STATE OF INDIANA)
) SS:
COUNTY OF GRANT)

IN THE GRANT CIRCUIT COURT

CAUSE NO. 27C01-0601-PL-54

STATE OF INDIANA,

Plaintiff,

v.

BRETT DEAN BARRETT,
individually and doing business as
BARRETT & SON PLUMBING,

Defendants.

FILED
JAN 24 2006
Carolyn J. Mowery
CLERK GCC

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-11-14.

2. The Defendant, Brett Dean Barrett, individually and doing business as Barrett & Son Plumbing, is an individual engaged in business as a home improvement contractor with a principal place of business in Grant County, located at 2419 S. Valley Avenue, Marion, Indiana, 46933.

FACTS

8. Since at least March 30, 1994, the Defendant has entered into home improvement contracts with Indiana consumers.

9. The State of Indiana issued a plumber contractor license to the Defendant on March 30, 1994, which has since been terminated.

A. Allegations regarding Consumer Rose Marie Koors' Transaction

10. On or around February 10, 2004, the Defendant entered into a contract with Rose Marie Koors ("Koors") of Marion, Indiana, wherein the Defendant agreed to install an outside water spigot for a price of Thirty Dollars ($30.00), which Koors paid.

11. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the contract he would install the outside water spigot within a reasonable period of time.

12. The Defendant has neither begun, and therefore has not completed, the work on Koors' home, nor has he issued a refund to Koors.

B. Allegations regarding Consumer Cheryl Milford's Transaction

13. On or around June 22, 2004, the Defendant entered into a contract with Cheryl Milford ("Milford") of Gas City, Indiana, wherein the Defendant represented he would repair the plumbing, install a central air conditioning unit, and repair an electrical breaker on Milford's home for a price of One Thousand Three Hundred and Nine Dollars ($1,309.00), which Milford paid. A true and accurate copy of the Defendant's contract with Milford is attached and incorporated by reference as Exhibit "A."

14. The Defendant failed to include the following information in the contract with Milford:

(1) The address of the residential property that is the subject of the home improvement;

(2) The address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

(3) Any time limitation on the consumer's acceptance of the home improvement contract;

(4) A reasonably detailed description of the proposed home improvements, or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(5) The approximate starting and completion date of the home improvements;

(6) A statement of any contingencies that would materially change the approximate completion date; and

(7) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

15. The Defendant failed to obtain the necessary license and/or permit prior to any work commencing under his contract with Milford.

16. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the contract with Milford he would complete the work within a reasonable period of time.

17. While the Defendant did begin the job, he has yet to either complete the work on Milford's home, or to issue a refund to Milford.

C. Allegations regarding Consumer James Holcomb's Transaction

18. On or around September 7, 2004, the Defendant entered into an oral contract with James Holcomb ("Holcomb") of Sweetser, Indiana, wherein the Defendant represented he would repair the plumbing and install a furnace in Holcomb's home for a price of One Thousand Two Hundred Thirty-One and 26/100 Dollars ($1,231.26), which Holcomb paid.

19. The Defendant's oral contract with Holcomb failed to meet the requirements of Ind. Code § 24-5-11-10(a)(1), *et seq*.

20. The Defendant failed to obtain the necessary license and/or permit prior to any work commencing under his contract with Holcomb.

21. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the oral contract he would install the furnace within a reasonable period of time.

22. While the Defendant did begin the job, he has yet to either complete the work on Holcomb's home, or to issue a refund to Holcomb.

D. Allegations regarding Consumer Keith Caperton's Transaction

23. On or around February 9, 2005, the Defendant entered into an oral contract with Keith Caperton ("Caperton") of Hartford City, Indiana, wherein the Defendant represented he would re-plumb Caperton's home for a price of One Thousand and One Hundred Dollars ($1,100.00), which Caperton paid.

24. The Defendant's oral contract with Caperton failed to meet the requirements of Ind. Code § 24-5-11-10(a)(1), *et seq*.

25. The Defendant failed to obtain the necessary license and/or permit prior to any work commencing under his contract with Capterton.

26. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the oral contract he would re-plumb Caperton's home within a reasonable period of time.

27. The Defendant has yet to begin, and therefore has not finished, the work on Caperton's home, nor has he issued a refund to Caperton.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

28. The services described in paragraphs 10, 13, 18, and 23 are "home improvements" as defined by Ind. Code § 24-5-11-3.

29. The transaction referred to in paragraphs 10, 13, 18, and 23 are "home improvement contracts" as defined by Ind. Code § 24-5-11-4.

30. The Defendant is a "supplier" as defined by Ind. Code § 24-5-11-6.

31. By failing to provide the consumers with a completed home improvement contract, containing the information referred to in paragraphs 14, 19, and 24, the Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

32. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 31 above.

33. The transactions referred to in paragraphs 10, 13, 18, and 23 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

34. The Defendant is a "supplier" as defined by Ind. Code § 24-5-0.5-2(a)(3).

35. The Defendant's violations of the Indiana Home Improvement Contracts Act referred to in paragraphs 14, 19, and 24 constitute deceptive acts by the Defendant, in accordance with Ind. Code § 24-5-11-14.

36. The Defendant's representation to consumers the consumer transactions had sponsorship, approval, performance, characteristics, accessories, uses, or benefits they did not have, when the Defendant knew or reasonably should have known the transactions did not have such, as referenced in paragraphs 10, 13, 18, and 23, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

37. The Defendant's representations to consumers he would be able to deliver or complete the subject of the consumer transaction within a reasonable period of time, when the Defendant knew or reasonably should have known he could not, as referenced in paragraphs 11, 16, 21, and 26, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

38. By failing to obtain the necessary licenses and permits, as referenced in paragraphs 15, 20 and 25, the Defendant violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-10(a)(1).

COUNT III – KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

39. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 38 above.

40. The misrepresentations and deceptive acts set forth in paragraphs 10, 11, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 25, and 26, were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Brett Dean Barrett, individually and doing business as Barrett & Son Plumbing, enjoining the Defendant from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:

(1) The name of the consumer and the address of the residential property that is the subject of the home improvement;

(2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

(3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

(4) A reasonably detailed description of the proposed home improvements;

(5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(6) The approximate starting and completion date of the home improvements;

(7) A statement of any contingencies that would materially change the approximate completion date;

(8) The home improvement contract price; and

(9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;

c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;

d. representing expressly or by implication the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should have known it does not have;

e. representing expressly or by implication the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot; and

f. soliciting or engaging in a home improvement transaction without a license or permit required by law.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendants for the following relief:

a. cancellation of the Defendant's unlawful contracts with consumers, including, but not limited to, those consumers identified in paragraphs 10, 13, 18, and 23, pursuant to Ind. Code § 24-5-0.5-4(d);

b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendant, including but not limited to those consumers identified in paragraphs 10, 13, 18, and 23, in an amount to be determined at trial;

c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars ($5,000.00) per violation, payable to the State of Indiana;

e. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars ($500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By: _____
Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of Attorney General
Indiana Government Center South
302 W. Washington, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3300

210068

Barrett Plg. & Htg

CUSTOMER'S ORDER NO.	DEPARTMENT	DATE
		6-22-04

NAME: Cheryl Milford

ADDRESS: 655 ESD

CITY, STATE, ZIP: Gas City

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RETD	PAID OUT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1	1 Received 714.00 Fr		
2	A/C material		
3			
4			
5			
6	[signature]		
7			
8			
9			
10			
11	Paid in Full	$595.00	
12			
13			
14			
15	[signature]		
16			
17			
18	6-23-04		
19			
20			

RECEIVED BY

adams RDC5805

KEEP THIS SLIP FOR REFERENCE

ORIGINAL

STATE'S EXHIBIT A

Blumberg No. 5138

STATE OF INDIANA	)	IN THE GRANT CIRCUIT COURT
	) SS:	
COUNTY OF GRANT	)	CAUSE NO. 27C01-0601-PL-54
STATE OF INDIANA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BRETT DEAN BARRETT,	)	
Individually and doing business as	)	
BARRETT & SON PLUMBING,	)	
	)	
Defendant.	)	

FILED
JAN 24 2006
Carolyn J. Mowery
CLERK GCC

APPEARANCE BY ATTORNEY IN CIVIL CASE

Party Classification: Initiating

1. The undersigned attorney now appears in this case for the following party: State of Indiana

2. Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

Name:	Terry Tolliver	Atty. No.: 22556-49
Address:	Office of the Attorney General	Phone: (317) 233-3300
	Indiana Government Center South	Fax: (317) 233-4393
	302 W. Washington Street, 5th Floor	Computer Address: N/A
	Indianapolis, Indiana 46204	

3. There are other party members: Yes ___ No X

4. *If first initiating party filing this case,* the Clerk is requested to assign this case the following Case Type under Administrative Rule 8(b)(3): PL

5. I will accept service by FAX at the above noted number: Yes ___ No X

6. This case involves support issues: Yes ___ No X

7. There are related cases: Yes ___ No X

8. This form has been served on all other parties. Certificate of service appears below:
Yes ___ No _X__

9. Additional information required by local rule: _____N/A

STEVE CARTER
Attorney General of Indiana

By: _____
Terry Tolliver
Deputy Attorney General
Attorney No. 22556-49

Office of the Attorney General
Indiana Government Center South
302 West Washington Street, Fifth Floor
Indianapolis, Indiana 46204
(317) 233-3300

SUMMONS

STATE OF INDIANA	)	IN THE GRANT CIRCUIT COURT
	) SS:	
COUNTY OF GRANT	)	CAUSE NO. 27C01-0601-PL-54
STATE OF INDIANA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BRETT DEAN BARRETT,	)	
Individually and doing business as	)	
BARRETT & SON PLUMBING,	)	
	)	
Defendant.	)	

TO DEFENDANT: **Brett Dean Barrett**
2419 S. Valley Avenue
Marion, IN 46933

You have been sued by the person named "plaintiff", in the court stated above.

The nature of the suit against you is stated in the complaint that is attached to this summons. It also states the relief sought or the demand made against you by the plaintiff.

You must answer the complaint in writing, by you or your attorney, within twenty (20) days, commencing the day after you receive this summons (you have twenty-three (23) days to answer if this summons was received by mail), or a judgment by default may be rendered against you for the relief plaintiff has demanded.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

Dated: 1-25-06 Carolyn J. Mowery (Seal)
Clerk of the Circuit Court of Grant County

The following manner of service of summons is hereby designated.

☒ Service on individual – (Personal or copy) at above address. **(PERSONAL SERVICE BY SHERIFF)**

Terry Tolliver, Att'y No. 22556-49
Attorney for Plaintiff
Office of the Attorney General
Consumer Protection Division
302 W. Washington St.
IGCS, 5th Floor
Indianapolis, IN 46204
(317) 233-3300