

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-97-

STATE OF MAINE,

Plaintiff

v.

ALLSTATE MOBILE
HOMES, INC.,

Defendant

COMPLAINT

1. This is an action for preliminary injunction pursuant to M.R.Civ.P. 65(b) and 5 M.R.S.A. § 209, and 10 M.R.S.A. §§ 1404 and 1406 seeking to enjoin permanently Allstate Mobile Homes from requiring consumers to execute warranty waivers in connection with the sale of mobile homes and from failing to honor statutory mobile home warranties and further seeking relief for affected consumers.

PARTIES

2. Plaintiff, State of Maine, is a sovereign state and brings this action by and through its Attorney General pursuant to 5 M.R.S.A. §§ 191 and 209 and the powers vested in him by common law.

3. The defendant, Allstate Mobile Homes, Inc., is a Maine corporation with a principal place of business at 1425 Lisbon Street, Lewiston, Maine. Allstate Mobile Homes has been licensed by the Maine Manufactured Housing Board to sell mobile homes in Maine at all times relevant to this complaint.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105 and 5 M.R.S.A. § 209.

STATUTORY BACKGROUND

5. Pursuant to 10 M.R.S.A. § 1404, manufacturers and dealers of mobile homes shall provide a written warranty that provides that the mobile home is free from any substantial defects in materials or workmanship. The manufacturer and the dealer are jointly and severally liable to the consumer for the fulfillment of the terms of the warranty.

6. Pursuant to 10 M.R.S.A. § 1404-A, the dealer or the installer shall provide owners of manufactured homes with a written warranty that provides that the installation of the home is free from any substantial defects in materials or workmanship.

7. Pursuant to 10 M.R.S.A. § 1405, the Manufactured Housing Warranty shall be in addition to and not in derogation of all other rights and privileges which a consumer may have under any other law or instrument. The manufacturer or dealer shall not require the buyer to waive his rights and any such waiver shall be contrary to public policy and shall be unenforceable and void.

8. Pursuant to 10 M.R.S.A. § 1406, any violation of the Mobile Home Warranty Act shall constitute a violation of the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206, et seq.

9. Pursuant to 5 M.R.S.A. § 209, whenever the Attorney General has reason to believe that an unfair trade practice is being committed or is about to be committed, the Attorney General may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the act or practice and the Court may make such other orders and judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unfair trade practice any monies or properties which may have been acquired by means of the unfair trade practice.

FACTS

10. Allstate Mobile Homes, Inc. ("Allstate") is a retail mobile home dealership with a sales office in Lewiston, Maine. Allstate is licensed by the State of Maine Manufactured Housing Board to operate this dealership.

11. Allstate enters into purchase and sales agreements with retail buyers of mobile homes. In connection with the sales of mobile homes, Allstate requires consumers to execute documents entitled a "Condensation Agreement," "A Retailer Limited Warranty," a "Homeowner Responsibility" and a "About Your Furnace". Copies of these documents are attached to this complaint as Exhibit A and incorporated herein by reference.

12. The "Condensation Agreement" provides that Defendant "and manufacturer have no responsibility for any resulting loss or damage" due to condensation. The Agreement further requires the mobile home owner to vent bathroom windows when the bath or shower is operated and to install vent fans or other ventilation systems "should excessive moisture and condensation continue to be present."

13. The "About Your Furnace" document provides that the furnace in the owner's home "is warranted by the company that manufactures the furnace" and not by the manufacturer or the Defendant.

14. The document entitled "Homeowner Responsibility" provides that the homeowner is responsible for any damage to the home "as a result of settling". The Defendant also disclaims any responsibility through this document for the costs of repairs or services to appliances including refrigerators, stoves, water heaters and furnaces. Finally, Defendant disclaims responsibility in this document for frozen water pipes, chips or scratches on appliances or woodwork.

COUNT I: DISCLAIMER OF WARRANTY
CONDENSATION AGREEMENT

15. The Defendant requires purchasers to sign a Condensation Agreement which requires the purchaser to waive his or her rights under the statutory warranties established in 10 M.R.S.A. §1404 and 1404-A.

16. Defendant's conduct as alleged in this Count was intentional.

17. Defendant's conduct constitutes a violation of 10 M.R.S.A. §1405, 10 M.R.S.A. §1406 and 5 M.R.S.A. §207.

COUNT II: DISCLAIMER OF WARRANTY
FURNACE WARRANTY

18. Plaintiff repeats and realleges the preceding paragraphs in this complaint.

19. Defendant requires purchasers of mobile homes to sign a document disclaiming any responsibility and any warranty by the Defendant and the manufacturer of the mobile home for defects in material, workmanship or installation of the furnace.

20. Defendant's conduct as alleged in this Count was intentional.

21. Defendant, by disclaiming warranty responsibilities for furnaces sold with mobile homes, violates 10 M.R.S.A. §1404, §1405 and §1406. Pursuant to 10 M.R.S.A. §1406 Defendant's conduct constitutes an unfair and deceptive trade practice in violation of 5 M.R.S.A. §207.

COUNT III: DISCLAIMER OF WARRANTY
HOMEOWNER RESPONSIBILITY

22. Plaintiff repeats and realleges the preceding paragraphs in this Complaint.

23. The document entitled "Homeowner Responsibility" provides that the homeowner assumes responsibility for any damage caused by "settling" and further provides that the homeowner must "look to the manufacturer" of an appliance for any warranty obligations and not to the Defendant.

24. Defendant's conduct in requiring consumers to sign the "Homeowner Responsibility" document violates 10 M.R.S.A. §1404, §1404-A and §1405.

25. Defendant's conduct as alleged in this Count was intentional.

26. Pursuant to 10 M.R.S.A. §1406 Defendant's conduct in disclaiming warranties constitutes an unfair and deceptive trade practice in violation of 5 M.R.S.A. §207.

COUNT IV: FAILURE TO HONOR STATUTORY WARRANTIES

27. Plaintiff repeats and realleges the preceding paragraphs in this Complaint.

28. A number of purchasers of mobile homes have experienced substantial defects in their mobile homes. These defects include defective doors, leaking and freezing pipes, defective windows, leaking ceilings, defective furnaces, cracked counter tops, and defective toilets.

29. The purchasers who have experienced defects and problems with their mobile homes have been unable, even after repeated attempts, to have Defendant fix or take responsibility for fixing the defects or problems.

30. The Defendant has sold mobile homes to purchasers with substantial defects in material workmanship or installation and has failed to honor its statutory warranties, pursuant to 10 M.R.S.A. §1404 and §1404-A, resolving those defects or problems.

31. Defendant's conduct as alleged in this Count was intentional.

32. Defendant's conduct, pursuant to 10 M.R.S.A. §1406, constitutes an unfair and deceptive trade practice in violation of 5 M.R.S.A. §207.

RELIEF REQUESTED

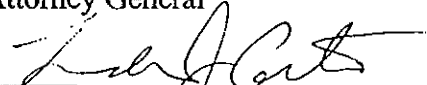
WHEREFORE, plaintiff State of Maine requests this Court:

1. Declare that the defendant, Allstate Mobile Homes, Inc., has sold mobile homes in the State, in violation of 10 M.R.S.A. §§ 1404 and 1404-A in that the mobile homes are not free from substantial defects in materials or workmanship.

2. Declare that Allstate Mobile Homes, Inc. has failed to honor the manufactured housing warranty, in violation of 10 M.R.S.A. §§ 1404 and 1404-A.
3. Declare that, pursuant to 10 M.R.S.A. § 1406, Allstate Mobile Home, Inc.'s failure to honor the statutory manufactured housing warranties constitutes an Unfair Trade Practice, in violation of 5 M.R.S.A. § 207.
4. Order that the defendant, Allstate Mobile Homes, Inc., take appropriate corrective action with respect to honoring warranties on the mobile homes that it has sold to Maine residents.
5. Enjoin Defendant from
 - a. further sales of mobile homes until its sales and warranty documents have been approved by the Manufactured Housing Board as being in compliance with applicable Maine law.
 - b. requiring consumers to waive their rights under 10 M.R.S.A. §1404 and §1404-A.
6. Order Defendant to pay a civil penalty of \$10,000 for each intentional violation of the Unfair Trade Practices Act.
7. Order Defendant to pay the Attorney General its attorneys fees.
8. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ANDREW KETTERER
Attorney General



LINDA J. CONTI
Maine Bar #3638
Assistant Attorney General
6 State House Station
Augusta, ME 04333-0006
Telephone: (207) 626-8800

Dated: April 23, 1998

RECEIVED
STATE OF MAINE
ATTORNEY GENERAL

JUN 16 1998

STATE HOUSE AUGUSTA, MAINE

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
Civil Action

Docket No. CV-98-107

REC'D & FILED

JUN 11 1998

STATE OF MAINE
Plaintiff

vs.

CONSENT DECREE
AND ORDER

ALLSTATE MOBILE HOMES,
INC.

Defendant

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Plaintiff State of Maine on having filed a complaint in the above-referenced matter, and plaintiff and defendant Allstate Mobile Homes, Inc. having consented to the entry of this Consent Decree and Order, for purposes of settlement only, and without this Decree constituting evidence against or an admission of any party, without trial of any issue of fact or law. NOW, THEREFORE, upon consent of the parties hereto IT IS HEREBY ORDERED AS FOLLOWS:

1. Defendant Allstate Mobile Homes, Inc., its agents, servants, officers, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this consent decree and order are permanently enjoined from violating the manufactured housing warranties set forth in 10 M.R.S.A. §§ 1401-1406.

2. Defendant Allstate Mobile Homes, Inc. shall honor the warranties set forth in 10 M.R.S.A. § 1404 and 1404-A with respect to mobile homes that it has sold to Maine residents to the reasonable satisfaction of the consumer or an inspector for the Maine Manufactured Housing Board.

3. Defendant Allstate Mobile Homes, Inc. is enjoined from requiring consumers to disclaim statutory warranties in connection with the sale of mobile homes.

4. Defendant Allstate Mobile Homes, Inc. shall send a letter, a copy of which is attached hereto as Exhibit A, to all consumers who purchased mobile homes from Allstate Mobile Homes and who signed waivers disclaiming warranty rights set forth in 10 M.R.S.A. §§ 1404 and 1404-A, informing the consumers that the waiver is void with a copy of the letter to be provided to the Department of the Attorney General. Defendant Allstate Mobile Homes, Inc. shall provide the Department of the Attorney General with the names and addresses of all consumers to whom the letter is sent within ten days of the date of mailing.

5. Defendant Allstate Mobile Homes, Inc. shall pay to the Department of the Attorney General, pursuant to 5 M.R.S.A. § 209, Unfair Trade Practices, civil penalties in the amount of \$3,500.00 and attorneys fees of \$1,000.00.

6. Jurisdiction is retained by this Court for the purposes of enabling any party to this Consent Decree to apply to this Court at any time for such further orders as may be necessary for the construction, modification, or enforcement of any other provision of this decree and injunction, and for punishment pursuant to 5 M.R.S.A. § 209,, including additional civil penalties, for future violations of the provisions of this Consent Decree.

7. The undersigned acknowledge the terms of this Consent Decree, agree to these terms and to the entry of this Decree.

8. The Clerk is direction to incorporate this Order in the docket by reference pursuant to M. R. Civ. P. 79(a).

Dated: 6-12-98


Justice, Maine Superior Court

WE CONSENT:

Dated: 6/1/98



NEIL S. SHANKMAN
SHANKMAN & ASSOCIATES
11 Lisbon St.
Lewiston, ME 04240
(207) 786-0311
Attorney for Allstate Mobile Homes, Inc.

Dated: 6/8/98



LINDA CONTI
ASSISTANT ATTORNEY GENERAL
Department of Attorney General
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(207) 626-8591
Attorney for Plaintiff State of Maine

EXHIBIT A

Dear Customer:

During the late fall of 1997 it came to our attention that two of the warranty forms used by Allstate Mobile Homes, Inc. did not comply with State law. It appears that some of our customers were led to believe that certain warranty protections under state law were being waived.

We want to clarify the situation immediately. First of all, the "Condensation Agreement" signed by you at the time of purchasing your mobile home from Allstate was intended to let you know the risks of condensation and potential moisture damage that can arise from the improper use of your mobile home. At no time was the notice intended to suggest that either the manufacturer or Allstate would not stand behind its products 100%. If condensation problems arise through no fault of your own; it is this company and the manufacturer who are going to take responsibility.

At the time of the purchase of your mobile home, we also provided to you a summary sheet regarding your furnace and the warranty covering it. In retrospect, it is obvious to us that the language that we used in that notice is misleading and must be clarified. To the degree that there are any problems with the furnace (or any other aspect of your home) it is the manufacturer of the home and Allstate that will take primary responsibility. As with any other product, you are responsible for the consequences of your negligence or mistreatment of the furnace or other aspects of the mobile home. However, we want you to be assured that we are here to work with you not only at the time of sale, but for as long as you own the mobile home. We want you to be happy with it and we want you to be a satisfied customer.

This does not mean that every aspect of every mobile home will be perfect. It does mean that the mobile home that we sell will be free from any substantial defects in materials or workmanship. If there is a problem, we will address it. This is the law and it is simply good business.

We have entered into an Agreement with the Attorney General to resolve the State's concerns. A copy of the Agreement is enclosed. If you have any additional questions about the agreement or your warranty, please feel free to contact Linda Conti, Assistant Attorney General at Station 6, Augusta, Maine 04333.

Thank you for purchasing your mobile home from Allstate Mobile Homes, Inc. Be sure to let us know if there are any questions or concerns.

Sincerely,

Lawrence Taylor, President