

FILED
COMMON PLEAS COURT
MUSKINGUM CO., OHIO

2019 APR 11 PM 3:59

TODD A. BICKLE
CLERK

IN THE COURT OF COMMON PLEAS
MUSKINGUM COUNTY, OHIO

STATE OF OHIO ex rel.
ATTORNEY GENERAL
DAVE YOST

30 E. Broad St., 14th Floor
Columbus, Ohio 43215

Plaintiff,

v.

ROBERT GORLEY
DBA C&J CONSTRUCTION,
34 N. Fifth St. 105 Rear
Zanesville, OH 43701

Defendant,

CH
Case No. 2019-0100

Judge: JUDGE COTTRILL

COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, 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 R.C. 1345.01 *et seq.*
2. The actions of Robert Gorley ("Defendant"), hereinafter described, have occurred in Muskingum and other counties in the State of Ohio and, as set forth below, are in violation of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01, *et seq.* and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21.
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 (2), in that Defendant resides in Muskingum County and Muskingum County is one of the counties in which Defendant conducted activity that gave rise to the claims for relief.

DEFENDANT

5. Defendant Robert Gorley is a natural person residing at 34 N. Fifth St. 105 Rear, Zanesville, OH 43701.
6. At all times relevant to this action, Defendant represented that he would provide home remodeling and repair goods and services under the business name C&J Construction.
7. Defendant is a “supplier,” as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting “consumer transactions” by soliciting consumers either directly or indirectly for home remodeling and repair goods and services for a fee, within the meaning of R.C. 1345.01(A).
8. Defendant engaged in “home solicitation sales” as a seller as that term is defined in R.C. 1345.21, as he made personal solicitations of his sales at the residences of buyers, within the meaning of R.C. 1345.21(A).

STATEMENT OF FACTS

9. Defendant engaged in the business of offering and providing home improvement goods and services under the fictitious name C&J Construction.
10. Upon information and belief, Defendant failed to register the fictitious name “C&J Construction” with the Ohio Secretary of State.
11. Defendant solicited and sold home improvement goods and services at the residences of buyers.

12. Defendant does not have a retail business establishment or a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.
13. Defendant engaged in the business of providing goods and services to consumers, including repair, remodeling, and installation services, and failed to deliver some of those goods and services within eight weeks.
14. Defendant accepted monetary deposits from consumers for the purchase of home improvement goods and services and failed to deliver those goods and services and has refused to refund consumers' deposits or payments.
15. Defendant represented to consumers that he would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.
16. Defendant performed substandard, shoddy, and incomplete work when he provided home improvement services.
17. After receiving payment, Defendant would sometimes begin to provide contracted services, and then fail to complete the work.
18. Defendant's performance of contracted services in a substandard, shoddy or incomplete manner has resulted in harm to consumers and required that consumers pay additional money to have Defendant's work corrected and/or to complete the work Defendant was supposed to do.
19. Defendant did not notify consumers of their cancellation rights nor did he provide consumers with a notice of cancellation.

PLAINTIFF'S FIRST CAUSE OF ACTION:

VIOLATIONS OF THE CSPA
COUNT I- FAILURE TO DELIVER

20. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-19 of this Complaint.

21. Defendant 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 – PERFORMING SUBSTANDARD / SHODDY WORK

22. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-21 of this Complaint.

23. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing substandard work and then failing to correct such work.

24. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(B)(2).

COUNT III – FAILURE TO REGISTER FICTITIOUS NAME

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-24 of this Complaint.

26. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by failing to register with the Ohio Secretary of State his use of fictitious business names, as required by R.C. 1329.01.
27. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendant 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

COUNT 1:

FAILURE TO PROVIDE PROPER NOTICE OF THREE DAY RIGHT OF RESCISSION

28. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-27 of this Complaint.
29. Defendant violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to give proper notices to consumers of their right to cancel their transactions by a specific date.
30. The act or practice described above has been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

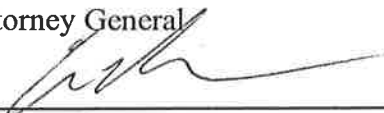
WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. ISSUE A DECLARATORY JUDGMENT that each act or practice complained of herein violates the CSPA, its Substantive Rules, and the HSSA, in the manner set forth in the Complaint.

- B. ISSUE A PERMANENT INJUNCTION enjoining Defendant, his 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.*, its Substantive Rules, and the HSSA, R.C. 1345.21 *et seq.*
- C. ORDER Defendant, pursuant to R.C. 1345.07(B), to pay actual damages to all consumers injured by the conduct of the Defendant as set forth in this Complaint.
- D. ASSESS, FINE and IMPOSE upon Defendant a civil penalty of up to \$25,000 for each separate and appropriate violation of the CSPA described herein pursuant to R.C. 1345.07(D).
- E. ISSUE AN INJUNCTION prohibiting Defendant from engaging in business as a Supplier in any consumer transactions in this state until such time as Defendant has satisfied all monetary obligations ordered pursuant to this litigation.
- F. GRANT Plaintiff its costs incurred in bringing this action.
- G. ORDER Defendant 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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