STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT COURT

CAUSE NO. 49C01 07 06 PL 025325

STATE OF INDIANA,

Plaintiff,

v.

ERIC COMBS, individually and doing business as CASIE CREEK, INC.,

Defendants.

FILED

(32) JUN 19 2007

Elizabeth L. White
CLERK OF THE MARION CIRCUIT COURT

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Lisa Ward, petitions the Court pursuant to the Indiana Home Improvement Contracts Act, Indiana Code § 24-5-11-1, *et seq.* and the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *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, Eric Combs, is an owner and an officer of Casie Creek, Inc. ("Casie Creek"), and is active in its management and operations. As an owner, Combs has controlled and directed the affairs of the corporation, including Casie Creek's

sales practices, and has used the defendant corporation for the purpose of misleading and deceiving Indiana consumers as set forth herein.

3. The Defendant, Casie Creek, Inc. ("Casie Creek"), at all times relevant to this complaint, was a for-profit domestic corporation engaged in business as a home improvement contractor with a principal place of business in Marion County, located at 5103 Grand Tetons Boulevard, Indianapolis, Indiana.

4. When, in this Complaint, reference is made to any act of Defendants, such allegations shall be deemed to mean that the principals, agents, representatives, or employees of Defendants did or authorized such acts to be done while actively engaged in the management, direction, or control of the affairs of Defendants and while acting within the scope of their duties, employment, or agency.

FACTS

5. Since at least July 22, 2005, the Defendants have entered into home improvement contracts with Indiana consumers.

A. ALLEGATIONS REGARDING JEFF SMITH

6. On or about April 7, 2006, the Defendants entered into a contract with Jeff Smith of Indianapolis, Indiana, wherein the Defendants represented that they would replace a patio for Smith for a total contract price of Three Thousand Seventy-Five Dollars ($3,075.00). Smith paid the entire amount on that date. A true and correct copy of the Defendants' contract with Smith is attached and incorporated by reference as Exhibit "A."

7. The Defendants failed to include the following information in their contract with Smith:

a. any time limitation on the consumer's acceptance of the contract;

b. the approximate starting and completion dates of the home improvements;

c. a statement of contingencies that would materially change the approximate completion dates; and

d. legible printed or typed versions of the Defendants' name and the consumer's name placed directly after or below their signatures.

8. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job within a reasonable period of time.

9. To date, the Defendants have neither completed the work as represented nor issued a refund to Smith.

B. ALLEGATIONS REGARDING ALISON BEAUDRY

10. On or about June 19, 2006, the Defendants entered into a contract with Alison Beaudry of Westfield, Indiana, wherein the Defendants represented that they would install a patio at Beaudry's home for a total contract price of Three Thousand Five Hundred Dollars ($3,500.00). On that date, Beaudry paid a down payment of One Thousand Seven Hundred Seventy Dollars ($1,770.00) to the Defendants. A true and correct copy of the Defendants' contract with Beaudry is attached and incorporated by reference as Exhibit "B."

11. The Defendants failed to include the following information in their contract with Beaudry:

a. any time limitation on the consumer's acceptance of the contract;

b. the approximate starting and completion dates of the home improvements;

c. a statement of contingencies that would materially change the approximate completion dates; and

d. a legible printed or typed version of the Defendant's name and the consumer's name placed directly after or below their signatures.

12. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job within a reasonable period of time.

13. The Defendants began work on July 12, 2006, and worked for three (3) days.

14. On July 19, the Defendants represented to Beaudry that they would return the next day to continue working.

15. To date, the Defendants have neither completed the work as represented nor issued a refund to Beaudry.

C. ALLEGATIONS REGARDING DANNY and TIANA GERALD

16. On or about January 9, 2006, the Defendants entered into a contract with Danny and Tiana Gerald of Fortville, Indiana, wherein the Defendants represented that they would replace a porch at the Geralds' home for a total contract price of Two Thousand One Hundred Dollars ($2,100.00). On that date, the Geralds paid a down payment of One Thousand One Hundred Dollars ($1,100.00) to the Defendants. A true and correct copy of this contract is attached and incorporated by reference as Exhibit "C."

17. On January 10, 2006, the Defendants began work. There was a verbal

modification of the contract on that date, involving an additional cost to the Geralds of Three Hundred Dollars ($300.00). On that date, the Geralds paid One Hundred Fifty Dollars ($150.00) to the Defendants.

18. On January 11, 2006, the Defendant entered into an additional contract with the Geralds, wherein the Defendant represented that he would pour the concrete for their garage floor for a total contract price of Three Thousand Five Hundred Dollars ($3,500.00). On that date, the Geralds paid One Thousand Seven Hundred Fifty Dollars ($1,750.00) to the Defendant. A true and correct copy of this contract is attached and incorporated by reference as Exhibit "D."

19. The Defendants failed to include the following information in their contracts with the Geralds:

a. any time limitation on the consumer's acceptance of the contract;

b. the approximate starting and completion dates of the home improvements;

c. a statement of contingencies that would materially change the approximate completion dates; and

d. a legible printed or typed version of the Defendant's name and the consumer's name placed directly after or below their signatures.

20. The Defendants failed to obtain the required permit from the City of Fortville prior to commencing work as referenced in numbered paragraph 16.

21. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job within a reasonable period of time.

22. Pursuant to Ind. Code § 24-5-11-10(d), a modification to a home improvement contract, as referenced in paragraph 17, is not enforceable against a consumer unless it is stated in a writing that is signed by the consumer.

23. To date, the Defendants have neither completed the work as represented nor issued a refund to the Geralds.

COUNT I: VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

24. The services described in paragraphs 6, 10, 16, and 18 are "home improvements" as defined by Ind. Code § 24-5-11-3.

25. The transactions referred to in paragraphs 6, 10, 16, and 18 are "home improvement contracts" as defined by Ind. Code § 24-5-11-4.

26. The Defendants are "suppliers" as defined by Ind. Code § 24-5-11-6.

27. By failing to provide the Consumers with a completed home improvement contract, containing the information referred to in paragraphs 7, 11, and 19, the Defendants violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

COUNT II: VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

28. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 27 above.

29. The transactions referred to in paragraphs 6, 10, 16, and 18 are "consumer transactions," as defined by Ind. Code § 24-5-0.5-2(a)(1).

30. The Defendants are "suppliers" as defined by Ind. Code § 24-5-0.5-2(a)(3).

31. The Defendants' violations of the Indiana Home Improvement Contracts

Act, referred to in paragraphs 7, 11, and 19 constitute deceptive acts by the Defendants in accordance with Ind. Code § 24-5-11-14.

32. The Defendants' representations to consumers that the subjects of their consumer transactions had characteristics or benefits they did not have, which the Defendants knew or reasonably should have known that they did not have, as referenced in paragraphs 6, 10, 16, 17, and 18, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

33. The Defendants' representations to consumers that they would be able to deliver or complete the subject of the consumer transactions within a reasonable period of time, when the Defendants knew or reasonably should have known that they could not, as referenced in paragraphs 8, 12, and 21 constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

34. By failing to obtain the building permit required by the City of Fortville prior to engaging in a consumer transaction, as referenced in paragraph 20, 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

35. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 34 above.

36. The misrepresentations and deceptive acts set forth in numbered paragraphs 6-8, 10-12, 14, 16-18, and 19-21 above were committed by the Defendants with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, permanently enjoining the Defendants 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:

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

   ii) The name and address of the Defendant and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

   iii) 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;

   iv) A reasonably detailed description of the proposed home improvements;

   v) 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;

vi) The approximate starting and completion dates of the home improvements;

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

viii) The home improvement contract price; and

ix) Signature lines for the Defendants or the Defendants' 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, that the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendants know or reasonably should know that it does not have;

e. representing, expressly or by implication, that the Defendants are able to deliver or complete the subject of a consumer transaction within a

reasonable period of time, when the Defendants know or reasonably should know that they 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 the Defendants for the following relief:

a. cancellation of the Defendants' unlawful contracts with all consumers, including, but not limited to, Jeff Smith, Alison Beaudry, and Danny and Tiana Gerald, 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 Defendants for home improvements including, but not limited to:

   i. Jeff Smith, in the amount of Three Thousand Seventy Five Dollars ($3,075.00).

   ii. Alison Beaudry, in the amount of One Thousand Seven Hundred Seventy Dollars ($1,770.00).

   iii. Danny & Tiana Gerald, in the amount of three Thousand Dollars ($3,000.00).

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 Defendants' 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 Defendants' 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,

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