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IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

FOR COURT USE ONLY	
S.C.	12
Line #:	

STATE OF OHIO *ex rel.*
ATTORNEY GENERAL
DAVE YOST

Plaintiff,

v.

THE LEGACY LOFTS ON
COURTLAND, LLC, *et al.*,

Defendants.

) Case No: A 1901251
)
) Judge: TERRY NESTOR
)

) FINAL JUDGMENT
) ENTRY AND ORDER

) **RECEIVED**
ATTORNEY GENERAL OF OHIO

) FEB 08 2021
)

) CONSUMER PROTECTION SECTION
) PUBLIC INSPECTION FILE

ENTERED
FEB 04 2021

The Plaintiff commenced this action on March 11, 2019, by filing its Complaint, Request for Declaratory and Injunctive Relief, Consumer Restitution, Civil Penalties, and Other Appropriate Relief against Defendants The Legacy Lofts on Courtland, LLC ("Legacy Lofts") and Scot Call (collectively "Defendants"). The Complaint alleged violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 *et seq.*, and the Condominium Property Act ("CPA"), R.C. 5311.01 *et seq.*

On March 20, 2019 certified mail service was issued to Defendant Legacy Lofts. This mail was returned as unclaimed and, on May 2, 2019, Legacy Lofts was served by ordinary mail. Defendant Call was served by publication and the Affidavit of Publication was filed January 23, 2020. Plaintiff moved for default judgment on March 12, 2020, and the Court entered a Default Judgment Entry and Order against Defendants on May 8, 2020.

On December 11, 2020, Plaintiff filed a Memorandum in Support of Damages and Other Requested Relief ("Damages Memo"), in which Plaintiff submitted evidence, including consumer affidavits, supporting the amount of consumer damages and civil penalties that



VERIFY RECORD

Plaintiff was requesting. In their affidavits, the consumers attested to the damages each of them suffered. The evidence established that the consumers sustained monetary damages after Defendants failed to provide the goods and services for which Defendants accepted the consumers' payments.

The Court finds that the consumers sustained damages in the amount of \$43,750.00.

In its Damages Memo, Plaintiff also explained the basis for a \$50,000 civil penalty. Plaintiff requested the civil penalty pursuant to R.C. 1345.07(D) and provided evidence of the Defendants' violations of the CSPA sufficient to warrant imposing a civil penalty. The Court finds Plaintiff's request for a civil penalty in the amount of \$50,000 well-taken.

Based on the above, the Court restates below the Findings of Fact, Conclusions of Law, and ordered relief included in the Court's May 8, 2020 Default Judgment Entry and Order, and orders additional relief based on the evidence presented in the Plaintiff's Damages Memo.

FINDINGS OF FACT

1. Defendant The Legacy Lofts on Courtland, LLC ("Legacy Lofts") is a limited liability company registered in Ohio with a principal place of business in Hamilton County. Legacy Lofts did business as The Legacy Lofts.
2. Defendant Scott Call ("Call") is an adult person who was or is a resident of the State of Ohio, and who was and is an owner, employee, officer, or director of Defendant Legacy Lofts.
3. Defendants were developers of an anticipated residential condominium project located on Courtland Avenue in Norwood, Ohio.
4. The condominium project was named The Legacy Lofts. It was to consist of a maximum of 112 residential units.

5. Before the condominium project could be inhabited, Defendants needed and planned to do significant construction and remodeling work on the property.
6. Defendants solicited individuals to enter into agreements to purchase ownership interests in the condominium project. The agreements were titled "Reservation Binder Agreements."
7. When signing a Reservation Binder Agreement, the buyer agreed to purchase a condominium unit at closing at a set price when the development was completed. The sale would not close until the development was completed.
8. Pursuant to R.C. 5311.26, Defendants were required to provide to potential buyers a written condominium development disclosure statement that disclosed multiple material facts about the condominium development.
9. Defendants did not provide a written condominium development disclosure to potential buyers, or otherwise disclose many of the material facts required by R.C. 5311.26.
10. The Reservation Binder Agreement specified remodeling and construction work Defendants needed to perform on the development before the unit could be sold. For example:
 - a. All the roofs will be replaced;
 - b. All brick and masonry stone work will be repaired and cleaned;
 - c. The entire property will be fenced in with wrought iron security fencing with remotely operated pedestrian and vehicle gates;
 - d. The bathrooms will be designed to fit each individual unit and will have quality fixtures, furniture and tiling with glass fronted shower units; and
 - e. The interior mill work will be a mix of existing and new.
11. The anticipated completion dates for various portions of the condominium project ranged from approximately April 2018 to December 2018.

12. When the buyer signed the Reservation Binder Agreement the buyer paid a deposit to Defendants. The deposit amount was often \$5,000 per unit.
13. Per the terms of the Reservation Binder Agreement the deposit was fully refundable if the buyer made a written request to terminate the agreement at least 60 days prior to the anticipated closing date.
14. Pursuant to R.C. 5311.25(A) the buyers' deposits were required to be held in escrow. The Reservation Binder Agreement did not contain the language described in R.C. 5311.25(A)(2)(b).
15. Defendants did not hold the buyers' deposits in escrow, or collect the legally required interest on deposits in excess of \$2,000.
16. Multiple buyers signed Reservation Binder Agreements.
17. Beginning in the spring of 2018, problems related to the development of the condominium project began to occur. The Defendants notified buyers that these problems would impact the planned completion date of the project.
18. Some buyers requested in writing the return of their deposits, including some buyers who requested the return prior to 60 days of the original closure date.
19. Buyers who requested the return of their deposits have never received any portion of their deposit returned.
20. Defendants entered into agreements and promissory notes with some buyers agreeing to return the buyers' deposits. Defendants have not followed the terms of these agreements or promissory notes.
21. Defendants have ceased all contact with buyers, and will not respond to buyers' requests for information.

22. To date, the condominium project has not been completed. Defendants do not own all of the property that the condominium project is to be developed on. As such, the condominium project will not be completed.

CONCLUSIONS OF LAW

23. Jurisdiction over the subject matter of this action, for which the recoverable monetary amount in dispute is greater than \$15,000, lies with this Court pursuant R.C. 2305.01, and pursuant to the CSPA, R.C. 1345.04.

24. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(3), as Defendants conducted activity in Hamilton County that gave rise to the claims for relief.

25. The Attorney General is the proper party to commence these proceedings under the authority vested in him by R.C. 1345.07 and R.C. 5311.27.

26. Defendants are "suppliers" as defined in R.C. 1345.01(C) because Defendants were, at all times relevant hereto, engaged in the business of effecting consumer transactions either directly or indirectly by soliciting and selling goods or services to consumers in the State of Ohio for purposes that were primarily for personal, family or household use, within the meaning specified in R.C. 1345.01(A).

27. Defendants are "developers" as defined in R.C. 5311.01(S) because Defendants directly or indirectly sold or offered to sell condominium ownership interests in a condominium development.

28. Defendants committed unfair and 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 deliver of the goods and services ordered, making a full refund, advising the consumer 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.

29. Defendants committed unfair and deceptive acts or practices in violations of the CSPA, R.C. 1345.02(A), by representing that the subject of a consumer transaction had sponsorship, approval, performance characteristics, uses, or benefits that it did not have, specifically that 1) deposits made under the transaction would be fully refundable upon written notice at least 60 days prior to the anticipated closing, and 2) refunds would be provided pursuant to the terms of refund agreements or promissory notes.
30. Defendants violated the CPA by accepting deposits or down payments in connection with the sale of a condominium unit and not holding the deposits or down payments in trust or escrow, and not collecting the required interest on these deposits or down payments, in violation of R.C. 5311.25.
31. Defendants violated the CPA by not fully and promptly refunding purchasers' deposits or other payments upon proper request by the purchaser to void or otherwise terminate the agreement, in violation of R.C. 5311.27.
32. Defendants violated the CPA by selling condominium ownership interests in a residential condominium development and not providing the prospective purchasers a disclosure statement that disclosed fully and accurately all material circumstances or features affecting the development in a readable and understandable written statement, including the provisions required by R.C. 5311.26, in violation of R.C. 5311.26.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED THAT:

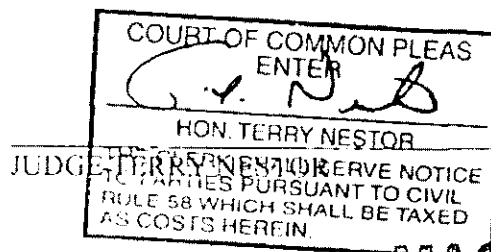
- A. The Plaintiff's request for a Declaratory Judgment that the acts and practices described in Plaintiff's First Cause of Action violate the CSPA, R.C. 1345.01 *et seq.*, is hereby GRANTED. The Plaintiff's request for a Declaratory Judgment that the acts and practices described in Plaintiff's Second Cause of Action violate the CPA, R.C. 5311.01 *et seq.*, is hereby GRANTED.
- B. Defendants, under their names, or any other names, their officers, partners, agents, representatives, salespersons, employees, successors or assigns, and all persons acting in concert and participation with them directly or indirectly through any corporate device, partnership or association, in connection with any consumer transaction, are hereby PERMANENTLY ENJOINED from committing further violations of the acts or practices described in the Conclusions of Law, paragraphs 28-32.
- C. Defendants are jointly and severally liable and hereby ORDERED to pay actual damages to all consumers injured by the conduct of the Defendants in the amount of \$43,750. The amount shall be paid to the Attorney General for distribution to the consumers set forth in Plaintiff's Memorandum on Damages and accompanying exhibits, summarized as follows:

Brown	Monica	\$7,000
Carnavale	Maryann	\$3,500
Fishman	Felice	\$10,000
Kiwan	Badereddin	\$9,750
Morris	Nathen	\$5,000
Slone	Kathleen	\$3,500
West	Daniel	\$5,000

- D. Based on the above findings that Defendants committed unfair and deceptive acts and practices in violation of the CSPA, Defendants are ORDERED to pay civil penalties to the Attorney General, pursuant to R.C. 1345.07(D), in a total amount of \$50,000.
- E. Defendants shall pay Plaintiff's costs of collecting this judgment as permitted by statute.
- F. Defendants shall pay all court costs associated with this matter.

IT IS SO ORDERED.

2/4/2021
DATE



MAGISTRATE

FEB 01 2021

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Prepared by:

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