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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

FILED

STATE OF OHIO, EX REL. DAVE YOST
Plaintiff

Case No: CV-21-944245

2023 MAY 23 3:14

Judge: MICHAEL J RUSSO

CLERK OF COURTS
CUYAHOGA COUNTY

NEIL WOLFE, ET AL.
Defendant

JOURNAL ENTRY

05/16/2023: PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT, FILED 12/15/2022, IS GRANTED AS TO COUNTS 3, 4, 5 (STYLED BY THE PLAINTIFF AS "COUNTS III, IV, AND V OF PLAINTIFF'S FIRST CAUSE OF ACTION (CSPA)"), AND COUNTS 9 AND 10 (STYLED BY THE PLAINTIFF AS "COUNTS I AND II OF PLAINTIFF'S THIRD CAUSE OF ACTION (HCSSA)") OF THE COMPLAINT AS THERE IS NO GENUINE ISSUE OF MATERIAL FACT AND, AFTER CONSTRUING THE UNDISPUTED EVIDENCE IN A LIGHT MOST FAVORABLE TO THE NON-MOVING PARTIES, REASONABLE MINDS CAN COME ONLY TO THE CONCLUSION THAT PLAINTIFF STATE OF OHIO, EX REL. DAVE YOST IS ENTITLED TO JUDGMENT IN ITS FAVOR AS A MATTER OF LAW. OSJ.

TRIAL REMAINS AS PREVIOUSLY SET ON ALL OTHER CLAIMS. PARTIAL.
THIS ENTRY TAKEN BY JUDGE JANET R BURNSIDE.

Judge Signature

Date

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO, ex rel.)	CASE NO. CV-21-944245
DAVE YOST)	
Plaintiff,)	JUDGE MICHAEL RUSSO
-vs-)	
)	ORDER GRANTING
NEIL WOLFE, et al.,)	SUMMARY JUDGMENT
Defendants)	

This matter came before the Court upon Plaintiff’s Motion for Summary Judgment filed December 15, 2022. Defendants’ responses were due January 12, 2023. Defendant Wolfe sought and was granted an extension of time until April 15, 2023 to respond to Plaintiff’s Motion. Neither Defendant submitted a memorandum in opposition to Plaintiff’s Motion.

I. INTRODUCTION

Plaintiff, by and through Attorney General of Ohio Dave Yost, initiated this action with the filing of a Complaint on February 22, 2021 against Defendants Neil Wolfe (“Wolfe”), individually, and Neil Construction Co., Inc. (“NCC”), a business entity operated solely by and under the control of Defendant Neil Wolfe. The Complaint alleged multiple violations of the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq., and its Substantive Rules, O.A.C. 109:4-3-01 et seq., plus violations of the Home Solicitation Sales Act (“HSSA”), R.C. 1345.21 et seq. and the Home Construction Service Suppliers Act (“HCSSA”), R.C. 4722.01 et seq., and sought certain declaratory and injunctive relief, consumer damages, civil penalties and the costs of bringing this action.

While this matter was pending, on September 16, 2021 Plaintiff filed a Motion for Preliminary Injunction. Testimony and evidence was taken at hearings held October 6, 2021

and October 8, 2021 which resulted in a Preliminary Injunction (“PI”) Order of the Court on October 20, 2021.

A. The Preliminary Injunction Order of October 20, 2021

In its Preliminary Injunction Order of October 20, 2021 the Court found that Defendants violated the CSPA and its substantive rules, and the HCSSA by:

1. accepting money from consumers for the delivery and completion of certain home improvement goods and/or services and then failing to deliver the goods and/or services and failing to provide refunds to consumers, in violation of R.C. 1345.02(A) and O.A.C. 109:4-3-09;
2. Failing to obtain required permits and/or registrations before accepting deposits and before commencing work, in violation of R.C. 1345.02(A) and R.C. 1345.02(G);
3. Making false and/or misleading statements which consumers relied upon to their detriment, in violation of R.C. 1345.02 and 1345.03;
4. Including unenforceable, unlawful and one-sided liquidated damages clauses in consumer contracts in violation of R.C. 1345.02;
5. Causing unreasonable delays in projects in violation of R.C. 1345.02;
6. Failing to include the required information and language in home construction service contracts pursuant to R.C. 4722.02 et seq.;
7. Taking excessive down payments in violation of R.C. 4722.02;
8. Abusing the mechanics’ lien process by placing liens upon consumer properties for work performed without first obtaining the permit and/or registration required by state or local ordinance, and/or by making false

claims in the Affidavit for Mechanics Liens pertaining to the work being fully performed, and in so doing, violating R.C. 1311.01 et seq. The Court also determined that abusing the mechanic's lien process in this manner constitutes an unfair or deceptive practice pursuant to R.C. 1345.02 et seq.

Defendants were preliminarily enjoined from violating these consumer protection laws, and a Receiver was appointed for oversight and control of the business, Defendant Neil Construction Co., Inc. Defendants were further prohibited from soliciting or engaging in consumer transactions and accepting monetary deposits without first registering as a contractor, and all future contracts for consumer goods and/or services had to be approved by the Receiver. Defendants were also prohibited from commencing any contracted work prior to obtaining all requisite permits, registrations, licenses and/or bonds, and Defendants were ordered to release three Mechanics Liens previously and improperly placed upon consumer homes, and prohibited from filing any further Mechanics' Liens upon any consumer property during the pendency of this case.

Further findings of the Court in its October 20, 2021 Order included an order prohibiting Defendants' from including one-sided liquidated damages clauses in future consumer contracts, and an order to remove same from existing consumer contracts, and a determination that Defendants' home construction service contracts failed to include information required by R.C. 4722.02 et seq., and that Defendants demanded excessive down payments in violation of R.C. 4722.04(A).

Defendants were ordered to produce to Plaintiff all consumer transactions in which they were currently engaged as well as all future consumer transactions, and Defendants

were preliminarily enjoined from “transferring or selling any personal or business assets for the purpose of avoiding collection of any judgment or providing restitution to any consumer harmed as a result of defendants’ practices.” Initially, Defendants were permitted to and encouraged to remain operational, under the watchful eye of the Receiver, but that was later modified upon contempt hearings before the Court.

B. Two Orders in Contempt

On February 14, 2022, nearly four months after the Preliminary Injunction was in place, the Plaintiff filed a Motion to hold Wolfe in Contempt and contemporaneously the Receiver filed a Notice of intention to cease the operations of Neil Construction Co., Inc.

Evidence and testimony was presented to the Court at hearings on that Motion on March 11, 2022, March 14, 2022, March 18, 2022 and on March 23, 2022. At the conclusion of the hearing the Court found Defendant Wolfe in contempt. After failing to purge himself of contempt the Court ordered Wolfe to serve 14 days in jail, and further “ordered [defendants] to cease all operations immediately.” In addition, the preliminary injunction was amended to “temporarily restrain Neil Wolfe and Neil Wolfe Construction, Inc. (sic) from acting as a principal or intermediary in any consumer construction or renovation transactions in the State of Ohio” and ordered the receiver to wind up the affairs of Neil Wolfe Construction, Inc. (sic) and any other corporate entities administered by Neil S. Wolfe” and the liquidation of all assets to be held by the receiver pending a distribution to the victims of the defendants.”

A second Motion for Contempt was filed by Plaintiff on May 23, 2022 and, upon the evidence and testimony at a hearing July 18, 2022, the Court found Defendant Wolfe in contempt of the PI Order a second time and sentenced him to an additional 7 days in jail.

C. Summary Judgment

The Court now comes to consider Plaintiff's unopposed motion for summary judgment, filed December 15, 2022, as to Counts III, IV and V of Plaintiff's First Cause of action (CSPA), and Counts I and II of Plaintiff's Third cause of action (HCSSA), only. The Court hereby **GRANTS** summary judgment in favor of Plaintiff and makes the following Findings of Fact, Conclusions of Law and Orders the following relief:

FINDINGS OF FACT

1. Defendant Neil Wolfe is an individual and was the sole owner of Defendant Neil Construction Co., Inc., whose last known business address was 221 South Main Street, Hudson, OH 44236.
2. Defendants operated a home improvement business where they regularly accepted money from consumers who contracted for home improvement goods and/or services.
3. Defendants routinely included unfair, one-sided liquidated damages clauses in their contracts with consumers.
4. Defendants repeatedly failed to acquire permits required by county or municipal ordinances prior to commencing work on consumer properties.
5. Defendants repeatedly failed to register as a contractor in municipalities which required registration, prior to commencing work on consumer property.
6. Defendants entered into construction service contracts with consumers without including all of the statutorily required information.
7. Defendants took excessive down payments for construction service contracts contrary to and in violation of the HCSSA.

8. Defendants abused the mechanics' lien process by placing liens upon consumer properties for work performed without obtaining a permit and/or registering as a contractor.
9. Defendants abused the mechanics' lien by making false statement in Affidavits for Mechanics' Liens pertaining to the status of the work performed.
10. Pursuant to this Court's March 24, 2022 Order, the Receiver wound up the affairs of Defendant NCC.
11. The Receiver filed a Motion to Distribute Funds which was approved by this Court on March 15, 2023. In his motion the Receiver recommended approval of consumers' claims in the amount of \$663,299.98. The Receiver stated in his report that only \$37,426.92 remained of the Company's assets to pay those claims.
12. After distributing the remaining assets of NCC, nineteen consumers were left with unpaid claims totaling \$625,873.06.

CONCLUSIONS OF LAW

1. The Attorney General, acting on behalf of the State of Ohio and in the public interest, is the proper party to bring this action by virtue of the authority vested in the Attorney General by R.C. 1345.07.
2. The actions of Defendants have occurred in the State of Ohio, including Cuyahoga County, and as set forth herein, are in violation of the CSPA, R.C. 1345.01 et seq., and its Substantive Rules, Ohio Administrative Code ("O.A.C."), 109:4-3-01 et seq., and the HCSSA, R.C. 4722.01 et seq.
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to the CSPA, R.C. 1345.04.

4. This Court has venue to hear this case pursuant to Civ. R. 3(C)(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Cuyahoga County, Ohio.
5. Defendants are “suppliers” as that term is defined in R.C. 1345.01(C) as they engaged in the business of effecting or soliciting consumer transactions for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A).
6. Defendants are “home construction service suppliers” as that term is defined in R.C. 4722.01(D) as they contracted with consumers to provide home construction services for compensation within the meaning specified in R.C. 4722.01 et seq.
7. Defendants committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) and R.C. 1345.02(G) on at least five (5) occasions by failing to obtain required permits before commencing work upon consumers’ properties.
8. Defendants committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) and R.C. 1345.02(G) on at least two (2) occasions by failing to obtain a registration, license, bond, or insurance required by local ordinance before commencing work upon consumers’ properties.
9. Defendants committed unfair and deceptive acts and practices in violation of R.C. 1345.02 on at least two (2) occasions by making false and/or misleading statements which consumers relied upon to their detriment.
10. Defendants committed unfair and deceptive acts and practices in violation of R.C. 1345.02 on at least twenty (20) occasions by including unenforceable, unlawful and one-sided liquidated damages clauses in consumer contracts.

11. Defendants committed violations of R.C. 4722.01 et seq. on at least thirteen (13) occasions by failing to include all necessary information and language required by R.C. 4722.02(A)(1) by failing to include information required by statute in home construction service contracts, including but not limited to the supplier's taxpayer identification number.
12. Defendants committed violations of R.C. 4722.01 et seq. on at least thirteen (13) occasions by failing to include all necessary information and language required by R.C. 4722.02(A)(5) by failing to include information required by statute in home construction service contracts, including but not limited to the anticipated date or time period the home construction service is to begin and the anticipated date or time period it is to be completed.
13. Defendants committed further violations of R.C. 4722.04 on at least thirteen (13) occasions by taking down payments on home construction service contracts greater than ten percent of the contract price.
14. On at least three (3) occasions Defendants made false and/or misleading statements in Affidavits for Mechanics Liens regarding the status of work performed on consumer properties. Making these false and/or misleading statements in conjunction with the placing of liens on consumer property is an abuse of the mechanics lien process in violation of R.C. 1311.01.
15. This Court finds that Defendant has a long history of committing unfair and deceptive acts and practices against Ohio consumers. Defendants were previously ordered to comply with Ohio's consumer laws through a 2003 Consent Judgment with the Ohio Attorney General in Lake County. Defendant was later found in contempt of court in that matter for failing to comply with the judgment entry. Similarly, Defendant was ordered to pay civil penalties of \$15,000 for each of 11 violations of law found in a 2017 Summit County case brought

by the Ohio Attorney General. These sanctions appear to have had little to no impact on Defendant's behavior. In fact, even after being found in contempt of court twice by this Court and jailed for a total of 21 days, Defendant Wolfe continued engaging in the same or similar unfair or deceptive acts and practices. In the present matter, this Court finds that Defendant Wolfe committed at least 71 separate violations of the CSPA and HCSSA subject to a \$25,000 civil penalty each.

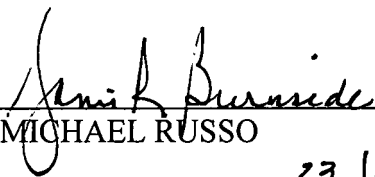
THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

- A. Defendants, doing business under the names Neil Construction Co., Inc., Neil Wolfe or under any other names, along with their agents, representatives, salespeople, employees, successors, or assigns, and all persons acting in concert or participating with them, directly or indirectly, are **PERMANENTLY ENJOINED** from engaging in the acts and practices described in this order 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.
- B. It is **DECLARED** that the acts and practices committed by Defendants, as set forth above, violate the CSPA, R.C. 1345.01 et seq., and its Substantive Rules, O.A. C. 109:4-3-01 et seq.
- C. It is **DECLARED** that making false and/or misleading statements in an Affidavit for Mechanics Lien violates R.C. 1311.01 et seq. and further constitutes an unfair and deceptive act or practice pursuant to the CSPA, R.C. 1345.02 et seq.
- D. It is **DECLARED** that placing a lien upon a consumer property for work performed prior to obtaining a permit and/or registering as a contractor is an unfair or deceptive act or practice in violation of the CSPA R.C. 1345.02 et seq.

- E. Pursuant to R.C. 1345.07(B), Defendant Neil Wolfe, individually, is **ORDERED** to pay consumer restitution in the total amount of Six Hundred Twenty-Five Thousand, Eight Hundred Seventy-Three Dollars and Six Cents (\$625,873.06). Restitution shall be paid to the Ohio Attorney General's Office for distribution to the consumers listed and in the amounts stated in the Receiver's Second Amended Proposed Claim Distribution (attached hereto as Exhibit A).
- F. Defendants are jointly and severally **ORDERED** to pay a \$25,000 civil penalty for each of the 71 violations noted in the above Conclusions of Law section for a total civil penalty of One Million Seven Hundred Seventy Five Thousand and 00/100 Dollars (\$1,775,000.00).
- G. All payments ordered in section E and F above shall be made to:
- Finance Specialist
Consumer Protection Section
Office of the Ohio Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
- H. Based on the egregious nature of Defendants' conduct, Defendants are hereby **PERMANENTLY ENJOINED** from engaging in business as suppliers in any consumer transactions with Ohio consumers, under these or any other names.
- I. Defendants are **ORDERED**, jointly and severally, to pay all costs associated with collecting this judgment.
- J. Defendants are **ORDERED**, jointly and severally, to pay all court costs.
- K. This Court shall retain jurisdiction to enforce this judgment entry and order.

IT IS SO ORDERED.

Date: 5/23/23



JUDGE MICHAEL RUSSO

23 JA 0901

cc: Plaintiff
Defendant Neil Wolfe
Defendant Neil Construction Co., Inc.

EXHIBIT A

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY OHIO

STATE OF OHIO, ex rel. DAVE YOST)	CASE NO. CV-21-944245
OHIO ATTORNEY GENERAL,)	
)	JUDGE MICHAEL J RUSSO
Plaintiff,)	
)	
v.)	
)	
NEIL WOLFE, et al.,)	
)	
Defendants.)	

RECEIVER'S NOTICE OF SECOND AMENDED PROPOSED CLAIM DISTRIBUTION

Matthew C. Rambo, the Court-appointed Receiver (the "Receiver") for Neil Construction Company, Inc. (the "Company") hereby submits Notice to this Court that pursuant to the Court's January 26, 2023, order, putative claimant Kyle Gilmore timely submitted his proof of claim form to the Receiver. Accordingly, the Receiver provides the Second Amended Proposed Claim Distribution herein. Additionally, on February 6, 2023, the Receiver issued notice to the below consumers of the Second Amended Proposed Claim Distribution, Objection period, and Hearing scheduled for March 14, 2023. A copy of that notice is attached hereto as Exhibit A.

The Receiver states that \$37,426.92 remains of the Company's assets for distribution to consumers and the Consumers' claims total \$663,299.98. The claims submitted, percentage of the overall total, and pro rata share of the Company's remaining assets that the Receiver proposes to distribute to each consumer as amended are as follows:

1. Fred McLaughlin - \$140,000, 21.1%, \$7,897.08
2. Rodney Koteles - \$27,280, 4.1%, \$1,534.50

3. Robert Lingler – (Claim disallowed, no signed and notarized Proof of Claim form)
4. Glenn Bates – \$7,780.98, 1.2%, \$449.12
5. Monique Wilson - \$31,110, 4.7%, \$1,759.07
6. Chad Longstreth - \$110,795, 16.7%, \$6,250.30
7. Robert Brown - \$9,412.16, 1.4%, \$523.98
8. Doremus Thomas - \$8,525, 1.3%, \$486.55
9. Ellis Dillen - \$30,415, 4.6%, \$1,721.64
10. Dung Huynh - \$15,000, 2.3%, \$860.82
11. Bob Curtis - \$15,385, 2.3%, \$860.82
12. William Melver - \$4,500, 0.7%, \$261.99
13. Julie Kelley - \$14,849.72, 2.2%, \$823.39
14. Michelle Smith - \$21,280, 3.2%, \$1,197.66
15. Leland Edwards - \$8,565, 1.3%, \$486.55
16. James Hinchliffe - \$11,660.12, 1.8%, \$673.68
17. Candice Hall - \$44,500, 6.7%, \$2,507.60
18. Joseph Kobak - \$59,100, 8.9%, \$3,331.00
19. Sheila Hammons - \$19,262, 2.9%, \$1,085.38
20. Kyle Gilmore - \$83,880, 12.6%, \$4,715.79

Respectfully submitted,

/s/ Matthew C. Rambo

Matthew C. Rambo (0079092)

matthew@freeburglaw.com

Freeburg & Rambo LLC
8228 Mayfield Rd. #5B
Chesterland, Ohio 44026
(440)421-9181
Receiver

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2023, a copy of the foregoing was filed electronically. Notice of the filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. Undersigned counsel further certifies that, on this date, the above filing was sent by regular U.S. Mail, postage prepaid, to all parties not registered with the Court to receive electronic filings.

/s/ Matthew C. Rambo

Receiver

NOTICE OF SECOND AMENDED PROPOSED DISTRIBUTION OF ASSETS

Dear Consumer:

You are receiving this letter because you previously provided a Proof of Claim form to the Receiver for Neil Construction Company, Inc. (the "Company"). The Receiver has reviewed those forms and has proposed the enclosed distribution of assets to the Court as of February 6, 2023. Any objections to the Receiver's proposed distribution must be filed with the Court by February 27, 2023. **FAILURE TO OBJECT TO THE PROPOSED DISTRIBUTION CONSTITUTES A WAIVER OF ANY SUCH OBJECTIONS.**

You may file your objections with the Court by mailing to:

Clerk of Court, Civil Division
Justice Center
1200 Ontario Street, 1st Floor
Cleveland, Ohio 44113

Please use the enclosed form as a cover sheet for filing your objection and include your name, address and signature.

OBJECTIONS MUST BE FILED WITH THE COURT ON OR BEFORE FEBRUARY 27, 2023, TO BE CONSIDERED.

A hearing to review the proposed distribution has been scheduled by the Court for March 14, 2023, at 2:00 p.m. A copy of the Court's hearing notice is enclosed herein.

Should you have any questions, please contact the Receiver, Matthew Rambo, at 440-421-9181.

Respectfully,

Matthew Rambo, Receiver

Exhibit A

**PROPOSED DISTRIBUTION OF ASSETS OF NEIL CONSTRUCTION COMPANY,
INC.**

\$37,426.92 remains of the Company's assets for distribution. Claims totaling \$663,299.98 were identified by the Receiver. The claim submitted, percentage of the overall total, and pro rata share of the Company's remaining assets that the Receiver proposes to distribute to each consumer are as follows:

1. Fred McLaughlin - \$140,000, 21.1%, \$7,897.08
2. Rodney Koteles - \$27,280, 4.1%, \$1,534.50
3. Robert Lingler – (Claim disallowed, no signed and notarized Proof of Claim form)
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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY OHIO

STATE OF OHIO, ex rel. DAVE YOST)	CASE NO. CV-21-944245
OHIO ATTORNEY GENERAL,)	
)	JUDGE MICHAEL J RUSSO
Plaintiff,)	
)	
v.)	
)	
NEIL WOLFE, et al.,)	
)	
Defendants.)	

OBJECTION TO PROPOSED CLAIM DISTRIBUTION

Respectfully submitted,

(Signature)

(Name)

(Address):

