

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

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

Plaintiff,

v.

ADOLFO CASTANEDA,

Defendant.

: CASE NO. 15 CV 009587

: JUDGE SERROTT

: **RECEIVED**
ATTORNEY GENERAL OF OHIO

: APR 14 2017

: CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

**DECISION AND ENTRY GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Rendered this 22nd day of November, 2016

SERROTT, J.

I. INTRODUCTION

On October 27, 2015, the State of Ohio, through Attorney General Michael DeWine, initiated this action against Defendant Adolfo Castaneda, alleging multiple violations of the Consumer Sales Practices Act and the Home Solicitation Sales Act. The violations primarily stem from Defendant accepting money from consumers in exchange for providing home improvement goods and services, but Defendant either failed to perform the work or provided shoddy and substandard services. The Complaint seeks a declaratory judgment that Defendant committed the complained of act or practices; a permanent injunction enjoining Defendant from any further statutory violations; an order to pay all actual damages to the injured consumers; the imposition of a civil penalty; and an injunction precluding Defendant from engaging in any business as a supplier in a consumer transaction until he satisfied all monetary obligations ordered in this litigation.

The State now moves for summary judgment on its Complaint on the grounds that no genuine issues of fact exist for trial. The Motion is unopposed.

II. RELEVANT FACTS

The Court will begin by noting that, on August 18, 2016, the State obtained an Order deeming its Requests for Admissions to be admitted as Defendant had been properly served with the Requests and failed to submit any responses. Based on this, Defendant has admitted the following facts:

- He sold home improvement services to Ohio consumers for their residential homes.
- He sold tree trimming and removal services to Ohio consumers.
- He conducted business using the names AC's Home Restoration and A&J Home Restoration, but had decision-making authority with regards to the business activities and sales conducted by these entities.
- He accepted monetary deposits from consumers for the purchase of home improvement good and services, such as for material or installation of flooring or tree trimming and removal.
- He failed to deliver goods and services sold to consumers within eight weeks.
- He accepted money from consumers and failed to either begin or to complete the contracted for services.
- He refused to refund consumers' deposits or payments despite consumers' requests for refunds.
- Consumers complained to him about the quality of the home improvement or tree trimming and removal services provided.
- He provided shoddy and substandard home repair services to consumers; consumers requested that he correct the substandard work; and he failed to do so.
- He failed to provide consumers with notices of cancellation forms describing their right to cancel the transactions.
- He offered home improvement services to consumers and entered into the agreements while at the residences of the consumers.
- His business has no fixed location where his services are regularly offered or exhibited for sale.
- The total purchase price for the services provided to the consumers at issue exceeded \$25.00.

(State's Ex. 2).

The State has further submitted Affidavits from multiple consumers to establish the alleged statutory violations and the damages. Mie and Takumi Ashida contracted for Defendant

to clean their gutters, replace rotted and destroyed fascia and soffit, replace damaged or destroyed gutters with new seamless gutters, refasten and re-pitch all gutters, remove and replace all damaged downspouts, and fix all damaged siding. (Mie Ashida Affidavit, ¶4). The Ashidas aver that he never told her or her husband verbally or in writing that they had a three-day right to cancel the contract. (Id. at ¶6). The Ashidas further aver that they paid a total of \$3,430.00 in cash and checks to Defendant for the work that was to be completed by April 18, 2015.

The Ashidas state that Defendant and his crew only replaced some of the damaged fascia and a portion of the gutter, but the gutter that was replaced was not done correctly and was not seamless as required by the contract. (Id. at ¶9). They contend they made multiple attempts to contact Defendant to return to correct and complete the job or refund their money and that they ultimately had to hire a different company to correct and complete the job. (Id. at ¶¶10, 11). They seek a refund of \$3,258.50, which is a partial refund in recognition that Defendant did at least remove the damaged gutter. (Id. at ¶¶13-15).

Chenlong Song avers that he paid Defendant the total sum of \$870.00 for labor and material for the installation of gutter screens, removal of a tree, and the rental of a dumpster. (Id. at ¶¶6-9). He further avers that he was not told he had a three-day right to cancel the agreement. (Id. at ¶5). He states that Defendant completed the gutter screening, but only cut down a few branches, left the piles in his yard, and then never returned to clean up the piles or complete the tree removal. (Id. at ¶10). Thus, he seeks a refund of the \$690.00 paid for the dumpster rental and tree removal. (Id. at ¶13).

Monica Loving avers that Defendant approached her regarding a rear gutter hanging off of her residence, and she agreed to hire him to remove the upper back gutter and fascia, replace the fascia with new wood, and reinstall the gutter to the proper pitch. Ms. Loving paid Defendant

\$150.00 cash for these services. (Id. at ¶3). He did not inform her that she had three days to cancel the agreement. (Id. at ¶4). She states that Defendant started to perform the work, but then left before the job was finished. Water then began leaking inside her residence, damaging interior walls. (Id. at ¶¶5, 6). Defendant refused to come back to her home to finish and correct the work, and she hired Affordable Roofing, who confirmed that Defendant's actions had caused additional damage. (Id. at ¶¶7, 8). Thus, she seeks the sum of \$230.00, representing the \$150 she paid to Defendant, and \$80 that she paid to Affordable Roofing to correct damage caused by Defendant. (Id. at ¶12).

Stacy Somazze, upon being approached by Defendant, hired him to replace an asphalt driveway with concrete and to further replace a concrete walkway and two door stoops. She avers that he never informed her of the three day right to cancel the contract. (Id. at ¶¶3, 9). Although she experienced other problems with the services performed by Defendant, she seeks only a refund of the \$228.97 she paid for the concrete needed to replace the walkway and door stoops. Ms. Somazze avers that Central Ready Mix showed up with the cement, but it could not be poured because Defendant had no workers there or forms in place, and never returned to complete this work. (Id. at ¶¶6-7, 11).

Finally, Bruce Soble avers that he entered into an agreement with Defendant whereby Defendant was to cut a tree to ground level, split and stack the wood, and clean and haul away the leftover trash. Mr. Soble paid Defendant a cash deposit of \$220.00 for the work. Defendant never returned to the residence to complete the work. Defendant further never informed him of his three day right to cancel the contract. (Id. at ¶¶4-8). Thus, Mr. Soble seeks a refund of the \$220.00 deposit.

Based on the above evidence, the State argues that the facts are not in dispute, and that no genuine issues exist for trial. Thus, the State requests that summary judgment be entered for the relief requested in the Complaint.

III. STANDARD OF REVIEW

Under Civ. R. 56, summary judgment is proper when "(1) [n]o genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party." *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327 (1977). Trial courts should award summary judgment with caution, being careful to resolve doubts and construe evidence in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 360 (1992). Nevertheless, summary judgment is appropriate where a party fails to produce evidence supporting the essentials of its claim. *Wing v. Anchor Media, Ltd. of Texas*, 59 Ohio St.3d 108 (1991), paragraph three of the syllabus.

Pursuant to Civ. R. 56(C), a movant bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. "In other words, the burden of demonstrating an entitlement to summary judgment rests with the moving party who must direct the court's attention to properly admissible evidence which demonstrates that the nonmoving party cannot support his or her claim or defense." *Davis & Meyer Law, Ltd. v. Pronational Ins. Co.*, Franklin App. No. 06AP-730, 2007-Ohio-3552, at ¶12. "Once a movant discharges its initial burden, summary judgment is appropriate if the nonmoving party does not

respond, by affidavit or as otherwise provided in Civ. R. 56, with specific facts showing that a genuine issue exists for trial.” Id.

III. LAW AND ANALYSIS

Based upon the unrefuted evidence, including Defendant’s deemed admissions, there can be no dispute that Defendant is a “supplier” engaged in “consumer transactions” as defined by the CSPA. See R.C. 1345.01. The CSPA mandates that “[n]o supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction.” R.C. 1345.02(A). The CSPA grants the attorney general the right to conduct investigations and to bring actions to enforce the statute. R.C. 1345.05. Additionally, R.C. 1345.09 grants a consumer a cause of action and the right to seek relief for violations of the CSPA. Finally, pursuant to R.C. 1345.07, the Attorney General may request and the court may impose a civil penalty of up to \$25,000 for each act or practice that is declared to be unfair, deceptive, or unconscionable.

The undisputed evidence demonstrates that Defendant committed a deceptive act and violated Ohio Adm. Code 109:4-3-09(A), the “Failure to Deliver Rule.” The code provision states it is a deceptive act or practice for a supplier to accept money from consumers for services, and then to permit eight weeks to elapse without providing the services; making a full refund; or advising the consumer of the duration of an extended delay and offering either a refund within two weeks or furnishing similar services of equal value as a good faith substitute if agreed to by the consumers.

Next, the undisputed evidence demonstrates Defendant violated the CSPA by providing shoddy and substandard home repair services and not correcting the work upon being notified of the deficiencies. R.C. 1345.02(B)(2). The uncontroverted averments of the consumers regarding Defendant’s conduct sufficiently support this finding.

Finally, the State's Complaint asserts a violation of the Home Solicitation Sales Act, specifically R.C. 1345.23(B)(1), which requires that, in every home solicitation sale, a consumer must be notified of his or her three day right to cancel the transaction. It is undisputed that, in every consumer transaction at issue Defendant failed to provide the statutorily required notice of the consumer's three day right to cancel the contract. Additionally, a violation of this provision is also a violation of the CSPA. R.C. 1345.28 ("Failure to comply with sections 1345.21 to 1345.27 of the Revised Code constitutes a deceptive act or practice in connection with a consumer transaction in violation of section 1345.02 of the Revised Code").

Based on the foregoing, the Court finds that no genuine issues of material fact exist for trial, and that the State is entitled to judgment on the Complaint as a matter of law. Accordingly, the Motion for Summary Judgment is GRANTED. The Court further finds the State's request for a civil penalty of \$10,000 to be reasonable and in accordance with the law.

It is therefore, ORDERED, ADJUDGED, AND DECREED THAT:

1. Declaratory Judgment is made that each act or practice described in the Complaint violates the CSPA, its substantive rules, and the HSSA, in the manner set forth in the Complaint.
2. Defendant, his agents, servants, 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, are **PERMANENTLY ENJOINED** 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.
3. Defendant is **ORDERED** to pay all actual damages to all consumers injured. Defendant shall pay the total sum of **\$4,627.47** to the Consumer Protection Section of the Ohio Attorney General's Office for distribution to the consumers.
4. In accordance with R.C. 1345.07(D), Defendant shall pay a civil penalty of **\$10,000.00**.

5. Defendant is hereby **ENJOINED** from engaging in business as a supplier in any consumer transaction in the State of Ohio until such time as he has satisfied all monetary obligations ordered in this judgment.
6. Defendant shall pay all court costs.

Pursuant to Civ. R. 58, the Clerk of Courts shall provide all parties with the notice of this judgment, and its date of entry on the record.

IT IS SO ORDERED.

Electronically Signed By:
JUDGE MARK A. SERROTT

Franklin County Court of Common Pleas

Date: 11-23-2016
Case Title: OHIO STATE EX REL -VS- ADOLFO CASTANEDA
Case Number: 15CV009587
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in cursive script, reading "Mark Serrott", is written over a circular official seal. The seal is partially obscured by the signature and has a textured, dotted appearance.

/s/ Judge Mark Serrott