

IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

STATE OF OHIO, *ex rel.*
ATTORNEY GENERAL
MICHAEL DEWINE

Plaintiff,

v.

MIDOHIO BUILDINGS, INC.,
dba MUSTANG BUILDING CORP., et al.

Defendants.

CASE NO. 13CI000152

JUDGE NUSBAUM

FINAL JUDGMENT ENTRY
AND ORDER

PREAMBLE

This matter was heard at a bench trial held April 27, 2015, through May 5, 2015. After hearing and weighing the evidence, the Court ruled from the bench on May 5. Consistent with that decision, and its earlier decision on the Motion for Summary Judgment, the Court now issues the following Final Judgment Entry and Order.

FINDINGS OF FACT

General Facts

1. Defendant MidOhio Buildings, Inc., ("MidOhio") is a now-defunct pole-barn construction business once owned and operated by Defendant Mark A. Reese. The company also did business as Mustang Buildings Corporation.
2. The last principal place of business for Defendant MidOhio was 138 Marietta Pike, Suite A, Chillicothe, Ohio 45601.
3. The Southern Hills Community Church ("SHCC") is a relief Defendant named by the State. Defendant Reese was the founder and senior pastor of the SHCC. The State did not allege any wrongdoing by the SHCC and this Court did not find any.

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

JUL 14 2015

RECEIVED
ATTORNEY GENERAL OF OHIO

Mark Reese and MidOhio

4. After a short-stint as an employee of Defendant MidOhio, Defendant Reese became a fifty percent shareholder along with David Ratliff. Defendant Reese quickly assumed primary control of the corporation's business of selling and constructing pole buildings. Prior to managing Defendant MidOhio, Defendant Reese had limited construction experience. After assuming control, he obtained considerable on-the-job experience and was trained by the former owner.
5. After Defendant Reese assumed control of Defendant MidOhio, it experienced an increase in contracts for the sale and construction of pole buildings. However, Defendant MidOhio also began to experience financial difficulties in paying material suppliers, contractors, laborers, and other expenses. Numerous consumers who had contracted with Defendant MidOhio began to complain about timely performance of the contract, completion of the buildings, shoddy and faulty workmanship, misrepresentations, and other poor construction business practices. Ultimately, Defendant MidOhio closed its business.

Consumer Transactions

6. Defendants Reese and MidOhio engaged in consumer transactions with William Green, Shirley Finegan, Randy Rodenstine, Richard Munson and Elizabeth Birch, Mark Morris, Dennis George, Chris Mace, and Teresa Ott.
7. Mark Detamore's transaction with Defendants Reese and MidOhio is not a consumer transaction because the sole intent of that transaction was to gift a building to his stepson for business operation.
8. The State failed to prove by a preponderance of the evidence that Keith Howard's

transaction was a consumer transaction.

Unfair and Deceptive Acts

9. Defendants Reese and MidOhio:

- a. Failed to deliver Williams Green's building permit on time;
- b. Failed to deliver to Mr. Green a completed barn on time;
- c. Misrepresented the status of Mr. Green's building permits and the timeframe for the construction consummation and completion;
- d. Failed to deliver Richard Munson and Elizabeth Birch's building on time;
- e. Evaded their contractual obligations to Mr. Munson and Ms. Birch;
- f. Failed to timely deliver on Mark Morris's contract;
- g. Failed to timely obtain the permits necessary to complete Mr. Morris's building;
- h. Misrepresented the status of Mr. Morris's permits;
- i. Evaded contractual obligations to Mr. Morris by delaying and stalling, and avoiding Mr. Morris;
- j. Failed to notify the Morrises of the precarious financial situation of the corporation;
- k. Produced and failed to repair shoddy work on Dennis George's roof;
- l. Failed to honor the warranty given on Mr. George's roof;
- m. Failed to deliver to Chris Mace a completed building on time;
- n. Misrepresented the construction timeline of Mr. Mace's building;
- o. Stalled and evaded contractual obligations to Mr. Mace;
- p. Failed to honor the warranty given on Teresa Ott's building;
- q. Produced shoddy work on Ms. Ott's building and failed to repair it.

10. The State failed to prove that Defendants Reese and MidOhio:
 - a. Failed to deliver Shirley Finegan's building on time;
 - b. Misrepresented the construction timeline of Ms. Finegan's building;
 - c. Misappropriated any consumer funds paid by Ms. Finegan;
 - d. Performed shoddy workmanship on Randy Rodenstein's building;
 - e. Committed any other unfair, deceptive, or unconscionable act under R.C. 1345.01 et seq. with regard to Randy Rodenstein's building.
11. Defendants Reese and MidOhio misappropriated consumer funds specifically designated for the purchase of materials and labor necessary for the construction of consumers' buildings:
 - a. \$16,000 of which was diverted to the SHCC and used for purposes that were not legitimate for the business;
 - b. \$427 of which was spent at Kay Jewelers in December of 2011 when the company was in dire financial straits and around the time that Defendant Reese was saying that he was going to start a new business, Automark Automotive Corporation ("Automark");
 - c. some of which was diverted to cover the company's negative bank account balance and make up for the company's unpaid debts to material suppliers;
 - d. some of which was diverted to starting a new business, Automark, after accepting Mark Morris's second draw payment and frustrating PayPal's attempts to refund Mr. Morris;
 - e. some of which was diverted after Defendant Reese met with the corporation's attorneys and was told by those attorneys to take the money out of the account

and deposit it with the attorneys to resolve potential claims by creditors and the IRS.

12. Defendants spent no significant portion of many consumers' funds on construction materials, even though those funds were contractually designated for that purpose.
13. When Defendant Reese first took over the business, there was \$136,000 in the checking account. In August of 2011, the checking account balance was negative. The reason that many of the consumers could not get a refund when they were dissatisfied with the progress being made on their buildings was because there was no money to make a refund. And the reason there was no money to make a refund was because Defendant Reese and MidOhio misappropriated the funds paid by consumers, trusting in the representations of Defendant Reese, who, on many occasions, advertised himself as a pastor and a Christian.

Consumer Damages

14. The following consumers were damaged by Defendants Reese and MidOhio in the following amounts:
 - a. William Green: \$6,501.38;
 - b. Richard Munson and Elizabeth Birch: \$13,660.67;
 - c. Mark Morris: \$33,423.63;
 - d. Chris Mace: \$11,874.00;
 - e. Teresa Ott: \$327.00.

Defendant Reese's Individual Responsibility

15. Nearly every unfair and deceptive act was committed individually by Defendant Reese.
16. Defendant MidOhio was the alter-ego of Defendant Reese. Consumers dealt almost

exclusively with Defendant Reese. There was a close corporation agreement and some other agreements, but there were no shareholder meetings, no minutes, and no regular meetings with Defendant Reese's partner, David Ratliff. Mr. Ratliff wanted to get out of the business and he met with Defendant Reese regularly for only about four months. Thereafter, the meetings became very irregular, with the last meeting occurring right before both decided to seek the assistance of attorneys in order to close down the business. The evidence establishes that Defendant Reese exercised his overwhelming control in order to commit fraudulent, unfair, and illegal acts.

Relief Defendant Southern Hills Community Church

17. The evidence does not establish that anyone, other than Mark Reese, affiliated with the SHCC committed any wrongful or illegal acts.
18. The State failed to establish that any of the funds that went to SHCC came from any of these specific consumers.

CONCLUSIONS OF LAW

General Conclusions

19. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Consumer Sales Practices Act ("CSPA").
20. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3).
21. Defendants Reese and MidOhio are "suppliers" as defined in the CSPA, R.C. 1345.01(C) because MidOhio and Reese engaged in the business of effecting consumer transactions, either directly or indirectly, by soliciting or selling goods or services to consumers for purposes that were primarily for personal, family, or household use, within the meaning specified in R.C. 1345.01(A).

22. Where a consumer obtains a judgment against a defendant, *res judicata* does not apply to a CSPA action brought by the State of Ohio *ex rel* Attorney General against the same defendant.

The Burden of Proof

23. The preponderance of the evidence, or greater weight of the evidence, is the burden that applies to this action, and the State has that burden—of proving every element of each claim in this case.
24. Where a contract for a consumer transaction is prepared by a supplier and submitted to a consumer without an attorney present, the language of the agreement should be construed most strictly against the supplier.

Family Gifts for Business Use Are Not Consumer Transactions

25. The threshold issue in this case is whether the transactions that are the subject of this action are consumer transactions, and R.C. 1345.01(A) of the Ohio Revised Code defines a consumer transaction as a sale of a good or service to an individual for purposes that are primarily personal, family, or household. The use of the word “purpose” implies a use for the good or the service. The noun “use” is defined in the dictionary as an act of using something. You cannot use a gift. A gift is not a use of property.

Unfair and Deceptive Acts

26. The claims asserted by the State can constitute unfair or deceptive acts. Courts of record in this state have found that all of the claims asserted by the State can constitute unfair or deceptive trade practices.
27. Defendants Reese and MidOhio committed unfair and deceptive acts in violation of the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-09, by failing to deliver goods and services

- in the promised time frame and then failing to make full refunds.
28. Defendants Reese and MidOhio committed unfair and deceptive acts in violation of the CSPA, R.C. 1345.02, by failing to disclose its precarious financial condition, including the substantial likelihood that it would not complete performance or honor warranties.
 29. Defendants Reese and MidOhio committed unfair and deceptive acts in violation of the CSPA, R.C. 1345.02(A), by accepting money from consumers for the purchase and installation of goods and services when Defendants knew or should have known that, due to its precarious financial situation, the consumers would not receive the goods or services.
 30. Defendants Reese and MidOhio committed unfair and deceptive acts in violation of the CSPA, R.C. 1345.02(A), by performing shoddy, substandard, and unworkmanlike services and then failing to correct that work.
 31. Defendants Reese and MidOhio committed unfair and deceptive acts in connection with consumer transactions in violation of R.C. 1345.02(A) by making false and misleading statements of fact or opinion in connection with a consumer transaction to the detriment of the consumer.
 32. Defendants Reese and MidOhio committed unfair and deceptive acts in violation of the CSPA, R.C. 1345.02, by repeatedly stalling and evading their contractual obligations.
 33. Defendants Reese and MidOhio committed unfair and deceptive acts in violation of the CSPA, R.C. 1345.02, by misappropriating consumer funds specifically designated for the purchase of materials and labor necessary for the construction of consumers' buildings.
 34. Defendants Reese and MidOhio committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by diverting company assets to personal,

charitable, or other non-business uses when the Defendants knew or should have known that there was a risk that doing so would leave the corporation with insufficient assets to fulfill all its contractual obligations to consumers, including the honoring of warranties.

Defendant Reese's Individual Liability

- 35. Defendant Reese is personally liable for these unfair and deceptive acts and practices.
- 36. Defendant Reese acted as the alter ego of Defendant MidOhio such that Defendant MidOhio had no separate mind, will, or existence of its own. The Court concludes that piercing the corporate veil is appropriate in this case, and therefore holds Defendant Reese liable for the unfair and deceptive acts of Defendant MidOhio.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

- A. The Court hereby **DECLARES** that the acts and practices described in the Plaintiff's Complaint, and above in the Findings of Fact and Conclusions of Law, violate the CSPA, R.C. 1345.01 et seq., in the manner set forth in this Decision.
- B. Defendants Reese and MidOhio, doing business under their own names, as Mustang Buildings Corporation, or any other names, their agents, representatives, salespeople, employees, successors, or assigns, and all persons acting in concert and participation with them, directly or indirectly, are hereby **PERMANENTLY ENJOINED** from committing any unfair, deceptive, or unconscionable act or practice that violates the CSPA, R.C. 1345.01 et seq., including the commission of any of the specific acts and practices declared by this Court to be unfair and deceptive.
- C. The State's request to enjoin the Defendant Reese from acting as a supplier as defined in the CSPA, R.C. 1345.01(C), is denied.

- D. Pursuant to R.C. 1345.07, Defendants Reese and MidOhio are **ORDERED**, jointly and severally, to pay a civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00). Payment made under this paragraph shall be submitted in the form of a certified check or money order, made payable to the "Ohio Attorney General's Office," and delivered to:

Compliance Officer
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

- E. Defendants Reese and MidOhio are **ORDERED**, jointly and severally, to pay restitution in the amount of Sixty-Five Thousand Seven Hundred Eighty-Six Dollars and Sixty-Eight Cents (\$65,786.68) to the consumers set forth on the attached Exhibit A. Payment made under this paragraph shall be submitted in the form of a certified check or money order, made payable to the "Ohio Attorney General's Office," and delivered to:

Compliance Officer
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

- F. Defendants Reese and MidOhio are **ORDERED** to pay all court costs.
- G. This Court shall retain jurisdiction to enforce compliance with provision B of this Final Judgment Entry and Order.

IT IS SO ORDERED.

Signed



Judge Scott Nusbaum

Date

Prepared by:

PLAINTIFF

MICHAEL DEWINE,
Attorney General of Ohio

BRADLY TURNER (0091043)
ERIN B. LEAHY (0069509)
Assistant Attorneys General
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
Brad (614) 466-1031 | Erin (614) 752-4730
Bradly.Turner@ohioattorneygeneral.gov
Erin.Leahy@ohioattorneygeneral.gov
Counsel for Plaintiff

EXHIBIT A

Consumer	Restitution
William Green	\$6,501.38
Richard Munson/Elizabeth Birch	\$13,660.67
Mark Morris	\$33,423.63
Chris Mace	\$11,874.00
Teresa Ott	\$327.00
Total	\$65,786.68