

CONSUMER PROTECTION DIVISION

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STATE OF MAINE
YORK, ss.

OCT 1 2012

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-12-50

STATE OF MAINE,

OFFICE OF ATTORNEY GENERAL

Plaintiff

v.

JOEL D. POIRIER and
POIRIER CONSTRUCTION
COMPANY, INC.,

Defendants

JUDGMENT BY DEFAULT

Pursuant to M.R. Civ. P. 55(b)(2), the Plaintiff's request for judgment by default is granted against the Defendants, Joel D. Poirier and Poirier Construction Company, Inc. (hereinafter collectively referred to as "Poirier").¹ A hearing was held on July 9 and 10, 2012, on the State's request for injunctive relief, restitution for consumers, and civil penalties. Poirier appeared *pro se*, representing himself and the closely-held corporation.

At the hearing, the Court heard testimony from 17 consumers who entered into home construction contracts with Poirier between 2007 and 2011.² Although the jobs varied in size and cost, the consumers' experiences with Poirier were strikingly similar, and resulted in significant financial loss to each consumer.

¹ Poirier had moved to set aside an entry of default after he failed to file an answer, which the State opposed. After notice and hearing, the Court denied Poirier's motion.

² Two of the 17 consumers testified about the same construction job.

The evidence adduced has been fully considered to determine the appropriate remedies for Poirier's violations of the statutory provisions cited in the State's complaint, namely, section 207 of the Unfair Trade Practices Act (the "UTPA," 5 M.R.S. §§ 205-A - 214), section 1487 of the Home Construction Contract Act (the "HCCA," 10 M.R.S. §§ 1486 - 1490), and sections 2-314 and 2-315 of the Uniform Commercial Code.³ Many of the customers reported they hired Mr. Poirier as a result of referral sources that indicated he did quality construction. The claims here are largely related to his company's failure to complete work and a failure to hire and properly supervise qualified workers. This likely occurred as a consequence of attempting to take on too much work in the hope it would stop his company's descending economic spiral. Unfortunately, it did not stop this spiral but exacerbated it. The Court does find that the violations of the UTPA committed by Poirier are intentional. Accordingly, it is ORDERED and ADJUDGED as follows:

1. Pursuant to 5 M.R.S. § 209 and M.R. Civ. P. 65, Poirier, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this order by personal service or otherwise are each permanently⁴ enjoined from acting as a general construction contractor in the State of Maine. Poirier is also

³ Pursuant to 10 M.R.S. § 1490, any violation of the HCCA constitutes *prima facie* evidence of a violation of the UTPA.

⁴ The term permanent is used to distinguish from temporary injunctive relief which expires upon entry of judgment. This permanent injunction is modifiable by future showing of good cause by either party which may include extended compliance or non-compliance with this order.

permanently enjoined in Maine from advertising his services to consumers for home repair or construction, taking payment from consumers for home repair or construction services hiring subcontractors to perform work for consumers.

The court concludes that the violations proven by the State do not concern Mr. Poirier's personal construction abilities. Mr. Poirier shall be allowed to do construction as an employee of another general contractor or subcontractor whose business he does not control or have an ownership interest. Mr. Poirier may also work as an independent contractor or subcontractor provided he contracts only with other professional contractors or subcontractors.

Mr. Poirier is enjoined from contracting directly with consumers who are not primarily engaged in the construction industry. This prohibition includes individuals who are not professional contractors, but who are acting as the general contractor for properties in which they personally possess an ownership interest.

2. Pursuant to 5 M.R.S. § 209, Poirier shall pay, jointly and severally, restitution to the Attorney General on behalf of the consumers listed below.⁵ The Attorney General shall distribute payments received to the consumers in a manner that he, in his sole discretion, determines is equitable based on each consumer's financial loss.

| | | | |
|----|--------------------------------------|----|-----------|
| A. | Richard Briganti & Patricia Bartlett | \$ | 6,000.00 |
| B. | Medora & Alton Cain | \$ | 12,720.05 |

⁵ In his written closing argument Mr. Poirier argues that these claims should be offset by amounts due on the contract. However once material breach of the contract occurred, the right to recover the remaining contract price is lost.

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| C. | John & Peggy Douglass | \$ 36,275.00 |
| D. | Patrick Duggan | \$ 34,586.00 |
| E. | Frances and Rosa Feeney | \$ 40,104.90 |
| F. | Pamela & Jeffrey Golarz | \$ 27,168.00 |
| G. | Patrice Henry & Thomas Gailie | \$ 25,129.96 |
| H. | Anthony Mignosa ⁶ | \$ 100,750.00 |
| I. | Paul & Eileen Palmer ⁷ | \$ 31,000.00 |
| J. | Eric Pooler ⁸ | \$ 71,000.00 |
| K. | James & Martha Rothwell | \$ 91,000.00 |
| L. | Beth L. Schurman ⁹ | \$ 38,884.35 |
| M. | Jason & Anne Tucker | \$ 30,000.00 |
| N. | Thomas & Christine Walczak | \$ 24,548.00 |
| O. | Ashley and Justin Wandrei | \$ 55,500.00 |
| P. | En Jeun Wu | \$ 71,098.83 |

If any consumer listed above pursues, or has pursued, a private remedy against Poirier, any funds collected by the consumer shall be deducted from

⁶ *Mignosa* - Mr. Mignosa submitted expert evidence of at least \$99,950.00 for work to be completed and indicated house was approximately one third built. Court concludes restitution in amount of \$99,950.00 plus septic fee of \$800.00 or \$100,750.00 is justified.

⁷ *Palmer* - The Court concludes that the restitution is \$31,000.00 based upon evidence of cost of repair/completion was \$30,000.00 plus an additional \$1,000.00 to finish up. Award is based upon completion costs not on percentage of completion.

⁸ *Pooler* - Mr. Pooler testified regarding \$71,380.42 worth of restitution but there was evidence of approximately \$2,500.00 worth of work done, which leaves a restitution sum of \$68,880.42.

⁹ *Schurman* - The Court concludes the restitution to Schurman to be the difference between the parties' repayment agreement balance of \$64,574.25 minus amount actually paid (\$28,690.00) or \$35,884.25. In addition restitution includes the invoice for roof repair of \$3,150.00, although the three sheets of damaged plywood are not assessed to Mr. Poirier. This leaves a restitution amount of \$38,884.25.

the amount specified herein for that consumer. The Court concludes each customer was a credible witness, generally, and specifically regarding restitution issues.

3. Pursuant to 5 M.R.S. 209, Poirier shall pay, jointly and severally, a civil penalty of \$50,000.00, which shall be suspended. The purpose of any monetary penalty be, it in the civil or criminal realm, or even common-law punitive civil damages is to achieve general and specific deterrence. In conducting such consideration, the Defendant's ability to pay and the financial impact upon him is relevant. Previous pleadings establish a recent bankruptcy and that the court concludes the injunctive relief as well as the restitution award satisfy the need for general and specific deterrence.

A review of 11 U.S.C.A. 523 (7)(A) makes it clear that civil fine penalties are non-dischargeable in bankruptcy. It is not clear to the court whether restitution awards are as well. Accordingly if future attempt to discharge the restitution obligations are made, the State may make application for the fine to be unsuspended.

This Court shall retain jurisdiction of this matter for all purposes. This Judgment by Default may be incorporated by reference on the docket.

Dated: 10/1, 2012



John H. O'Neil, Jr.
Justice, Superior Court

A TRUE COPY ATTEST



CLERK

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

| | | |
|---------------------|---|-----------------------------|
| In Re: |) | Chapter 7 |
| |) | Case No.: 12-20210 |
| Joel David Poirier, |) | |
| |) | |
| Debtor |) | |
| |) | |
| <hr/> | | |
| State of Maine, |) | Adv. Proceeding No. 12-2030 |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | |
| |) | ENTRY OF DEFAULT |
| Joel David Poirier, |) | JUDGMENT |
| |) | |
| Defendant |) | |

The Defendant, Joel David Poirier, has previously been defaulted for failure to plead or otherwise defend in this matter. The Defendant is not an infant or incompetent person. Pursuant to Federal Rule of Civil Procedure 55(b)(1) and Bankruptcy Rule 7055, judgment is entered against the Defendant and in favor of the Plaintiff, State of Maine, in the amount of \$695,765.09.

Date: November 2, 2012

/s/ James B. Haines, Jr.
Clerk, United States Bankruptcy Court