

FILED

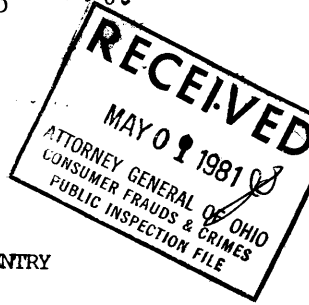
79 AUG 20 AM 9:05

IN THE MUNICIPAL COURT OF FRANKLIN, OHIO

DONALD BROWN, et al)
)
 Plaintiffs)
)
 -vs-)
)
 DONALL G. SPEARS, et al)
)
 Defendants)

Case No. 8897

DECISION AND ENTRY



This cause comes before the Court on the plaintiffs' motion for default judgment against defendant Donall G. Spears, individually, and defendant Donall G. Spears, dba Springboro Heating and Air Conditioning. The Court finds upon a review of the record that these two defendants were served on June 1, 1979, and have failed to answer the allegations of the complaint or to otherwise appear before the Court. On July 20, 1979, this Court heard the plaintiffs present evidence in support of damages in their cause. However, before deciding the question of damages, this Court must turn to a review of the law to determine the legal sufficiency of the claims which the plaintiffs bring before it.

Initially, this Court finds that the plaintiffs were consumers and the defendants were merchants and suppliers within the meaning of the Ohio Consumer Sales Practices Act, O.R.C. 1345.02 et seq, and further that the parties to this action did engage in the consumer transactions which are alleged in the complaint.

Briefly stated, plaintiffs' first claim alleges that the defendants committed an unfair or deceptive act in violation of O.R.C. 1345.02(A) by their use of the word "warranty" on the contract offer which is attached to the complaint as Exhibit A, which itself allegedly violates the Magnuson Moss Warranty Act, 15 U.S.C. §2301 et seq. The Court has examined the language used by the defendants in the contract offer, and has further examined 15 U.S.C. §2303, and finds as a matter of law that the language is in violation of the Federal Statute, in that the defendants contract offer states that there is a "ten year warranty on heat exchanger" but fails to designate said warranty as either "full" or "limited". The effect of this violation is seen by examining 15 U.S.C. §2310(b) which states that a violation of the Magnuson Moss Warranty Act is itself a violation of the Federal Trade Commission Act, 15 U.S.C. §45(a)(1). Turning to 15 U.S.C. §45, this Court finds that the United States Congress has declared unlawful "unfair or deceptive acts or practices in or affecting commerce".

The Court having found that the defendants have violated Federal Law, the question next presented by the plaintiffs first claim is whether that violation constitutes a violation of Ohio's Consumer Sales Practices Act. Plaintiffs urge two grounds on which to so hold. First, the plaintiffs urge that when a defendant-supplier violates a Federal Statute, his act in so doing is inherently and necessarily an unfair or deceptive act, which violates the Ohio Statute. In support thereof plaintiffs cite Brown v. Lyons, 43 O. Misc. 14, 72 O. O. 2d 216, 332 N. E. 2d 380 (1974). The Court finds the second reason, however, cited by the plaintiffs to be an even more cogent ground on which to uphold the legal sufficiency of plaintiffs' first claim, that being that State Law requires this Court to look to Federal Law in construing "unfair and deceptive" and since a violation of Federal Law has already been found by this Court, then a violation of the State Law must also be seen to exist.

Referring to O.R.C. 1345.02(C), this Court finds that, as a matter of law, this Court is directed to give "due consideration and great weight" to the fact that the defendants have been found to violate 15 U.S.C. 45(a)(1), in this Court's construction of whether or not the defendants have committed an unfair or deceptive act or practice under Ohio Law.

Page Two.

Therefore, this Court finds, as a matter of law, that where a defendant-supplier violates 15 U.S.C. §2303, his act in so doing is inherently and necessarily a violation of O.R.C. 1345.02(A).

Turning to plaintiffs' second claim, the allegations found here by the Court are much the same as in the first claim, except that the violation by the defendants here alleged is in their use of the word "warranty" without the qualifying phrase on the job invoice, which is attached to the complaint as Exhibit B.

As cited herein, the Court finds as a matter of law that the conduct alleged in the second claim is a violation of O.R.C. 1345.02(A).

Plaintiffs' third claim is grounded on the alleged breach of contract by the defendants, in that the defendants violated the express warranties in the contract. Upon a review of the contract proposal and job invoice, the Court finds these documents to be a contract between the parties whereby the plaintiffs promised to pay the defendants \$600 and the defendants committed themselves to install properly and correctly an oil furnace in the residential premises owned by the plaintiffs. In addition thereto, the defendants gave "a ten year warranty on heat exchanger, one year parts and labor guaranteed as per contract". The Court finds that the plaintiffs have performed their part of the contract.

The Court finds that the plaintiffs reasonably relied upon the warranties and representations given by the defendants to induce them to enter into this contract. Those representations included that the defendants would remedy any defects in the oil furnace which manifested themselves within the first year, at no cost to the plaintiffs. The Court further finds that shortly after the installation of the furnace by the defendants, a defect or other mechanical problem did arise in the furnace and that as a result thereof a dark, filmy dirt and soot material was emitted by the furnace throughout the entire interior of plaintiffs' home. The Court further finds that the plaintiffs did make numerous complaints and telephone calls to the defendants, but the defendants did not correct the problem. The Court finds that the plaintiffs did provide the defendants with an adequate number of opportunities to repair the problem under the terms of the warranties, but that the defendants refused or failed to do so and thereby breached their contract with these plaintiffs. The plaintiffs introduced numerous photographs into evidence and testified at length about the damages caused by this soot which was emitted by the furnace, and about the numerous attempts they made to contact the defendants and the numerous promises made by the defendants to come out and repair the furnace, all of which were to no avail.

Turning to the plaintiffs' fourth claim, the plaintiffs allege therein that the intentional breach of a contract by a supplier-defendant is a violation of O.R.C. 1345.02(A). In reliance thereon, the plaintiffs cite Brown v. Lyons, supra.

12. Where a supplier has legal obligations to consumers, and where there are no valid legal defenses for not performing those obligations, a supplier who avoids or attempts to avoid those obligations commits a deceptive act or practice in violation of the Ohio Consumer Sales Practices Act, R.C. §1345.02(A). 43 O. Misc. at 20; 72 O.O. 2d at 219; 332 N. E. 2d at 386.

The Court finds as a matter of law that where a defendant-supplier breaches his contract with a plaintiff-consumer, without any legal defenses for not performing these obligations, then he has committed an unfair or deceptive act or practice in violation of O.R.C. 1345.02(A).

Lastly, plaintiffs' fifth claim alleges that "in its handling and servicing attempts to repair the furnace's defects and problems, defendants have, jointly

and severally, consistently maintained a pattern of inefficiency, incompetency, and continually stalled and evaded their legal obligations to properly perform the warranty work contracted for with these plaintiffs," and thereby have violated O.R.C. 1345.02(A) and/or O.R.C. 1345.03(A).

In making the determination of unconscionability, this Court must look to the activity of the defendant-suppliers herein. Brown v. Market Development, Inc., 41 O. Misc. 276, 68 O.O. 2d 276 (1974). In so doing, the Court finds that the plaintiffs made repeated telephone calls and inquiries of the defendants, continually expressing their complaints and problems which they were experiencing throughout the warranty period with this furnace. The Court further finds that the defendants did repeatedly promise the plaintiffs that they would come out and fix the furnace, but failed to so do.

The Court finds as a matter of law that where a defendant-supplier, in connection with a consumer transaction, continually stalls and evades his legal obligation to consumers, he thereby commits an unconscionable act and practice in violation of O.R.C. §1345.03(A). Brown v. Lyons, supra. It is clear from the evidence adduced at the hearing on July 20, 1979, which the defendants have failed to respond to, that the defendants herein did indeed stall and evade their legal obligation to these plaintiffs-consumers.

This Court now turns to the question of damages. The Court finds that on plaintiffs' first and second claim, that the mere use of words which violate Federal Law, absent a showing of damages flowing therefrom, entitles the plaintiffs to \$200 on each claim, as allowed by O.R.C. 1345.09.

On plaintiffs' third claim, which is founded on the defendants' breach of contract, the Court has reviewed the evidence presented and finds that the plaintiffs have suffered actual damages in the amount of \$2,981.67.

Turning to plaintiffs' fourth and fifth claims, the Court finds that the plaintiffs are entitled to treble actual damages pursuant to O.R.C. 1345.09.

However, the plaintiffs are limited to the amount pleaded in their complaint, and the Court therefore finds that the total damages to be allowed the plaintiffs on their claims is the amount of \$9,400.90, plus their costs herein.

The Court now turns to the question of attorney fees, and in so doing the Court allows the plaintiffs the amount of \$200 as reasonable attorney fees pursuant to O.R.C. 1345.09(F) (2).

The Court, lastly, is not unmindful that the defendant, Donall G. Spears, has been sued herein in his individual capacity as well as his status as sole proprietor and corporate officer of the defendant, Springboro Heating and Air Conditioning. However, the Court finds as a matter of law that corporate officers who have participated in a deceptive consumer sales practice may be held personally liable in an action under R. C. Chapter 1345. Quality Carpet Company v. Brown, 6 O. O. 3d 185 (1977); Brown v. The Wonderful World Publishing Company, Case No. 74 CV-12-4741 (C.P. Franklin County, 7-28-76).

It is therefore ordered, adjudged and decreed that the plaintiffs, Donald Brown and Mary Brown, shall recover of the defendants, Donall G. Spears, individually, and Donall G. Spears, dba Springboro Heating and Air Conditioning, jointly and severally, the sum of \$9,600.90, plus their costs in this action, plus interest at the rate of 7% per annum.


JOHN B. TRACY, JUDGE

cc: Ronald L. Burdge, Attorney for Plaintiffs
Donall G. Spears