

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-99-

STATE OF MAINE

Plaintiff

v.

ALBERT H. GIANDREA and
AG'S HOME QUALITY IMPROVEMENTS, INC.

Defendants

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COMPLAINT

INTRODUCTION

1. The State brings this action against Albert H. Giandrea and AG's Quality Home Improvements, Inc. pursuant to the Maine Unfair Trade Practices Act ("UTPA") 5 M.R.S.A. § 209 and M.R.Civ. P. 65 seeking permanent injunctive relief, restitution, civil penalties, and costs including attorneys fees.

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. Defendant Albert H. Giandrea (hereinafter "Giandrea") is an individual who resides at 109 Frye Road in Somerville, Maine.

4. Defendant AG's Quality Home Improvements, Inc. is a Maine corporation with a principal place of business at 109 Frye Road in Somerville, Maine. Giandrea is the President, clerk and alter ego of AG's Quality Home Improvements, Inc.

JURISDICTION

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

STATUTORY BACKGROUND

6. Under the UTPA, 5 M.R.S.A. § 207, unfair or deceptive acts or practices in the conduct of any trade or business are unlawful.

7. Under the Home Construction Contract Act, 10 M.R.S.A. § 1487(5), the initial down payment for a home construction contract may not exceed 1/3 of the total contract price.

8. Under the Home Construction Contract Act, 10 M.R.S.A. § 1490, a violation of the Home Construction Contract Act constitutes *prima facie* evidence of a violation of the Unfair Trade Practices Act.

FACTS

(Failure to Perform Work Paid For)

9. Defendant Giandrea owns and operates a home improvement business in Somerville, Maine. He contracts to perform home improvements and to build garages. Giandrea advertises his services in *Uncle Henry's*, a weekly advertiser published in Augusta, Maine.

10. On or about September 28, 1998, Mr. and Mrs. Boutte of Brunswick, Maine contracted with Defendants Giandrea and AG's Quality Home Improvements Inc. for an addition to their home. They gave Giandrea a \$2,640 deposit. He did not begin construction on the date specified in the contract.

11. After repeated calls to Giandrea, on November 5, 1998 the consumers cancelled the contract. Giandrea agreed at that time to refund the deposit but has not done so to date.

12. On or about October 17, 1998, Mr. Farris of Gray, Maine contracted with the Defendants to build a garage. The total contract price was \$9,810. Mr. Farris gave Giandrea

\$4,000 at that time. Pursuant to the contract Giandrea was to begin constructing the garage within 30 days of the date the contract was signed.

13. Three months later no work had been done. Mr. Farris has called Giandrea several times and to date no work has been done and no refund has been given.

14. In 1998 Defendants Giandrea and AG's Quality Home Improvements, Inc. contracted with Bogart Blakely of Bradley, Maine, Deborah Sweetland of Belfast, Maine and Robert Rapp of Pemaquid, Maine for home improvements or garage construction.

15. In each of the transactions described in paragraph 14, the Defendants were paid in full.

16. In each of the transactions described in paragraph 14 the Defendants performed substandard work and repeatedly ignored the consumers' complaints about substandard work.

COUNT I

(UTPA - Failure to Perform Work Paid For)

17. Plaintiff repeats, realleges and incorporates herein by reference the preceding paragraphs of this Complaint.

18. Defendants Giandrea and AG's Quality Home Improvement Inc.'s practice of collecting money from consumers to build garages or to make home improvements and then failing to begin the work or to refund the money collected is an unfair or deceptive act or practice in violation of 5 M.R.S.A. § 207.

19. Defendants' conduct as described herein is intentional.

COUNT II

(UTPA - Substandard Work)

20. Plaintiff repeats, realleges and incorporates herein by reference the preceding paragraphs of this Complaint.

21. Defendants Giandrea and AG's Quality Home Improvements Inc.'s practice of performing substandard work and ignoring consumers' complaints about substandard work is an unfair or deceptive act or practice in violation of 5 M.R.S.A. § 207.

22. Defendants' conduct as described herein is intentional.

COUNT III

(UTPA - Home Construction Contract Act)

23. Plaintiff repeats, realleges and incorporates herein by reference the preceding paragraphs 1-22 of this Complaint.

24. The Defendants Giandrea and AG's Quality Home Improvement Inc. accepted a down payment from Mr. Farris that exceeded one-third of the total contract price in violation of the Home Construction Contract Act, 10 M.R.S.A. § 1487(5).

25. Under 10 M.R.S.A. § 1450, Defendants' violation of the Home Construction Contract Act is an Unfair Trade Practice.

26. Defendants' conduct as described herein is intentional.

RELIEF REQUESTED

Plaintiff requests that this Court enter the following relief:

1. Declare that Defendant Albert H. Giandrea has engaged in unfair and deceptive acts or practices in the conduct of his business in violation of 5 M.R.S.A. § 207 by:

(a) taking deposits for work that he does not perform and failing to refund the deposits;

(b) performing substandard work and ignoring consumer's complaints about the substandard work; and

(c) taking an initial deposit that exceeds one-third of the total contract price in violation of 10 M.R.S.A. § 1487(5).

2. Pursuant to 5 M.R.S.A. § 209, permanently enjoin Defendant Albert H. Giandrea, his agents, servants, employees and those persons in active concert or participation with him who receive actual notice of the injunction from operating a home improvement or home repair business in Maine.

3. Order Defendant Albert H. Giandrea to pay restitution to all consumers injured by his unlawful practices.

4. Order Defendant Albert H. Giandrea to pay a civil penalty of \$10,000 for each intentional violation of the Unfair Trade Practices Act.

5. Declare that Defendant AG's Quality Home Improvements, Inc. has engaged in unfair or deceptive acts or practices in the conduct of its business by:

(a) taking deposits for work that is not performed and failing to return deposits;

(b) performing substandard work and ignoring consumer's complaints about the substandard work; and

(c) taking an initial deposit that exceeds one-third the total contract prices in violation of 10 M.R.S.A. § 1487(5).

6. Pursuant to 5 M.R.S.A. § 209, permanently enjoin Defendant AG's Quality Home Improvements, Inc., its agents, servants, employees and those persons in active concert or participation with it who receive actual notice of the injunction from operating a home improvement or home repair business in Maine.

7. Order Defendant AG's Quality Home Improvements, Inc. to pay restitution to all consumers injured by its unlawful practices.

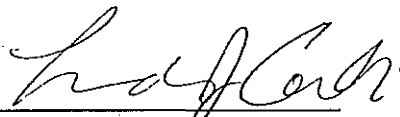
8. Order Defendant AG's Quality Home Improvements Inc. to pay a civil penalty of \$10,000 for each intentional violation of the Unfair Trade Practices Act.

9. Order Defendants Albert H. Giandrea and AG's Quality Home Improvements, Inc. to pay the Attorney General his costs of suit and investigation including attorney's fees.

10. Order such other and further relief, as the Court may deem necessary to remedy the effects of the Defendants' unfair and deceptive practices.

Dated: December 20, 1999

ANDREW KETTERER
ATTORNEY GENERAL



LINDA J. CONTI
Assistant Attorney General
6 State House Station
Augusta, Maine 04333
Tel. (207) 626-8800
Me. Bar No. 3638

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-00-0423

STATE OF MAINE,

Plaintiff

v.

ALBERT H. GIANDREA and
AG'S HOME QUALITY IMPROVEMENTS, INC.,

Defendants

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ORDER

The plaintiff State of Maine and Defendants Albert H. Giandrea and AG's Quality Home Improvements, Inc. consent to the entry of the following Order:

1. The Court finds that the Defendants Albert H. Giandrea and AG's Quality Home Improvements, Inc. violated the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207, as alleged in the Complaint.

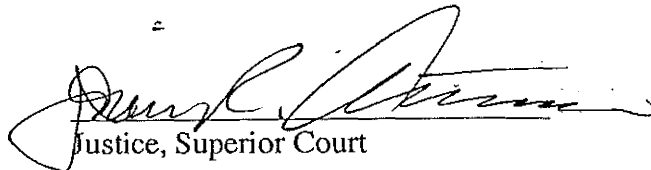
2. It is ordered that Albert H. Giandrea and AG's Quality Home Improvements, Inc., their agents, servants, employees and those persons in active concert or participation with them, who receive actual notice of this injunction are permanently enjoined from accepting any payments for goods or services until the goods have been delivered or the services have been performed.

3. Pursuant to 5 M.R.S.A. § 209, Albert H. Giandrea and AG's Quality Home Improvements, Inc. are ordered to pay restitution as follows:

- a. Dyron and Joyce Boutte \$2,640
- b. Michael Farris \$4,000

4. Pursuant to 5 M.R.S.A. § 209, Albert H. Giandrea and AG's Quality Home Improvements, Inc. are ordered to pay a civil penalty of \$1,000.00 to the Department of Attorney General.

Dated: Aug. 1, 2000


Justice, Superior Court

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-00-23

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 ALBERT H. GIANDREA *et al*,)
)
 Defendants)

STATE'S OBJECTION TO
THE DEFENDANT'S
MOTION TO SET ASIDE DEFAULT

INTRODUCTION

For the reasons set forth below, the State of Maine objects to the Defendant, Albert H. Giandrea's ("Giandrea") letter dated February 28, 2000 in which he requests that the default entered against him be set aside.

FACTS

The Consumer Mediation Division of the Attorney General's Office received five consumer complaints against Albert H. Giandrea and AG's Quality Home Improvements, Inc. As a result of these complaints, in the summer of 1999 the State commenced an investigation into Albert H. Giandrea and his business practices. Following its investigation the State drafted a complaint alleging that Giandrea and his corporation violated the Unfair Trade Practices Act. However before filing the complaint, the State learned through one of the consumer complainants that Albert H. Giandrea had filed a Petition for Bankruptcy.

The State contacted the Bankruptcy court and learned that Giandrea filed a voluntary Chapter 7 petition on July 26, 1999. The State also learned Giandrea is represented by Brian Winchester, Esq. in the Bankruptcy proceeding. The State informed Attorney Winchester that it

intended to seek relief from the stay to file a civil action in Kennebec County Superior Court, pursuant to the Unfair Trade Practices Act, against Giandrea and that it also intended to file an Adversary Complaint in the Bankruptcy proceeding, seeking a determination from that Court that any restitution and civil penalties that it obtained against Giandrea in the State Court proceeding was nondischargeable.

On November 2, 1999, the State sent a copy of its Unfair Trade Practices Act Complaint and ten-day letter, as required by 5 M.R.S.A. § 209, to Attorney Winchester. The State then filed its Motion for Relief from Stay with the Bankruptcy Court.¹ Attorney Winchester opposed the State's Motion for Relief from Stay on behalf of Mr. Giandrea. On December 14, 1999, the Bankruptcy Court granted the State's request for relief from the automatic stay to file the Complaint in Superior Court. A copy of the Bankruptcy Court's order is attached hereto as Exhibit 1.

After the State received relief from the automatic stay, it contacted Attorney Winchester. Winchester informed the State that he did not have authority to accept service of the Complaint and Summons on behalf of Giandrea, and that the State should have him served. Thereafter, the State forwarded the Complaint and Summonses to the Lincoln County Sheriff's Office. The Sheriff's Office served Giandrea in hand with the State Court Complaint and two Summonses, one for Giandrea individually and the other on Giandrea as President of AG's Quality Home Improvements, Inc. on January 31, 2000. The return of service is attached hereto as Exhibits 2 and 3.

¹ On or about November 19, 1999, the State filed an adversary complaint in the bankruptcy court seeking a determination of dischargeability. Attorney Winchester timely answered that complaint on Giandrea's behalf.

After being served in hand with the Complaint and Summons, Giandrea did not answer or otherwise defend the Complaint. The State filed an application to the clerk for an entry of a clerk's default on February 23, 2000. The clerk entered default against Albert H. Giandrea and AG's Quality Home Improvements, Inc. on February 28, 2000. Also on February 28, 2000 the Court received a letter from Giandrea requesting that the default judgment be set aside. Giandrea did not provide the State with a copy of the letter. Assuming that Giandrea's letter will be treated as a Motion to Set Aside a Default, the State submits this memorandum in opposition to Giandrea's motion.

ARGUMENT

In his letter Giandrea states:

When served with paperwork this case was and still is in Bankruptcy Court and to my understanding thought I was protected in Bankruptcy Court as the above work was conducted by a Corporation(sic) and thought that the Corporate Shield protected me. Therefore, I didn't understand that a response was to be filled(sic) within 20 days.

I ask the court to re-open this case so I have time to retain an Attorney to dispute it.

A Court may set aside an entry of default for good cause shown. M.R. Civ. P. 55(c). To meet the good cause standard of Rule 55(c), a party generally must show both a good excuse for his untimeliness in pleading and the existence of a meritorious defense. Boit v. Brookstone Company, Inc., 641 A.2d 864, 865 (Me. 1994)(citations omitted). Giandrea has shown neither a good excuse for his untimeliness in pleading nor that he has a meritorious defense.

Giandrea's good cause for failing to timely answer or appear in this action, according to his letter to the Court of February 28, 2000, is that he thought he was protected in Bankruptcy Court. This is not a good excuse for ignoring a Summons that was served upon him in hand.

Giandrea was represented in the Bankruptcy and vigorously opposed the State's Motion for Relief from Stay. The Bankruptcy Court, however, issued an order providing that the State could pursue its claims against him. In light of the Bankruptcy court's order, it was unreasonable for Giandrea to believe that he was protected by his bankruptcy petition and the automatic stay provision.

Moreover Giandrea claims that he wants to reopen this case so he can have time to retain an attorney. He has an attorney in the bankruptcy proceeding. His attorney told the State to have the complaint and summons served. Giandrea had notice of the complaint and time to retain counsel. His failure to retain counsel in this matter in a timely manner is no excuse.

Interstate Food Processing Court v. Pellerito Foods, Inc., 622 A.2d 1189, 1192-1193 (Me. 1993).

Even if Giandrea could show good cause for his untimeliness, he has not demonstrated the existence of a meritorious defense to the allegations in the Complaint. To prevail on this issue Giandrea must set forth facts and circumstances supporting his defense. Hamby v. Thomas Realty Associates, 617 A. 2d 562, 564 (Me. 1992)(for purposes of the meritorious defense component the moving party's version of the facts and circumstances supporting his defense is deemed to be true). At best Giandrea's letter suggests that he could defend this action on the grounds that the "corporate shield" protects him from liability. The complaint, however, alleges that Giandrea individually engaged in unfair and deceptive acts and practices in violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

The complaint seeks to hold Giandrea individually liable for his actions. Because Giandrea has been sued in his individual capacity, he is not protected by the "corporate shield". Direct participation in making misrepresentations and other conduct in violation of the Unfair Trade Practices Act are not shielded by the existence of a corporation. FTC v. Kitco of Nevada,

Inc., 612 F. Supp. 1282, 1292-1293 (D. Minn. 1985); FTC v. Gem Merchandising Corporation, 87 F.3d 466, 470 (11th Circuit 1996). For these reasons, Giandrea has not established that he has a meritorious defense.

CONCLUSION

Because Giandrea has demonstrated neither good cause for his untimeliness in pleading nor the existence of a meritorious defense, the State respectfully requests that his motion to set aside the default be denied.

Respectfully submitted,

Dated: _____

March 2, 2000



LINDA J. CONTI
Assistant Attorney General
Me Bar No. 3638
State House Station 6
Augusta, Maine 04333-0006
(207) 626-8800

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

U.S. BANKRUPTCY COURT
BANGOR, MAINE

1999 DEC 15 AM 10:09

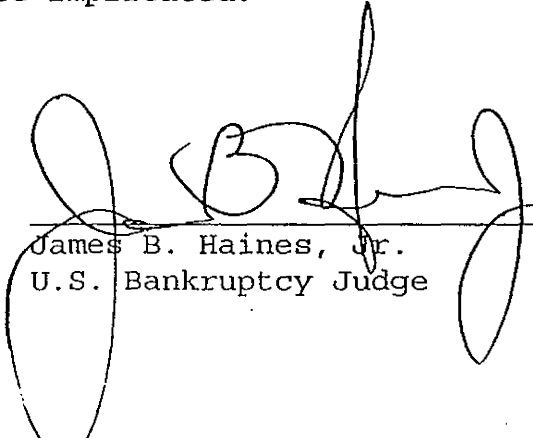
In re: *
* Chapter 7
ALBERT GIANDREA * Case No. 99-11221
*
and *
*
PAMELA GIANDREA, *
*
*
Debtors *

ORDER

On December 14, 1999, the court convened a telephonic hearing to consider the State of Maine's motion for clarification of the automatic stay or, in the alternative, for relief from the automatic stay. Brian P. Winchester, Esq., appeared for the debtors, Linda Conti, Esq., appeared for the State of Maine. Based upon a review of the pleadings, and this court's recently-promulgated decision in In re Nelson, 240 B.R. 802 (Bankr. D. Me. 1999), I conclude that the automatic stay does not apply to the State's action seeking, among other things, injunctive relief and restitution. See § 362(b)(4).

Of course, should the State seek to do anything more than is represented in its pleadings, the automatic stay, or the discharge injunction, might be implicated.

DATED: 12/14/99


James B. Haines, Jr.
U.S. Bankruptcy Judge

cc: Brian Winchester, Esq.
Linda Conti, Esq.
UST
P.J. Perrino, Esq.

EXHIBIT

SP
31

Return

STATE OF MAINE

SUPERIOR COURT

KENNEBEC, ss.
Docket No. _____

DISTRICT COURT

Location _____
Docket No. _____

State of Maine Plaintiff

v.

SUMMONS

Albert H. Giandrea Defendant

109 Frye Road Address
Somerville, Maine 04348

The Plaintiff has begun a lawsuit against you in the (District) (Superior) Court, which holds sessions at (street address) 95 State Street, in the Town/City of Augusta, County of Kennebec, Maine. If you wish to oppose this lawsuit, you or your attorney **MUST PREPARE AND SERVE A WRITTEN ANSWER** to the attached Complaint **WITHIN 20 DAYS** from the day this Summons was served upon you. You or your attorney must serve your Answer, by delivering a copy of it in person or by mail to the Plaintiff's attorney, or the Plaintiff, whose name and address appear below. You or your attorney must also file the original of your Answer with the court by mailing it to the following address: Clerk of (District) (Superior) Court, 95 State Street, Augusta, Maine 04330
(Mailing Address) (Town, City) (Zip)

before, or within a reasonable time after, it is served.

IMPORTANT WARNING

IF YOU FAIL TO SERVE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR EMPLOYER MAY BE ORDERED TO PAY PART OF YOUR WAGES TO THE PLAINTIFF OR YOUR PERSONAL PROPERTY, INCLUDING BANK ACCOUNTS AND YOUR REAL ESTATE MAY BE TAKEN TO SATISFY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS LAWSUIT, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you believe the plaintiff is not entitled to all or part of the claim set forth in the Complaint or if you believe you have a claim of your own against the Plaintiff, you should talk to a lawyer. If you feel you cannot afford to pay a fee to a lawyer, you may ask the clerk of court for information as to places where you may seek legal assistance.

Date: December 20, 1999

(Seal of Court)
Nancy A. Nevardin
Clerk

Linda J. Conti
(Attorney for) Plaintiff
Dept. of A.G., 6 S.H.S. Address
Augusta, Maine 04333-0006
(207) 626-8800 Telephone

Return

SUPERIOR COURT
KENNEBEC
_____, ss.
Docket No. _____

STATE OF MAINE

DISTRICT COURT
Location _____
Docket No. _____

State of Maine Plaintiff

v.

SUMMONS

AG's Quality Home Improvements, Inc. Defendant
Albert Giandrea, President
109 Frye Road Address
Somerville, Maine 04348

The Plaintiff has begun a lawsuit against you in the (District) (Superior) Court, which holds sessions at (street address) 95 State Street, in the Town/City of Augusta, County of Kennebec, Maine. If you wish to oppose this lawsuit, you or your attorney MUST PREPARE AND SERVE A WRITTEN ANSWER to the attached Complaint WITHIN 20 DAYS from the day this Summons was served upon you. You or your attorney must serve your Answer, by delivering a copy of it in person or by mail to the Plaintiff's attorney, or the Plaintiff, whose name and address appear below. You or your attorney must also file the original of your Answer with the court by mailing it to the following address: Clerk of (District) (Superior) Court, 95 State Street, Augusta, Maine 04330
(Mailing Address) (Town, City) (Zip)

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If you believe the plaintiff is not entitled to all or part of the claim set forth in the Complaint or if you believe you have a claim of your own against the Plaintiff, you should talk to a lawyer. If you feel you cannot afford to pay a fee to a lawyer, you may ask the clerk of court for information as to places where you may seek legal assistance.

(Seal of Court)

Date: November 21, 1999

Nancy A. Seyardin
Clerk

Linda J. Conti
(Attorney for) Plaintiff
Dept. of A.G., 6 S.H.S. Address
Augusta, Maine 04333-0006
(207) 626-8800 Telephone

STATE OF MAINE

Kennebec, ss.

SUPERIOR COURT
CV- 00-23

State of Maine,

READ & FILED
Nancy A. Desjardin

Plaintiff

FEB 25 2000 APPLICATION TO CLERK
FOR DEFAULT
WITH AFFIDAVIT

vs.

Clerk of Courts
Kennebec County

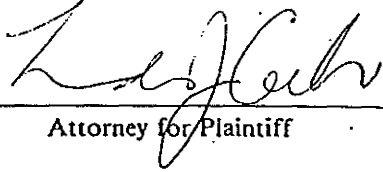
Albert H. Giandrea,
AG Quality Home Improvements, Inc.,

Defendant S

RESPECTFULLY REPRESENTS THE PLAINTIFF IN THE ABOVE ENTITLED ACTION THAT THE DEFENDANT HEREIN HAS FAILED TO PLEAD OR OTHERWISE DEFEND THIS ACTION AS REQUIRED BY THE MAINE RULES OF CIVIL PROCEDURE OR BY LAW:

WHEREFORE THE PLAINTIFF REQUEST THAT THE CLERK OF THIS COURT WILL ENTER DEFAULT AGAINST SAID DEFENDANT.

Dated February 23, 2000



Attorney for Plaintiff

AFFIDAVIT

Being first duly sworn, Linda Conti

Attorney for the Plaintiff, hereby states under oath, that entry of default should be made by the clerk at this time because:

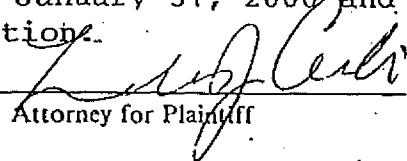
The Defendants, AG Quality Home Improvements, Inc. and

Albert H. Giandrea, are not infants or incompetent persons nor

are they subject to the Soldier and Sailors Relief Act. Albert

Giandrea resides in Somerville, Maine. The Defendants were served in hand with the Complaint and Summons on January 31, 2000 and have not answered or otherwise defended the action.

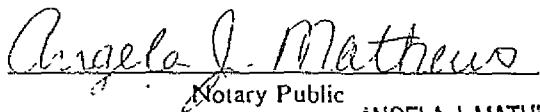
Dated: February 23, 2000



Attorney for Plaintiff

Personally appeared the above-named Linda J. Conti and made oath to the truth of the above-stated facts and that he has personal knowledge of the same except as noted and as to those facts stated on information or belief that he believes them to be true.

Dated: February 23, 2000



Notary Public

ANGELA J. MATHEWS
Notary Public • Maine

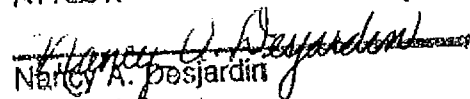
My Commission Expires November 18, 2006

DEFAULT ENTERED, DATE February 28, 2000

Nancy A. Desjardin
Clerk of the Superior Court

BY _____

A TRUE COPY
ATTEST:


Nancy A. Desjardin

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In Re:)	Chapter 7
)	Case No.: 99-11221
Albert H. Giandrea)	
)	
Debtor)	
<hr/>		
State of Maine Department)	Adv. Proceeding No.
Of Attorney General,)	
)	
Plaintiff)	
)	
v.)	COMPLAINT
)	
Albert H. Giandrea)	
)	
)	
Defendant)	

NOW COMES the State of Maine Department of Attorney General and complains against the Debtor, Albert H. Giandrea, as follows:

THE PARTIES

1. The Defendant/Debtor, Albert H. Giandrea, filed a Chapter 7 petition with this Court on July 26, 1999.
2. The Plaintiff, State of Maine, is a sovereign state acting through the Department of the Attorney General.

JURISDICTION AND VENUE

3. The Plaintiff seeks relief pursuant to 11 U.S.C. § 523. Jurisdiction is proper pursuant to 28 U.S.C. §§ 157, 1334, and venue is proper pursuant to 28 U.S.C. §§ 1408, 1409.

This action is commenced pursuant to Bankruptcy Rules 7001 and 7003, Fed. R. Civ. P. 3 and Local Rule 7003.

4. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) in that it objects to the Debtor's discharge of a particular debt.

THE FACTS

5. In 1998, Albert H. Giandrea owned and operated a home improvement business, AG's Quality Home Improvements, Inc. in Somerville, Maine.

6. Having received complaints from consumers, in August of 1999 the State drafted a civil Complaint alleging Mr. Giandrea violated the Unfair Trade Practices Act, 5 M. R.S.A. § 207 and Home Construction Contracts Act 10 M.R.S.A. §§ 1486-1490. (Attached as Exhibit A.)

7. On or about July 26, 1999, Albert H. Giandrea filed a Chapter 7 Bankruptcy.

8. The State learned of the bankruptcy and therefore did not file the Complaint immediately, rather on November 12, 1999 the State requested clarification from the Bankruptcy Court as to the Application of the Stay to the State's Unfair Trade Practices Complaint*.

9. The unfair and deceptive practices engaged in by the Defendant, as described in the Complaint, are set forth as follows:

A. Giandrea's practice of collecting money from consumers for home repair or construction projects and then failing to perform the work or to refund the deposits constitutes a pattern of practice of unfair and deceptive conduct in violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

* Assuming the State's Motion to clarify the application of the automatic stay to its proposed complaint is resolved so the State may proceed with its action in State Court, the State is filing this complaint to preserve its right to argue that any judgment it obtains in the State Court action is not dischargeable in this bankruptcy proceeding.

B. Giandrea collected in excess of one-third of the total contract price from a consumer, Mr. Farris of Gray, in violation of the Home Construction Contracts Act, 10 M.R.S.A. § 1487.

C. Giandrea's practice of intentionally misrepresenting facts material to a consumer's decision to enter into a home improvement contract constitutes a pattern or practice of unfair and deceptive conduct in violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

D. Defendant performed substandard and incomplete work and failed to respond to consumer complaints.

10. The Plaintiff, State of Maine, through the Department of the Attorney General, has standing to bring the State court action against the Defendant seeking injunctive relief, civil penalty, and equitable relief for injured consumers, including restitution, pursuant to 5 M.R.S.A. § 209.

COUNT I
FRAUD, 11 U.S.C. § 523(a)(2)(A)

11. The Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

12. Section 523(a)(2)(A) of the United States Bankruptcy Code disallows a debtor in bankruptcy from being discharged for a debt incurred through fraudulent means.

13. The Defendant violated Maine's Unfair Trade Practices Act, through his intentional and knowing misrepresentations to authors as to the Defendant's ability and willingness to begin and complete home improvement projects that he has been paid to perform.

14. The consumers, in reasonable reliance upon the Defendant's fraudulent misrepresentations, made payments to the Defendant for services which the Defendant did not perform.

WHEREFORE, the State of Maine Department of Attorney General prays this Court determine that the State's unliquidated claim [for restitution for consumers, who are incidental beneficiaries of the State's enforcement action] is a nondischargeable debt pursuant to 11 U.S.C. § 523(a)(2)(A).

COUNT II
WILLFUL AND MALICIOUS CONDUCT, 11 U.S.C. § 523(a)(6)

15. The Plaintiff repeats, realleges and incorporates the foregoing paragraphs as though fully set forth herein.

16. The Unfair Trade Practices Act, 5 M.R.S.A. § 205-A through 214, allows the State to bring an action to restrain a defendant from engaging conduct that is harmful to the public.

17. Section 523(a)(6) of the United States Bankruptcy Code prevents a debtor from receiving a discharge for a debt resulting from the debtor's willful and malicious conduct, which has been defined as conduct wherein the debtor acted without justification or excuse and with full knowledge of the specific consequences of his conduct, knowing full well that his conduct will cause particularized injury.

18. The Defendant's conduct in misrepresenting that he would make home repairs in order to obtain payment for work he did not do, was without justification or excuse and was done with full knowledge of the specific consequences of his conduct and with full knowledge that his conduct would cause particularized injury.

19. As a result of the Defendant's willful and malicious conduct, members of the public and the Plaintiff, State of Maine, suffered damages in an amount yet to be determined for restitution, civil penalties, and attorney fees.

WHEREFORE, the State of Maine Department of Attorney General prays this Court determine its unliquidated claim against the Defendant / Debtor for restitution, civil penalties, and attorneys fees is a nondischargeable debt pursuant to 11 U.S.C. § 523(a)(6).

COUNT III
CIVIL PENALTIES, 11 U.S.C. § 523(a)(7)

20. The Plaintiff repeats, realleges and incorporates the foregoing paragraphs as though fully set forth herein.

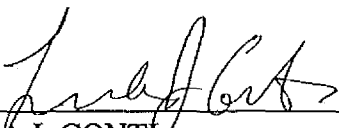
21. Section 523(a)(7) of the United States Bankruptcy Code excepts from discharge any debt which is related to a fine, penalty or forfeiture payable to and for the benefit of a governmental unit which is not payment for actual pecuniary loss.

WHEREFORE, the State of Maine Department of Attorney General prays this Court determine that its claim against the Defendant/Debtor for civil penalties is a nondischargeable debt pursuant to 11 U.S.C. § 523(a)(7).

WHEREFORE, the State of Maine Department of Attorney General prays this Court:

- A. Enter judgment in favor of the Plaintiff and against the Defendant by determining that the State's unliquidated claim for restitution is nondischargeable pursuant to 11 U.S.C. § 523;
- B. Enter a judgment in favor of the Plaintiff and against the Defendant by determining that the State's unliquidated claim for civil penalties is nondischargeable pursuant to 11 U.S.C. § 523;
- C. Order the Defendant to pay the cost of this action; and
- D. Grant the Plaintiff such other relief as the Court may deem just and proper.

DATED: November 17, 1999



LINDA J. CONTI
Assistant Attorney General
Six State House Station
Augusta, Maine 04333-0006
(207) 626-8800

Attorney for State of Maine

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

U.S. BANKRUPTCY COURT
BANGOR, MAINE

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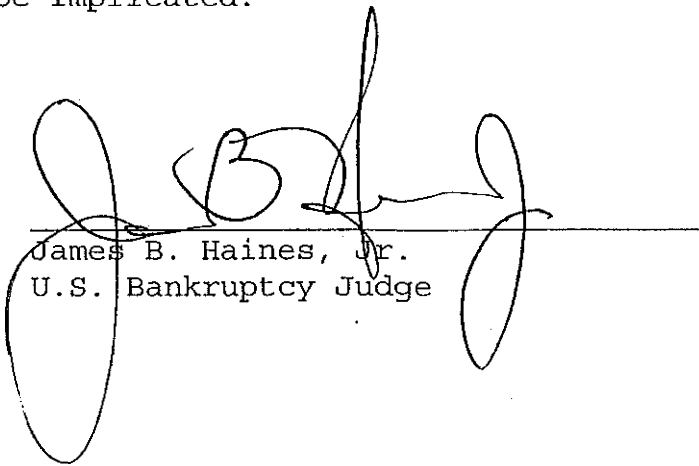
In re:	*	
	*	Chapter 7
ALBERT GIANDREA	*	Case No. 99-11221
and	*	
PAMELA GIANDREA,	*	
	*	
Debtors	*	

ORDER

On December 14, 1999, the court convened a telephonic hearing to consider the State of Maine's motion for clarification of the automatic stay or, in the alternative, for relief from the automatic stay. Brian P. Winchester, Esq., appeared for the debtors, Linda Conti, Esq., appeared for the State of Maine. Based upon a review of the pleadings, and this court's recently-promulgated decision in In re Nelson, 240 B.R. 802 (Bankr. D. Me. 1999), I conclude that the automatic stay does not apply to the State's action seeking, among other things, injunctive relief and restitution. See § 362(b)(4).

Of course, should the State seek to do anything more than is represented in its pleadings, the automatic stay, or the discharge injunction, might be implicated.

DATED: 12/14/99


James B. Haines, Jr.
U.S. Bankruptcy Judge

cc: Brian Winchester, Esq.
Linda Conti, Esq.
UST
P.J. Perrino, Esq.

SP
31

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

U.S. BANKRUPTCY COURT
DISTRICT OF MAINE
2000 APR -7 PM 12:04

In re: *
* Chapter 7
ALBERT H. GIANDREA * Case No. 99-11221
and *
PAMELA K. GIANDREA, *
*
Debtors *

STATE OF MAINE, *
* Adversary No. 99-1085
Plaintiff *
*
v. *
*
ALBERT H. GIANDREA, *
*
Defendant *

ORDER

On April 6, 2000, hearings convened in Augusta to consider the debtor/defendant's motion to dismiss and the State of Maine's motion for partial summary judgment. Brian P. Winchester, Esq., appeared for the debtor/defendant; Linda J. Conti, Esq., appeared for the State of Maine.

For the reasons set forth on the record, the defendant's motion to dismiss is DENIED, without prejudice to his right to raise the same issues by way of post-trial motion.

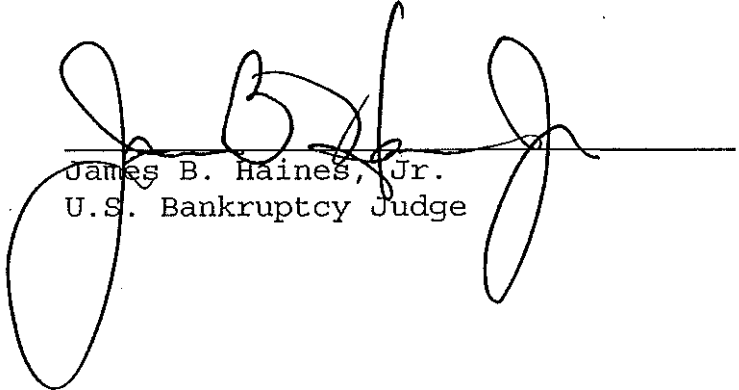
It is FURTHER ORDERED that the State of Maine's motion for partial summary judgment is GRANTED. To the extent the State obtains orders requiring the debtor to pay sums which qualify as an exception to discharge pursuant to § 523(a)(7) of the Bankruptcy Code, those obligations will not be discharged by this

-18-
cd

Chapter 7 bankruptcy proceeding. Because such obligations have yet to be established, the question whether they qualify for the exception to discharge must await state court action. Should the defendant claim that such obligations are not collectable because of his bankruptcy discharge, it will be up to the state court (or this court if the bankruptcy proceeding continues to pend) to determine, as a matter of federal law, whether the sums at issue come within 11 U.S.C. § 523(a)(7)'s reach.

DATED: _____

4/7/2000



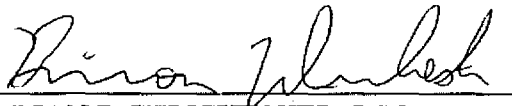
James B. Haines, Jr.
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In Re:)	Chapter 7
)	Case No.: 99-11221
Albert H. Giandrea)	
)	
Debtor)	
<hr/>		
State of Maine Department)	Adv. Proceeding No. 99-1085
Of Attorney General,)	
)	
Plaintiff)	
)	
v.)	CONSENT TO JUDGMENT
)	
Albert H. Giandrea)	
)	
Defendant)	

The Defendant, Albert H. Giandrea, hereby consents to a judgment being entered against him in favor of the Plaintiff, State of Maine, Department of Attorney General, in the amount of \$6,640.00 as a nondischargeable debt pursuant to 11 U.S.C. § 523(a).

Dated: 7/25/00


BRIAN P. WINCHESTER, ESQ.
Attorney for Defendant/Debtor

U.S. BANKRUPTCY COURT
 BANGOR, MAINE
 UNITED STATES BANKRUPTCY COURT
 DISTRICT OF MAINE
 2000 JUL -7 AM 9:54

 In re: *
 *
 ALBERT H. GIANDREA and * Chapter 7
 PAMELA K. GIANDREA * Case No. 99-11221
 Debtor *

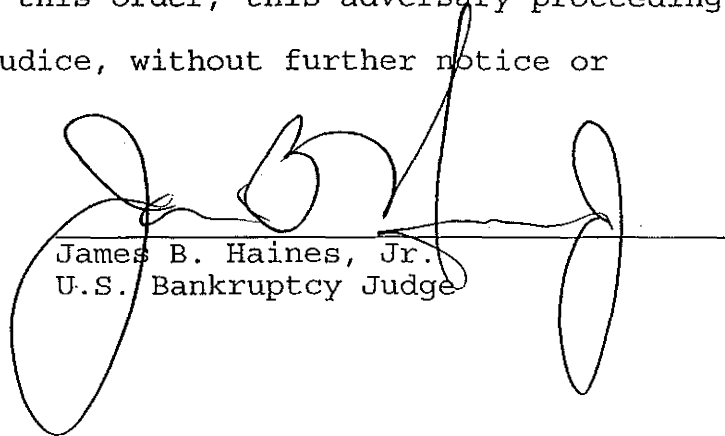
 STATE OF MAINE, DEPARTMENT OF *
 ATTORNEY GENERAL *
 *
 Plaintiff * Adversary No. 99-1085
 VS *
 *
 ALBERT H. GIANDREA *
 *
 Defendant *

ORDER

A trial was scheduled on July 10, 2000. The parties have advised the court that a stipulation by the parties would be submitted shortly.

It is, therefore, ORDERED that counsel shall submit a stipulated judgment, stipulation of dismissal or other pleading within 30 days of the date of this order. Should counsel fail to take the action required by this order, this adversary proceeding may be dismissed, with prejudice, without further notice or hearing.

DATED: 7/7/2000



 James B. Haines, Jr.
 U.S. Bankruptcy Judge

STATE OF MAINE

SUPERIOR COURT
KENNEBEC _____, ss.
Docket No. CV-00-23

DISTRICT COURT
Location _____
Docket No. _____

STATE OF MAINE

Plaintiff

v.

WRIT OF EXECUTION
 Renewal

ALBERT H. GIANDREA and AG'S QUALITY HOME IMPROVEMENTS, INC.
Defendant

To the sheriffs of our several counties or any of their deputies:

The plaintiff defendant on August 4, 2000 recovered judgment in the District Court at _____ Superior Court for Kennebec County against said plaintiff defendant, Albert H. Giandrea and AG's Home Quality Improvements, Inc. in this action for the sum of \$ 7,640.00 in debt or damage and \$ _____ in costs of suit, as appears of record:

\$2,640.00 Restitution for Dyron & Joyce Buotte
4,000.00 Restitution for Michael Farris
1,000.00 Civil Penalties
\$7,640.00 Total

We command that you cause the goods, chattels, or lands of the Debtor within your county to be paid and satisfied to the Creditor in the sum of \$ 7,640.00 with legal interest from the date of judgment, together with \$ 10.00 for this Original Writ of Execution, and make return of this writ within three years from this date.

(Seal of Court)

Date: 12/12/00

Nancy A. Desjardin
Clerk
Nancy Desjardin

Linda Conti, AAG
(Attorney for) Plaintiff / ~~Defendant~~
6 STATE HOUSE STATION

AUGUSTA ME 04333-00063
Address

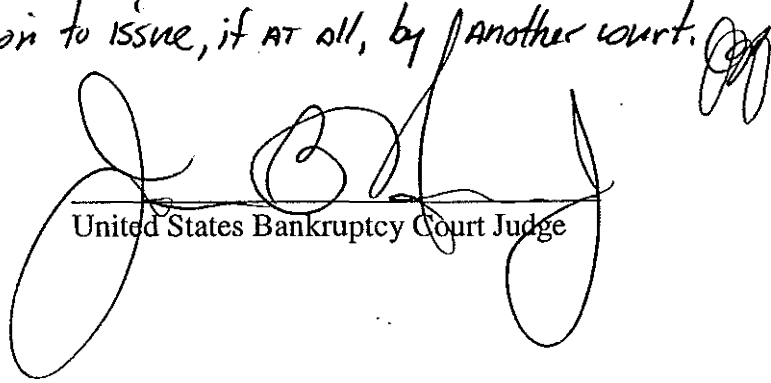
U.S. BANKRUPTCY COURT
 BANGOR, MAINE
 UNITED STATES BANKRUPTCY COURT
 DISTRICT OF MAINE
 AUG -3 PM 12:57

In Re:)	Chapter 7
)	Case No.: 99-11221
Albert H. Giandrea)	
)	
Debtor)	
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)	
State of Maine Department Of Attorney General,)	Adv. Proceeding No. 99-1085
)	
Plaintiff)	
)	
v.)	ORDER
)	
Albert H. Giandrea)	
)	
Defendant)	

On the Complaint of the State of Maine, Department of Attorney General, seeking a determination by this Court that the indebtedness to it is a nondischargeable debt pursuant to 11 U.S.C. § 523(a), Defendant/Debtor having consented to judgment in the amount of \$6,640.00, as agreed to by the Plaintiff, it is:

ORDERED that the indebtedness of Albert H. Giandrea to the State of Maine, Department of Attorney General is a nondischargeable debt and that a judgment be entered by the Clerk in the amount of \$6,640.00. *Execution to issue, if at all, by another court.*

Dated: 8/1/2000


 United States Bankruptcy Court Judge

cc: Linda Conte, Esq.
 Brian Winchester, Esq.
 U.S. Trustee
 P.J. Perrino, Esq.