

FILED BUTLER CO.
COURT OF COMMON PLEAS
AUG 15 2019
MARY L. SWAIN
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

CV
2019 08 1622
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

STATE OF OHIO ex rel. ATTORNEY
GENERAL DAVE YOST
441 Vine Street, 1600 Carew Tower
Cincinnati, Ohio 45202

Plaintiff,

v.

Wayne Colwell, individually and
d/b/a A2Z Exteriors
2275 Milville Avenue
Hamilton, OH 45013

Defendant.

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: **Case No.**
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: **Judge**
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: **COMPLAINT AND REQUEST FOR**
: **DECLARATORY JUDGMENT,**
: **INJUNCTIVE RELIEF, RESTITUTION**
: **AND CIVIL PENALTIES**
:
:

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through 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 R.C. 1345.07.
2. The actions of Defendant have occurred in Ohio, including Butler County and, as set forth below, are in violation of the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq., and its Substantive Rules, Ohio Administrative Code (“O.A.C.”) 109.4-3-01 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)(2) and (3), in that Butler County is where the Defendants' principal place of business was located and where Defendants conducted activity that gave rise to the claim for relief.

DEFENDANT

5. Defendant Wayne Colwell ("Colwell") is a natural person whose residence is located at 1630 Newbrook Drive, Cincinnati, Ohio.
6. The principle place of business for A2Z Exteriors is 2275 Milville Avenue, Hamilton, Ohio, in Butler County.
7. A2Z Exteriors is an unregistered fictitious business name.
8. Defendant Colwell is the owner of A2Z Exteriors, and dominated, controlled, and directed the business activities and sales conduct of A2Z Exteriors, and exercised the authority to establish, implement, or alter the policies of A2Z Exteriors, and committed, allowed, directed, ratified, or otherwise caused the following unlawful acts to occur.
9. Defendant was a "supplier" as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting "consumer transactions" by soliciting consumers either directly or indirectly for home remodeling and repair goods and services for a fee, within the meaning of R.C. 1345.01(A).

STATEMENT OF FACTS

10. Defendant accepted monetary deposits from consumers for the purchase of home improvement goods and services and failed to deliver those goods and services within eight weeks.
11. Defendant refused to refund consumers' deposits or payments despite consumers' requests for refunds.

12. Home improvement goods and services that were provided or attempted by Defendant were performed in an incomplete, shoddy, substandard, or unworkmanlike manner.
13. Defendant failed to register or report the use of a fictitious business name with the Secretary of State prior to doing business in Ohio under such fictitious name.

COUNT I - FAILURE TO DELIVER

14. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through thirteen (1-13) of this complaint.
15. Defendant engaged in unfair or deceptive acts or practices in violation of R.C. 1345.02(A) of the CSPA and the Failure to Deliver Rule, O.A.C. 109:4-3-09(A), by accepting money from consumers for goods or services, failing to make full delivery of the promised goods or services, and failing to provide full refunds.

COUNT II – PERFORMING SUBSTANDARD / SHODDY WORK

16. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through fifteen (1-15) of this complaint.
17. Defendant engaged in unfair or deceptive acts and practices in violation of R.C. 1345.02(A) of the CSPA by performing home improvement services in an incomplete, shoddy, substandard, or unworkmanlike manner and failing to correct such work.
18. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III – FAILURE TO REGISTER

19. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through eighteen (1-18) of this complaint.

20. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to register or report the use of a fictitious business name with the Secretary of State prior to doing business in Ohio under such fictitious name, as required by R.C. 1329.01.
21. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant 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. **DECLARE** that each act or practice complained of herein violates the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C. 109:4-3-01 et seq., in the manner set forth in the complaint.
- B. **ISSUE A PERMANENT INJUNCTION**, pursuant to R.C. 1345.07(A)(2), enjoining the Defendant Colwell, doing business under his own name, under the name A2Z Exteriors, or any other names, his agents, representatives, salespeople, employees, successors, or assigns, and all persons acting in concert and participation with him, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C. 109:4-3-01 et seq., including, but not limited to, violating the specific statutes and rules alleged to have been violated herein.
- C. **ORDER** Defendant to reimburse all consumers found to have been damaged by Defendant's unlawful actions.

- D. **ASSESS, FINE and IMPOSE** upon Defendant a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D).
- E. **PROHIBIT** Defendant, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, from engaging in consumer transactions as a supplier in this state until such time as Defendant has satisfied all monetary obligations ordered pursuant to this litigation.
- F. **ORDER** Defendant to pay all court costs.
- G. **GRANT** Plaintiff its costs in bringing this action, including, but not limited to, the costs of collecting on any judgment awarded.
- 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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