

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

STATE OF OHIO ex rel.)	
ATTORNEY GENERAL)	
DAVE YOST)	Case No:
30 E. Broad St., 14 th Floor)	
Columbus, Ohio 43215)	
)	Judge:
Plaintiff,)	
v.)	
)	
DARYL ROBERT FRALEY,)	COMPLAINT AND REQUEST FOR
8041 Dayton Germantown Pike)	DECLARATORY JUDGMENT,
Germantown, Ohio 45327)	INJUNCTIVE RELIEF, CONSUMER
)	RESTITUTION, CIVIL PENALTIES,
and)	AND OTHER APPROPRIATE RELIEF
)	
DIXIE FENCE SOUTH, LLC)	
8041 Dayton Germantown Pike)	
Germantown, Ohio 45327)	
)	

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 Consumer Sales Practices Act, (“CSPA”), R.C. 1345.01 *et seq.*
2. The actions of Daryl Robert Fraley and Dixie Fence South, LLC (“Defendants”), hereinafter described, have occurred in Montgomery and other counties in the State of Ohio and, as set forth below, are in violation of the CSPA, R.C. 1345.01 *et seq.* and the Home Solicitation Sales Act (“HSSA”), R.C. 1345.21 *et seq.*

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), (3), and (6), in that Defendants reside in Montgomery County, this is the county where they conducted activity giving rise to the claims for relief, and the county in which all or part of the claims for relief arose.

DEFENDANTS

5. Defendant Daryl Robert Fraley is a natural person residing at 8041 Dayton Germantown Pike, Germantown, Ohio 45327.
6. Defendant Dixie Fence South, LLC is a domestic Limited Liability Company registered with the Ohio Secretary of State on January 10, 2020.
7. Defendant Fraley, at all times relevant to this action, controlled and directed the business activities and sales conduct of Dixie Fence South, LLC, causing, personally participating in, or ratifying the acts and practices of the same, including the conduct giving rise to the violations described herein.
8. Defendants are each a “supplier,” as they engaged in the business of effecting “consumer transactions” by soliciting “consumers” either directly or indirectly for home improvement goods and services for a fee, for purposes that were primarily for personal, family or household use, as those terms are defined in R.C. 1345.01(A), (C), and (D).
9. Defendants engaged in “home solicitation sales” as “sellers,” as they made personal solicitations and sales of his home improvement goods and services at the residences of “buyers,” within the meaning of R.C. 1345.21(A), (C), and (D).

STATEMENT OF FACTS

10. Defendants engaged in the business of offering and selling home improvement goods and services, including fence installation and repair, at the residences of buyers.
11. Defendants do not have a retail business establishment having a fixed permanent location where the goods were exhibited or the services were offered for sale on a continuing basis.
12. Defendants solicited and sold home improvement goods and services, including fence installation and repair, to consumers, and failed to deliver some of those goods and services within eight weeks.
13. Defendants accepted monetary deposits from consumers for the purchase of home improvement goods and services, including fence installation and repairs, and failed to deliver those goods and provide the services.
14. In some cases, Defendants have refused to refund consumers' deposits or payments despite consumers' requests for refunds.
15. In some cases, after receiving payment, Defendants began work, but then failed to complete the work.
16. In some cases, Defendants provided shoddy and substandard home repair services to consumers and then failed to correct such services.
17. Defendants represented to consumers that they would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.
18. Defendants did not provide consumers with refunds of deposits paid when Defendants did not perform the contracted work.

19. During their solicitation and sale of home improvement goods and services, including fencing installation and repair, Defendants failed to provide consumers with notice of their right to cancel their transactions within three business days.

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 the preceding paragraphs of this Complaint.

21. Defendants 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- SHODDY AND SUBSTANDARD WORK

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

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

24. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendants 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
FAILURE TO PROVIDE NOTICE OF THREE-DAY RIGHT TO CANCEL

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in the preceding paragraphs of this Complaint.
26. Defendants violated the HSSA, R.C. 1345.23, and the CSPA, R.C. 1345.02(A), by failing to include appropriate cancellation language in the contracts entered into with consumers, or giving consumers a separate, appropriately worded “notice of cancellation” required by R.C. 1345.23(B)(2) or otherwise informing consumers of how and when to give notice of cancellation as required by R.C. 1345.23(B)(3).
27. The act or practice described above has been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendants 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, R.C. 1345.01 *et seq.*, its Substantive Rules OAC 109:4-3-01 *et seq.*, and the HSSA, R.C. 1345.21 *et seq.*, in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION enjoining the Defendants, their 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, O.A.C. 109:4-3-01 *et seq.*, and the HSSA, R.C. 1345.21 *et seq.*

- C. ORDER Defendants, pursuant to R.C. 1345.07(B), to pay actual damages to all consumers injured by the conduct of Defendants as set forth in this Complaint.
- D. ASSESS, FINE and IMPOSE upon Defendants a civil penalty of up to \$25,000.00 for each separate and appropriate violation of the CSPA described herein pursuant to R.C. 1345.07(D).
- E. ISSUE AN INJUNCTION prohibiting Defendants from engaging in business as a supplier in any consumer transactions in this state until such time as Defendants have satisfied all monetary obligations ordered by this Court, and any other Court in Ohio in connection with a consumer transaction.
- F. GRANT Plaintiff its costs incurred in bringing this action, including, but not limited to, the costs of collecting on any judgment awarded.
- G. ORDER Defendants 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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