of Shawn Marioth and Marioth Custom Construction LLC (“Defendants”), have occurred in Franklin 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.*, 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(C)(3) and (6), in that Franklin County is the county where Defendants conducted activity giving rise to the claims for relief, and this is the county in which all or part of the claims for relief arose.

DEFENDANTS

5. Defendant Shawn Marioth is a natural person residing at 2640 Wall St., Centerburg, OH 43011.
6. Defendant Marioth Custom Construction LLC (“Marioth Construction”) is a domestic Limited Liability Company registered with the Ohio Secretary of State on November 8, 2021, with its business address listed as 237 Flushing Way, Sunbury, OH 43074.
7. Defendant Shawn Marioth, at all times relevant to this action, controlled and directed the business activities and sales conduct of Defendant Marioth Construction, 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

1. Defendants engaged in the business of providing home improvement and construction goods and services, including interior remodeling services, to consumers for work on their residences.
2. Defendants did not have a retail business establishment having a fixed permanent location where the goods were exhibited or the services were offered for sale on a continuing basis.
3. In some or all cases, Defendant Marioth personally solicited consumers at their homes to contract Defendants for interior remodeling services.
4. In some cases, Defendants accepted a monetary deposit from a consumer for the purchase of home improvement goods and services and failed even begin to deliver those goods and services and have refused to refund consumers' deposits or payments.
5. In some or all cases, Defendant Marioth personally collected the monetary deposits from consumers.
6. In some or all cases, Defendant Marioth exercised his control over Defendant Marioth Construction by deciding when to send employees or subcontractors to consumers' homes to begin or continue the promised interior remodeling services.
7. In some cases, after taking payments from consumers, Defendants began to perform home improvement and construction work, including interior remodeling services, but then failed to complete the work.
8. In some cases, Defendants provided shoddy and substandard home improvement and construction services, including interior remodeling services, to consumers and then failed to correct such services.

9. Defendants represented to consumers that their services came with a warranty guaranteeing the quality of the work done and promised to correct any flaws found in these services at no additional cost.
10. When consumers asked Defendants to honor the promised warranty or to otherwise to correct flaws in the services rendered, Defendants refused to do so.
11. In some or all cases, Defendant Marioth personally communicated with consumers and exercised his control over Defendant Marioth Construction in deciding not to correct shoddy or incomplete work left at consumers' homes or to deny consumers any relief under the promised warranty.
12. During their solicitation and sale of home improvement and construction goods and services, Defendants did not properly notify consumers of their cancellation rights under Ohio law, nor did they provide consumers with a compliant notice of cancellation form.

PLAINTIFF'S CAUSE OF ACTION: VIOLATIONS OF THE CSPA
COUNT I- FAILURE TO DELIVER

13. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in the preceding paragraphs of this Complaint.
14. Defendants committed unfair or deceptive acts and practices in violation of the Failure to Deliver Rule, Ohio Adm.Code 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

15. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in the preceding paragraphs of this Complaint.
16. 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.
17. 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 CLAIM OF WARRANTY

18. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in the preceding paragraphs of this Complaint.
19. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and 1345.02(B)(10), by representing that the subject of a consumer transaction involved a warranty, a disclaimer of warranties or other rights, remedies, or obligations when the representation was false.
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 IV: DECEPTIVE OR UNFAIR CUSTOMER SERVICE

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

22. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by misrepresenting the status of consumers' orders and refunds.
23. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by providing consumers with inadequate and unfair customer service.
24. 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

FAILURE TO PROVIDE PROPER NOTICE OF THREE-DAY RIGHT OF
RESCISSION

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in the preceding paragraphs of this Complaint.
26. 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.
27. Defendants violated the CSPA, R.C. 1345.02(A), and 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).

28. 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 Ohio Adm.Code 109:4-3-01 *et seq.* and the HSSA, R.C. 1345.21 *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, Ohio Adm.Code 109:4-3-01 *et seq.* and the HSSA, R.C. 1345.21 *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 suppliers in any consumer transactions in this state until such time as Defendants have satisfied all of their respective 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

A handwritten signature in blue ink, appearing to read 'C. Ramdeen', with a long horizontal flourish extending to the right.

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