

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

FILED
DAVID D. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

STATE OF OHIO, ex rel.
Attorney General Michael DeWine
615 W. Superior Ave. 11th Floor
Cleveland, OH 44113-1899

Plaintiff,

v.

UNMISTAKABLY PREMIER HOMES
INC.
c/o Stephen M. Kovack statutory agent
1392 High St Ste 205
Wadsworth, Ohio 44281-8712

and

STEPHEN M. KOVACK
1392 High Street #205
Wadsworth, Ohio 44281-8712

Defendants.

) CASE NO.

) JUDGE

12 CIV 1691

JAMES L. KIMBLER, JUDGE

) COMPLAINT FOR DECLARATORY
) JUDGMENT, INJUNCTIVE RELIEF,
) RESTITUTION AND CIVIL
) PENALTIES

JURISDICTION

1. Michael DeWine, Attorney General of Ohio, 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. 1345.01 et seq., the Ohio Consumer Sales Practices Act.
2. The actions of Defendants, hereinafter described, have occurred in the State of Ohio, including in Medina County and, as set forth below, are in violation of the Consumer Sales Practices Act, R.C. 1345.01 et seq.
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Consumer Sales Practices Act.

4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Medina County.

DEFENDANTS

5. Defendant Unmistakably Premier Homes Inc., (hereinafter “UPH” or “Defendant”) is an Ohio corporation with its principal place of business located at 1392 High Street #205 Wadsworth, Ohio 44281.
6. Defendant Stephen M. Kovack (hereinafter “Kovack” or “Defendant”) is the owner of UPH. On information and belief, Defendant Kovack dominated, controlled and directed the business activities and sales conduct of Defendant UPH, causing, personally participating in, or ratifying the acts and practices of Defendant UPH as described in the Complaint.
7. Defendants are "suppliers," as that term is defined at R.C. 1345.01(C), as Defendants are engaged in the business of effecting "consumer transactions", within the meaning of R.C. 1345.01(A) by offering services for the design and construction of residential homes.

STATEMENT OF FACTS

8. Defendants have solicited consumers for services including the design and construction of new residential homes in Medina County, Ohio.
9. Defendants have entered into contracts with numerous Ohio consumers for the design and construction of new residential homes in Medina County, Ohio.
10. Defendants represented that homes built by Defendants came with a “one year limited warranty on the entire home” a “15-year dry basement warranty” a “25-year limited

structural warranty” and a “limited lifetime warranty on windows.” Defendants represented that they maintained a full time warranty department with 24 hour emergency service.

11. At the time into which a contract was entered between Defendants and an individual consumer, Defendants accepted a substantial deposit to be applied to the cost of Defendant’s design and construction services.
12. In several cases, Defendants completed construction of the consumer’s home, but failed to honor the terms of the warranties represented to consumers.
13. Several of the homes built by Defendants contained latent defects, such that concrete walkways, driveways, and porches began to sink in towards the house as the ground settled.
14. Homes built by Defendants contained numerous defects, including but not limited to unfinished trim work, inadequate or poorly placed HVAC vents, faulty garage doors, faulty lighting, sloppy painting and drywall work, failing to deliver promised upgrades, poor carpet seams, sagging and creaking floors, faulty and ill-sized doors, damaged cabinetry, foundation issues, water intrusion, loose floor boards, mismatched woodwork, warped and “bubbled” flooring, loose siding, and leaky roofs.
15. In several cases, Defendants accepted substantial deposits from consumers and failed to either complete construction of the home or refund the deposit. Numerous consumers throughout Medina County have been left with a home that is incomplete and for which the consumer cannot obtain an occupancy permit. Defendants have continually stalled and evaded their obligations by promising to finish such homes but Defendants have failed to complete homes or provide refunds to consumers.
16. In at least one case, consumers paid a deposit in the amount of \$8,500.00 for a new

home construction. When Defendants failed to timely complete the home, the consumers' bank foreclosed on the home and petitioned for the appointment of a receiver to finish the property. The consumers have now lost the property and lost the initial deposit of \$8,500.00.

17. In several cases, Defendants accepted substantial deposits from consumers and failed to begin construction. Defendants have promised consumers in such cases refunds, but most consumers have not received the promised refunds.

PLAINTIFF'S CAUSE OF ACTION

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT I

FAILURE TO DELIVER

18. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Seventeen (1-17) of this Complaint.
19. Defendants have committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, Ohio Admin. Code 109:4-3-09(A)(1) and the Consumer Sales Practices Act, R.C. 1345.02(A), by accepting substantial down payments from consumers for the design and construction of residential homes, then failing to deliver the goods and/or services purchased or to return down payments to consumers.
20. The act or practice of accepting substantial down payments from consumers for the design and construction of residential homes, then failing to deliver the goods and/or services purchased or to return down payments to consumers has been previously declared to be unfair, deceptive, or unconscionable by rule adopted pursuant to division (B)(2) of R.C. 1345.05 before the consumer transaction on which this action is based occurred.

COUNT II

FAILING TO PERFORM IN A WORKMANLIKE MANNER AND FAILING TO CORRECT SUCH WORK

21. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Seventeen (1-17) of this Complaint.
22. Defendants have committed unfair or deceptive acts or practices in violation of the Consumer Sales Practice Act, R.C. 1345.02(A), by failing to perform in a workmanlike manner and failing to correct such work.
23. The act or practice of failing to perform in a workmanlike manner and failing to correct such work has been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq.
24. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III

PERFORMING CONTRACT WORK IN AN INCOMPETENT, UNSATISFACTORY AND UNWORKMANLIKE MANNER

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Seventeen (1-17) of this Complaint.
26. Defendants have committed unfair or deceptive acts or practices in violation of the Consumer Sales Practice Act, R.C. 1345.02(A), by performing contract work in an incompetent, unsatisfactory and unworkmanlike manner.
27. The act or practice of performing contract work in an incompetent, unsatisfactory and unworkmanlike manner has been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq.

28. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT IV

FAILING TO HONOR EXPRESS WARRANTIES

29. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Seventeen (1-17) of this Complaint.

30. Defendants have committed unfair or deceptive acts or practices in violation of the Consumer Sales Practice Act, R.C. 1345.02(A), by failing to honor express warranties.

31. The act or practice of failing to honor express warranties has been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq.

32. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT V

STALLING AND EVADING OBLIGATIONS, INCLUDING FAILING TO PROMPTLY DELIVER SERVICES FOR WHICH CONSUMERS CONTRACTED

33. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Seventeen (1-17) of this Complaint.

34. Defendants have committed unfair or deceptive acts or practices in violation of the Consumer Sales Practice Act, R.C. 1345.02(A), by stalling and evading obligations, including failing to promptly deliver services for which consumers contracted.

35. The act or practice of stalling and evading obligations, including failing to promptly deliver services for which consumers contracted has been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq.

36. 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:

1. **ISSUE** a permanent injunction enjoining Defendants, under the names listed in this Complaint, or any other names, their agents, servants, representatives, salesmen, employees, successors and assigns and all persons acting in concert or participating with Defendants, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains, or violating the Consumer Sales Practices Act, and the Substantive Rules contained in the Ohio Administrative Code, and from engaging in consumer transactions in the State of Ohio until full restitution is made to all consumers harmed by Defendants' actions.
2. **ISSUE** a declaratory judgment declaring that each act or practice complained of in this Complaint violates the Consumer Sales Practices Act, and the Substantive Rules contained in the Ohio Administrative Code in the manner set forth in this Complaint;
3. **IMPOSE** upon Defendants civil penalties in the amount of Twenty-Five Thousand Dollars (\$25,000.00) for each appropriate violation of the Consumer Sales Practices Act pursuant to R.C. 1345.07(D);
4. **ORDER** Defendants to reimburse consumers who have been injured by the acts and practices of which Plaintiff complains;
5. As a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, **ORDER** Defendants, their successors or assigns, under these or any other names, to maintain in their possession and control for a period of five (5) years all

business records relating to Defendants' solicitation or effectuation of business in Ohio and to permit the Ohio Attorney General or his representative, upon reasonable twenty-four (24) hour notice, to inspect and/or copy any and all of said records and further ORDER that copies of such records be provided at Defendants' expense to the Ohio Attorney General upon request of the Ohio Attorney General or his representatives;

6. GRANT Plaintiff his costs in bringing this action;
7. GRANT such further relief as justice and equity require.

Respectfully submitted,

MICHAEL DEWINE
Attorney General



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