

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV98-152

STATE OF MAINE,

Plaintiff,

v.

ROBERT A. LOCKARD
AND RALEE B., INC.,
a Maine corporation,

Defendants

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AMENDED COMPLAINT
(Preliminary and Permanent
Injunction)

INTRODUCTION

1. This is an action under the Unfair Trade Practices Act, 5. M.R.S.A. §§ 206 through 216 (1989 and Supp. 1995) to obtain declaratory relief, a preliminary and permanent injunction prohibiting Ralee B., Inc., formerly d/b/a Lockard's Collision Center and Robert A. Lockard (hereinafter referred to as "Defendants") from engaging in unfair and deceptive conduct, civil penalties, restitution, costs and attorneys fees.

JURISDICTION AND PARTIES

2. Plaintiff State of Maine, a sovereign state, by and through the Attorney General, commences this action under 5 M.R.S.A. §§ 206 through 216, commonly known as the Maine Unfair Trade Practices Act (hereinafter referred to as the UTPA), to protect the public by preventing and restraining Defendants from engaging in violations of the UTPA.

3. Defendant Ralee B., Inc., formerly d/b/a Lockard's Collision Center and the current lessor of Lockard's Collision Center, is a corporation duly incorporated under the laws of the State of Maine with a principal place of business in Portland, Maine.

4. Defendant Robert A. Lockard is the President of Ralee B., Inc. and the former proprietor of Lockard's Collision Center. Defendant Lockard is a resident of Gray, Maine.

5. Venue is properly located in Kennebec County pursuant to 5 M.R.S.A. § 209.

FACTUAL BACKGROUND

6. At all relevant times, Defendants were engaged in the auto repair business and maintained a repair facility which did business as Lockard's Collision Center (hereinafter "Lockard's") located on Allen Avenue in Portland, Maine.

7. Defendants currently lease Lockard's to James Davison, a former employee of Defendants. The allegations set forth in this Complaint predate the lease agreement which was entered into in June 1997.

8. During the period Defendant Lockard was the owner and proprietor of Lockard's, Lockard's agents regularly conferred with insurance appraisers and agreed that it could perform specified repairs to automobiles at a specified price, if selected by the vehicle owner to do the repairs.

9. The agreed upon repairs and the cost of each repair item were routinely set forth in writing in a damage estimate, referred to as an appraisal, signed by the appraiser and a Lockard's sales writer.

10. In those instances when the vehicle owner then requested that Lockard's perform the repairs on the vehicle, and did not request that Lockard's deviate in any manner from the agreed upon appraisal, Defendants routinely failed to perform the agreed upon repairs set forth in the appraisal.

11. Defendants routinely failed to obtain authorization from vehicle owners prior to deviating from the agreement reached between Lockard's, the insurance appraiser and the vehicle owner.

12. Defendants routinely failed to disclose to customers that the work was not performed in accordance with the agreement reached between Lockard's Collision Center, the insurance appraiser and the vehicle owner.

13. Defendants routinely impliedly or expressly represented that the work performed was performed in accordance with the agreement reached between Lockard's Collision Center, the insurance appraiser and the vehicle owner.

14. In those instances when Lockard's Collision Center failed to perform the agreed upon repairs, Defendants engaged in a variety of practices, including, but not limited to:

- a) repairing items instead of replacing them;
- b) failing to use the agreed upon type of part (salvage, after market or original manufacturer's equipment);

- c) installing used, reconditioned or rebuilt parts without first obtaining the specific agreement of the customer;
- d) overcharging vehicle owners for the parts actually installed;
- e) billing vehicle owners for work that was not performed and parts that were not installed;
- f) failing to repair all of the agreed upon items;
- g) billing vehicle owners for excessive labor hours;
- h) billing vehicle owners at labor rates in excess of the agreed upon rates; and
- i) misrepresenting, on the bill presented to the vehicle owner for payment, the work that was actually performed on the vehicle.

15. In many instances when Lockard's repaired parts instead of replacing them, the vehicle owner ultimately paid more to have the part repaired than if a new part had been installed. Lockard's charged the vehicle owner substantially more in labor charges when it repaired a part instead of replacing it, thereby obtaining a significantly greater profit than if the part had been replaced.

16. In those instances when Lockard's engaged in the fraudulent practices described in paragraph 14, Defendants routinely calculated the final bill presented to the vehicle owner in such a manner that the total amount of the repairs was precisely the same amount as that on the agreed upon appraisal. In so doing, Defendants avoided alerting the vehicle owner to the fact that the repairs had not been performed as agreed. Even in those instances when the

deviations from the agreed upon repairs were set forth in the final bill, Defendants did not review the bill with the vehicle owner or otherwise orally disclose the deviations.

17. In the course of failing to use the specified type of part, as described in paragraph 14(b) herein, Lockard's routinely installed used or salvage parts instead of the specified after market or original manufacturer part.

18. As described in paragraph 14(c) herein, Defendants did not obtain permission from the vehicle owner prior to installing used, reconditioned, or rebuilt parts.

19. Defendants were aware of, condoned and participated in the unfair and deceptive practices described in the preceding paragraphs.

CAUSE OF ACTION

COUNT ONE (Unfair and Deceptive Conduct)

20. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 1 through 19 of the Complaint.

21. Defendants' conduct, as described in paragraphs 11-16 of the Complaint, constitutes unfair and deceptive acts or practices in violation of section 207 of the UTPA.

22. Defendants' conduct as described herein is intentional.

COUNT TWO (Unfair and Deceptive Conduct)

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

24. Under Maine law governing the repair of motor vehicles [29-A M.R.S.A. §§ 1801 through 1809 (Supp. 1995), formerly 29 M.R.S.A. § 2601 through 2609 (Supp. 1993)], Defendants' failure to obtain specific authorization from a customer prior to installation of used, reconditioned or rebuilt parts, as described in paragraphs 14(c) and 18 of the Complaint, constitutes an unfair trade practice for purposes of the UTPA. *See* 29-A M.R.S.A. §§ 1804 & 1807 (Supp. 1995), formerly 29 M.R.S.A. §§ 2604 & 2607 (Supp. 1993).¹

25. Defendants' conduct as described herein is intentional.

RELIEF REQUESTED

1. Declare that Defendants have intentionally engaged in unfair or deceptive acts of practices in violation of the UTPA, 5 M.R.S.A. §§ 206 through 216 (1989 and Supp. 1996) and section 2604 of the laws governing the repair of motor vehicles. 29-A M.R.S.A. § 1804 (Supp. 1995), formerly 29 M.R.S.A. § 2604 (Supp. 1993).

2. Preliminarily and permanently enjoin Defendants, their agents, assigns, or any person acting for Defendants or under their control from :

¹ The Maine law governing repair of motor vehicles was enacted in Chapter 698 of the Public Laws of 1979, and was originally codified at 29 M.R.S.A. § 2601 through 2609. The original statute was repealed and replaced by the enactment of Chapter 683 of the Public Laws of 1993, and is now codified at 29-A M.R.S.A. §§ 1801 through 1809 (published in the revised volume 14 of the Maine Revised Statutes Annotated). Despite recodification, the language of the statute has not changed since its original enactment in 1979.

A. Failing to perform agreed upon repairs, in the agreed upon manner and at the agreed upon price, including the agreed upon hourly labor rate, without first obtaining express authorization from the relevant entity or person (e.g. the insurance company, the insured, or the owner of the vehicle);

B. Installing a used, reconditioned, or rebuilt part prior to obtaining the specific agreement of the customer;

C. Making any material misrepresentations to consumers in connection with the repair of motor vehicles; and

D. Engaging in any other unfair or deceptive acts or practices in violation of the UTPA or in violation of Maine law governing repair of motor vehicles [29-A M.R.S.A. §§ 1801 through 1809 (1996)].

3. Order Defendants to pay a civil penalty of up to \$10,000 per violation of the UTPA.

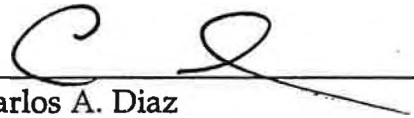
4. Order Defendants to pay restitution to any person injured by Defendants' unfair and deceptive conduct.

5. Order Defendants to pay to the Department of the Attorney General its attorneys fees and costs of investigation and suit.

ANDREW KETTERER
ATTORNEY GENERAL

Dated: *Aug. 26, 1998*

Amy M. Homans
Assistant Attorney General
Public Protection Division
Six State House Station
Augusta, Maine 04333
(207) 626-8867



Carlos A. Diaz
Assistant Attorney General
Public Protection Division
Six State House Station
Augusta, Maine 04333
(207) 626-8846

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
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ROBERT A. LOCKARD)
AND RALEE B, INC.,)
a Maine Corporation,)
Defendants)

CONSENT DECREE AND ORDER

Plaintiff State of Maine having filed its Complaint in the above-captioned matter on June 12, 1998, and Plaintiff and Defendants Robert A. Lockard and Ralee B, Inc. having consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein, and for purposes of settlement only, without this Consent Decree constituting any admission by any party with respect to such issues, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. This Court has jurisdiction over the Plaintiff, State of Maine, and the Defendants, Robert A. Lockard and Ralee B, Inc., and the subject matter of this civil action. The Complaint states a claim for relief under the Unfair Trade Practices Act (5 M.R.S.A. § 209) and 29-A M.R.S.A. §§ 1804 & 1807.

2. This Consent Decree shall apply to Defendants Robert A. Lockard and Ralee B, Inc., and their officers, agents, servants, employees, attorneys, and any and all persons in active concert or participation with them who receive actual notice of the Consent Decree by personal service or otherwise.

3. Defendants Robert A. Lockard and Ralee B, Inc. are hereby jointly and severally ordered to make payment to the Department of the Attorney General of \$75,000 (seventy-five thousand dollars) on or before August 16, 1999, representing the following:

- a. \$25,000 in restitution, to be distributed by the Department of the Attorney General to persons injured as a result of the Defendants' unlawful conduct.
- b. \$25,000 in aggregated civil penalties.
- c. \$25,000 in payment for the Department of the Attorney General's attorney's fees, investigative costs and costs of suit.

4. Pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. § 209, the Defendants are permanently enjoined and restrained from engaging in any of the following acts or practices in the State of Maine:

- a. deviating from the specific terms of any written appraisal or estimate for automobile repairs without first obtaining the customer's consent;
- b. violating 29-A M.R.S.A. § 1804 by installing a used, reconditioned or rebuilt automobile part without first obtaining the customer's consent;
- c. substituting one type of automobile part for another type specified in the written estimate (i.e. original manufacturer equipment, after market, or used parts), without first obtaining the customer's consent;
- d. charging a customer for automobile parts or repairs that were not actually installed or performed as represented on the customer's bill;
- e. charging a customer for automobile repair labor at an hourly rate higher than that set forth in the written estimate without first obtaining the customer's consent;

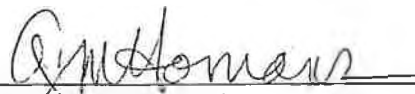
f. misrepresenting to a customer the nature of the repair work done on the customer's automobile; and

g. engaging in any other unfair or deceptive acts or business practices.

5. Pursuant to the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 209, ANY PERSON WHO VIOLATES THIS INJUNCTION SHALL FORFEIT AND PAY TO THE STATE OF MAINE A CIVIL PENALTY OF NOT MORE THAN \$10,000 FOR EACH VIOLATION.


6. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Consent Decree, for the modification of or termination of any provisions thereof, and for the enforcement of compliance herewith (including through actions for civil or criminal contempt).

Dated: 9/9/99



Amy Homans, Assistant Attorney General
Maine Bar Reg. No 3199

Dated: 9/9/99




Carlos Diaz, Assistant Attorney General
Maine Bar Reg. No. 8015


Department of the Attorney General
6 State House Station
Augusta, Maine 04333
(207) 626-8800

Attorneys for the State of Maine

Dated: _____


Robert A. Lockard, both as an individual
Defendant and as President on behalf of
Defendant Ralee B, Inc.

Dated: _____


James Bowie, Esq.
Maine Bar Reg. No. 185

Thompson & Bowie
Three Canal Plaza
P.O. Box 4630
Portland, Maine 04112

Attorney for Defendants

ORDER

IT IS HEREBY ORDERED AND DECREED as set forth above.

Dated: 9/23/99


JUSTICE, SUPERIOR COURT