

RECEIVED AND FILED
KENNEBEC SUPERIOR COURT

STATE OF MAINE
KENNEBEC, ss.

2006 DEC 20 A 8:57

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-06- 327

STATE OF MAINE,

RECEIVED AND FILED
KENNEBEC SUPERIOR COURT

Plaintiff

CONSENT DECREE
(Maine Unfair Trade Practices Act,
5 M.R.S.A. § 207

v.

HOME DEPOT U.S.A., INC., and
THD AT HOME SERVICES, INC.,

Defendants

Plaintiff, State of Maine, has filed its Complaint in the above-captioned matter on 12/18/06. The State of Maine and the Defendants have consented to entry of this Consent Decree without trial or adjudication of issue of fact or law herein. This decree does not constitute evidence against the Defendants or an admission by the Defendants of any of the allegations in Plaintiff's Complaint.

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any fact or law herein, and upon the consent of the parties hereto, it is hereby ordered and decreed as follows:

1. This Court has jurisdiction over the subject matter of this action and over the parties consenting to this Decree. The Complaint states claims which may be granted against the Defendants pursuant to the Maine Unfair Trade Practices Act (UTPA), 5 M.R.S.A. §§ 205-214, and the Maine Home Construction Contracts Act, 10 M.R.S.A. §§ 1486-1490.
2. The Defendants, their agents, employees, assigns and any other persons in active concert or participation with the Defendants in the sale of home construction and

repair services who receive actual notice of this injunction are enjoined as of January 1, 2007 from entering into any further home construction contracts that do not include:

- A. a description of the method of payment, with the initial down payment being limited to no more than 1/3 of the total contract price unless the parties agree to an exemption pursuant to 10 M.R.S.A. § 1489;
- B. an express warranty statement which reads:

In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation or appropriate use. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract;
- C. a statement allowing the parties the option to adopt one of three methods of resolving contract disputes, binding arbitration, non-binding arbitration, or mediation;
- D. the consumer protection warning addendum required by 10 M.R.S.A. §1487(13) in the form appended hereto as Exhibit A;
- E. if a construction includes installation of insulation in an existing residence, any disclosures required by 10 M.R.S.A. Chapter 219, Insulation Contractors;

- 3. As of September 4, 2006, the Defendants are further enjoined from failing to include in their contracts the express change order statement required by 10 M.R.S.A. § 1489 and which reads:

Any alternation or deviation from the above contractual specifications that result in a revision of the contract price will be executed only upon the parties entering a written change order.

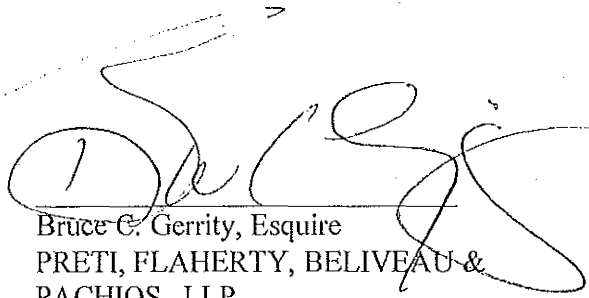
3. Pursuant to 5 M.R.S.A. § 209 (Maine Unfair Trade Practices Act) and 10 M.R.S.A. § 1490 (Maine Home Construction Contracts Act) the Defendants are each ordered to pay the Department of Attorney General a civil ~~penalty~~ ^{assessment} of \$15,000. The civil ~~penalties~~ ^{assessment} shall be paid by certified bank check or money order, payable to the Department of Attorney General and shall be paid in full within 30 days from the date of this Consent Decree.
5. Jurisdiction is retained by this Court for the purpose of enabling any party of this Consent Decree to apply to this Court at any time for such further orders as may be necessary for the modification of any of the provisions of this Decree.
6. Any violation by the Defendants of the mandatory injunction listed above (paragraph 2) and the order to pay a civil ~~penalty~~ ^{assessment} (paragraph 3) shall be subject to the civil penalties authorized in 5 M.R.S.A. § 209.
7. The undersigned, with the knowledge of the terms of the above Consent Decree, agree to these terms and to the entry of this Consent Decree.
8. Each and every violation of this Consent Decree shall be treated as a separate contempt hereof.

Dated: 3-16-07


Justice, Superior Court

Dated:

Dec. 8th, 2006



Bruce C. Gerrity, Esquire
PRETI, FLAHERTY, BELIVEAU &
PACHIOS, LLP
45 Memorial Circle, P.O. Box 1058
Augusta, ME 04332-1058
(207) 623-5300

Dated:

Dec 8, 2006



James A. McKenna, Esquire
Assistant Attorney General
Office of the Attorney General
Six State House Station
Augusta, ME 04333-0006
(207) 626-8842
E-mail: jim.mckenna@maine.gov

repair services who receive actual notice of this injunction are enjoined as of January 1, 2007 from entering into any further home construction contracts that do not include:

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C. a statement allowing the parties the option to adopt one of three methods of resolving contract disputes, binding arbitration, non-binding arbitration, or mediation;

D. the consumer protection warning addendum required by 10 M.R.S.A. §1487(13) in the form appended hereto as Exhibit A;

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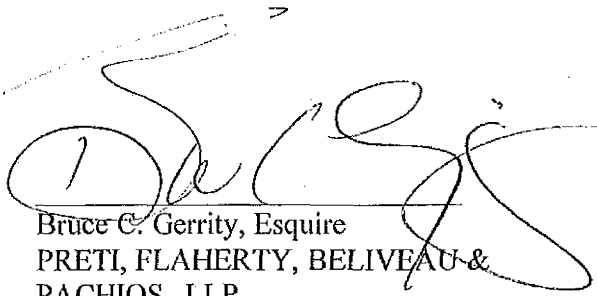
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STATE OF MAINE
KENNEBEC, SS

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 HOME DEPOT U.S.A., INC., and)
 THD AT HOME SERVICES, INC.,)
)
 Defendants)
)

**COMPLAINT FOR
INJUNCTIVE AND OTHER RELIEF**
(Maine Unfair Trade Practices Act, 5 M.R.S.A. §207)

INTRODUCTION

This is an action brought pursuant to the Maine Unfair Trade Practices Act §§ 205-214, seeking to enjoin Defendants The Home Depot USA, Inc. [hereinafter referred to as “Home Depot”] and THD At-Home Services, Inc. [hereinafter referred to as “THD”] from entering into home construction and repair contracts that are in violation of the Maine Home Construction Contracts Act, 10 M.R.S.A. §§ 1486-1490.

PARTIES

1. Plaintiff State of Maine [“State”] a sovereign state, by and through the Attorney General, commences this action under 5 M.R.S.A. § 205-A to 214 and 10 M.R.S.A. §§ 1486-1490, the Maine Home Construction Contracts Act, to protect the public by preventing and restraining Home Depot from engaging in violations of the Maine Unfair Trade Practices Act and the Home Construction Contracts Act.
2. Home Depot is a foreign corporation registered to do business in the State of Maine and selling to Maine consumers home construction materials and installation of those

materials in the home. Home Depot has stores at various locations in Maine, including one at 26 Stephen King Drive, Augusta, Maine 04330.

3. THD is a foreign corporation registered to do business in the State of Maine and offers such home construction and repair services as roofing, siding and replacement of windows and which is closely related to Home Depot's consumer sales business.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105 and 5 M.R.S.A. § 209.
5. Venue is properly laid in this county pursuant to 5 M.R.S.A. § 209.

STATUTORY BACKGROUND

6. Pursuant to 5 M.R.S.A. § 207, "unfair or deceptive acts or practices in the conduct of any trade or commerce are ...unlawful."

7. Pursuant to 5 M.R.S.A. §209:

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by § 207 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use of employment of such unlawful method, act or practice, any moneys or property, real or personal, which may have been acquired by means of such method, act or practice....

8. Pursuant to the Maine Home Construction Contracts Act, 10 M.R.S.A. § 1486-1490, since 2003 contractors who enter into a home construction or repair contract for more than \$3,000 must use a written form contract that contains each of the provisions set forth at 10 M.R.S.A. § 1487. Prior to 2003, this statute required from 1987 to 2003

that the written form contract be used for all home construction or repair contracts for more than \$1,400.

9. Pursuant to 10 M.R.S.A. § 1490(1), failure to use the required Home Construction Contract “shall constitute prima facie evidence of a violation of the Unfair Trade Practices Act, Title 5, Chapter 10.”
10. Pursuant to 10 M.R.S.A. § 1490(2), each failure by a contractor to use the required contract “constitutes a civil violation for which a forfeiture of not less than \$100 nor more than \$1,000 may be adjudged,” unless the violation was unintentional and a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.
11. Pursuant to the Maine Home Construction Contracts Act, a “home construction contract” means a contract to build, remodel or repair a residence, including not only structural work but also electrical, plumbing and heating work; carpeting; window replacements; and other non-structural work.

FACTS

12. Defendant Home Depot has stores in several municipalities in the State of Maine and provides home construction services to its customers.
13. Defendant THD is closely related to Home Depot and also provides home construction and repair services to Home Depot customers, such as roofing, siding and replacement of windows.
14. In contracting for the home construction and repair services with consumers, Home Depot and THD use written form contracts that do not contain all of the provisions required by the Maine Home Construction Contracts Act, 10 M.R.S.A. § 1487.

15. Home Depot typically requires consumers purchasing home construction and repair services through Home Depot to pay the entire amount being charged for materials and labor before work will be commenced.
16. In providing home construction or repair services to its customers, Home Depot and THD will hire subcontractors to provide the actual construction services.
17. Home Depot and THD use form construction contracts that do not include the following substantive provision required by 10 M.R.S.A. § 1487: both the estimated date of commencement of work and the estimated date when the work will be substantially completed (10 M.R.S.A. §1487(3)).
18. Home Depot and THD use form construction contracts that do not include the following substantive provision required by 10 M.R.S.A. § 1487: a description of the method of payment, with the initial down payment being limited to no more than one third of the total contract price (10 M.R.S.A. §1487(5)).
19. Home Depot and THD use form construction contracts that do not include the following substantive provision required by 10 M.R.S.A. § 1487: an express warranty statement which reads:

In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation or appropriate use. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract;

(10 M.R.S.A. §1487(7)).

20. Home Depot and THD use form construction contracts that do not include the following substantive provision required by 10 M.R.S.A. § 1487: a statement allowing the parties the option to adopt one of three methods of resolving contract

disputes, binding arbitration, non-binding arbitration, or mediation (10 M.R.S.A. §1487(8)).

21. Home Depot and THD use form construction contracts that do not include the following substantive provision required by 10 M.R.S.A. §1487: the consumer protection warning addendum (10 M.R.S.A. §1487(13), required as of September 1, 2006).
22. Home Depot and THD use form construction contracts that do not include the following substantive provision required by 10 M.R.S.A. §1487: the estimated date of commencement of work and the estimated date when the work will be substantially completed (10 M.R.S.A. §1487(3)).
23. Home Depot and THD use form construction contracts that do not include the following substantive provision required by 10 M.R.S.A. §1487: a change order statement which reads:

“Any alteration or deviation from the above contractual specifications that results in a revision of the contract price will be executed only upon the parties entering a written change order.”

(10 M.R.S.A. §1487(9)).

24. Home Depot and THD use form construction contracts that do not include the following substantive provision required by 10 M.R.S.A. §1487: the disclosures required by 10 M.R.S.A. Chapter 219, Insulation Contractors (10 M.R.S.A. §1487(11)).

COUNT ONE

25. The State repeats, realleges, and incorporates herein by reference paragraphs one through 21 of this Complaint.

26. The Maine Home Construction Contracts Act has been in effect since June 30, 1989. The home construction contracts used by Home Depot and THD have never contained all of the provisions required by this Act.
27. Home Depot's and THD's refusal from 1987 to the present to adhere to the requirements of the Home Construction Contracts Act constitutes unfair and deceptive acts or practices in the conduct of trade or commerce and are in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.
28. Home Depot's and THD's conduct as described in this Count is intentional.

COUNT TWO

29. The State repeats, realleges, and incorporates herein by reference paragraphs one through 31 of this Complaint.
30. Home Depot and THD use home construction and repair contracts that are standardized form contracts of adhesion and whose provisions are fixed and not subject to bargaining by consumers.
31. Home Depot and THD use home construction and repair standardized form contracts that significantly diminish consumers' Maine statutory rights and protections.
32. Home Depot and THD use home construction and repair standardized form contracts that fail to disclose material facts concerning consumers' statutory rights and protections.
33. Home Depot's and THD's use of home construction and repair standardized form contracts constitutes unfair and deceptive acts or practices in the conduct of trade or

commerce and are in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §207.

34. Home Depot's and THD's conduct as described in this Count is intentional.

RELIEF REQUESTED

WHEREFORE, the State respectfully requests that this Court:

1. Declare that Home Depot's and THD's failure to use a home construction and repair contract that meets the requirements of 10 M.R.S.A. § 1487 is in violation of 5 M.R.S.A. §207.
2. Declare that the contracts used by Home Depot and THD are illegal contracts of adhesion that are unfair and deceptive, in violation of 5 M.R.S.A. §207.
3. Issue a permanent injunction restraining Home Depot and THD from entering into any further home construction or repair contracts that are in violation of 10 M.R.S.A. § 1487.
4. Pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. §1490, assess a civil penalty against Home Depot and THD for each violation of the Maine Unfair Trade Practices Act.
5. Pursuant to 5 M.R.S.A. §209 and the Courts own equitable powers, award such equitable relief as the Court deems necessary to redress injury to consumers resulting from Home Depot's and THD's violations of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §207, including, without limitation, restitution.
6. Pursuant to 5 M.R.S.A. §209 and 10 M.R.S.A. §1490, order Home Depot and THD to each pay a civil penalty of up to \$10,000 for each intentional violation of 5 M.R.S.A. §207.
7. Pursuant to 5 M.R.S.A. §209 and 14 M.R.S.A. §1522(1)(A), order Home Depot and THD to pay the State its cost of investigation and suit, including its attorney's fees; and

8. Grant such other and further relief as the court seems just and proper.

Dated at Augusta, Maine this 18 day of December, 2006.

G. STEVEN ROWE
ATTORNEY GENERAL



JAMES A. MCKENNA
Bar No.: 1735
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006
(207) 626-8842
jim.mckenna@maine.gov

*Frank
Parker*

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CONSENT DECREE
(Maine Unfair Trade Practices Act,
5 M.R.S.A. § 207

Plaintiff, State of Maine, has filed its Complaint in the above-captioned matter on 12/18/06. The State of Maine and the Defendants have consented to entry of this Consent Decree without trial or adjudication of issue of fact or law herein. This decree does not constitute evidence against the Defendants or an admission by the Defendants of any of the allegations in Plaintiff's Complaint.

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any fact or law herein, and upon the consent of the parties hereto, it is hereby ordered and decreed as follows:

1. This Court has jurisdiction over the subject matter of this action and over the parties consenting to this Decree. The Complaint states claims which may be granted against the Defendants pursuant to the Maine Unfair Trade Practices Act (UTPA), 5 M.R.S.A. §§ 205-214, and the Maine Home Construction Contracts Act, 10 M.R.S.A. §§ 1486-1490.
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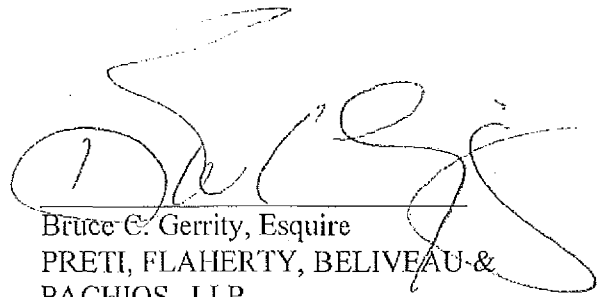
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Last revised 10/13/06

Maine Attorney General Home Construction Warning

Contractors Must Include This Statement With Any Home Construction Contract for More Than \$3,000

If you are thinking about building a new home or repairing your existing home, here are some things you should know.

Contractors Are Not Licensed - Buyer Beware!

While there are a great many competent, ethical home contractors in Maine, it is up to *you*, the consumer, to find one. Home contractors are not licensed or regulated by the State of Maine. The old saying "Buyer Beware" applies. You should also keep in mind that the lack of state licensing allows the worst contractors to compete for your business alongside the best. The Attorney General's Consumer Mediation Program ranks home contractors among the top three most complained about businesses every year.

We *strongly* recommend that you ask any contractor you are considering hiring for several references and that you follow up on them. It is also a good idea to check with your local building supply companies or real estate brokers. They will know the dependable contractors in your area.

Although home construction contractors are not licensed, some building trades are licensed. Plumbers, electricians, oil burner technicians, and installers of mobile and modular homes are licensed in Maine. For more information on these licensed trades, go to www.maine.gov/pfr/pfrhome.htm.

Building Codes

While some towns and cities have adopted building codes and enforced them, others have not. We recommend that you talk to your town's code officials before you begin construction.

Written Contracts Are Required

For all home construction and home improvement projects over \$3,000, Maine law requires a written contract with a specific provision that prohibits payment up front of more than one third of the contract price. When a contractor asks you for any money up front, make sure that the money is being used to purchase materials for your project. Ask for receipts and for a lien waiver from subcontractors. A model home construction contract that meets State law can be found in Chapter 18 of the *Maine Attorney General's Consumer Law Guide*. Go to www.maine.gov/ag/index.php?i=clg&s=chap18.

Be Careful with Construction Loans

If a lender is financing your construction project, make sure that you know your lender and that you understand how your loan proceeds will be disbursed and how subcontractors will be paid.

Home Contractor Complaints Received by the Attorney General

You can find out if a particular contractor has been the subject of a consumer complaint that the Attorney General attempted to mediate by contacting the Attorney General's Consumer Protection Division at 1-800-436-2131 or at consumer.mediation@maine.gov. The Better Business Bureau may also have relevant information on companies. Go to www.bosbbb.org or call (207) 878-2715. Keep in mind that just because the Attorney General has accepted a complaint for mediation does not necessarily mean the consumer was right and the contractor was wrong.

Home Contractors the State Has Sued

In the recent past the State has successfully sued the following home contractors for poor workmanship or failure to complete jobs:

- State of Maine v. CBS Enterprises (Kimberly Mark Smith and David J. Blais),
- Default Judgment in CBS Enterprises,
- State of Maine v. Frederic Weinschenk d/b/a Ric Weinschenk Builders, Inc.,
- State of Maine v. Stephen Lunt d/b/a Lakeview Builders, Inc.,
- State of Maine v. Bob Burns d/b/a Better Homes,
- State of Maine v. Albert H. Giandrea d/b/a AG's Home Quality Improvements, Inc.,
- State of Maine v. Al Verdone,
- State of Maine v. Mikal W. Tuttle, d/b/a MT Construction, DMI Industries, Inc., and MT Construction, Inc.

The Androscoggin County District Attorney has obtained a theft conviction against home contractor Harold Soper. State of Maine v. Harold Soper. Even when our law suits have been successful, we have been unable to collect a significant portion of the judgments because the builders are bankrupt, judgment proof, or have left the state. We strongly recommend that you research a contractor's record before you begin any construction project.

Your Home Construction Rights

Chapter 17 of the *Maine Attorney General's Consumer Law Guide* explains your rights when constructing or repairing your home. Chapter 18 of the *Consumer Law Guide* is a model home construction contract that meets the statutory requirements for any home construction contract over \$3,000. Go to <http://www.maine.gov/ag/index.php?r=clg>.

As of September 1, 2006 this entire statement must be an addendum to any home construction contract for more than \$3,000, as required by 10 M.R.S.A. Chapter 219-A. For updates to this warning go to <http://www.maine.gov/ag/>.

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D. the consumer protection warning addendum required by 10 M.R.S.A. §1487(13) in the form appended hereto as Exhibit A;

E. if a construction includes installation of insulation in an existing residence, any disclosures required by 10 M.R.S.A. Chapter 219, Insulation Contractors;

3. As of September 4, 2006, the Defendants are further enjoined from failing to include in their contracts the express change order statement required by 10 M.R.S.A. § 1489 and which reads:

Any alternation or deviation from the above contractual specifications that result in a revision of the contract price will be executed only upon the parties entering a written change order.

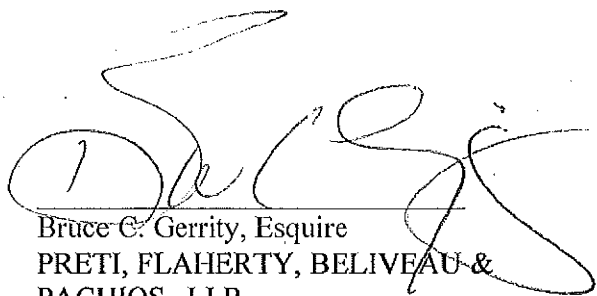
3. Pursuant to 5 M.R.S.A. § 209 (Maine Unfair Trade Practices Act) and 10 M.R.S.A. § 1490 (Maine Home Construction Contracts Act) the Defendants are each ordered to pay the Department of Attorney General a civil penalty of \$15,000. The civil penalties shall be paid by certified bank check or money order, payable to the Department of Attorney General and shall be paid in full within 30 days from the date of this Consent Decree.
5. Jurisdiction is retained by this Court for the purpose of enabling any party of this Consent Decree to apply to this Court at any time for such further orders as may be necessary for the modification of any of the provisions of this Decree.
6. Any violation by the Defendants of the mandatory injunction listed above (paragraph 2) and the order to pay a civil penalty (paragraph 3) shall be subject to the civil penalties authorized in 5 M.R.S.A. § 209.
7. The undersigned, with the knowledge of the terms of the above Consent Decree, agree to these terms and to the entry of this Consent Decree.
8. Each and every violation of this Consent Decree shall be treated as a separate contempt hereof.

Dated: _____

Justice, Superior Court

Dated:

Dec. 8th, 2006



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Dated:

Dec 8, 2006



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