

STATE OF MAINE  
KNOX, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. 19-

STATE OF MAINE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CASTLE BUILDERS, INC., )  
 MALCOLM I. STEWART and )  
 ELIZABETH J. STEWART, )  
 )  
 Defendants )

COMPLAINT  
(Injunctive Relief Requested)

I. INTRODUCTION

1. Attorney General Aaron M. Frey brings this action in the public interest on behalf of the State of Maine against Castle Builders, Inc., Malcolm I. Stewart, and Elizabeth J. Stewart (collectively, “Defendants”), pursuant to 5 M.R.S.A. § 209 of the Maine Unfair Trade Practices (the “UTPA,” 5 M.R.S.A. §§ 205-A - 214), seeking permanent injunctive relief, restitution for consumers, civil penalties, costs and attorney’s fees.

II. PLAINTIFF

2. Plaintiff State of Maine (the “State”) is a sovereign state that 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.

III. DEFENDANTS

3. Defendant Castle Builders, Inc. (“Castle Builders”) is a Maine corporation, with a former place of business in Union, Maine, that advertised, promoted, and sold home construction and repair services to consumers living

in the counties of Knox, Lincoln, Waldo, Somerset and Kennebec. Its current address is 119 Lickville Road, Belton, South Carolina 29669.

4. Defendant Malcolm I. Stewart ("Stewart") is a former resident of Washington, Maine. He is the sole shareholder and president of Castle Builders. His current address is 119 Lickville Road, Belton, South Carolina 29669.

5. Defendant Elizabeth J. Stewart ("E. Stewart") is Stewart's wife and a former resident of Washington, Maine. She is the treasurer of Castle Builders. Her current address is 119 Lickville Road, Belton, South Carolina 29669.

#### IV. JURISDICTION AND VENUE

6. This Court has personal jurisdiction over the parties pursuant to 14 M.R.S.A. § 704-A.

7. Pursuant to 5 M.R.S. § 206(3), Defendants engaged in trade or commerce that directly affected consumers in Maine such that this Court has subject matter jurisdiction over this action pursuant to 5 M.R.S.A. § 209 and 4 M.R.S.A. § 105.

8. Venue is properly laid in Knox County, pursuant to 5 M.R.S.A. § 209.

#### V. STATUTORY BACKGROUND

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

10. 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 section 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 other orders or 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 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. . . .

11. Pursuant to 5 M.R.S.A. § 209, each intentional violation of § 207 of the UTPA is a civil violation for which a penalty of up to \$10,000 may be imposed.

12. Pursuant to 14 M.R.S.A. § 1522(1)(A), the Court shall allow litigation costs, including court costs, reasonable attorney's fees, and reasonable expert witness fees, should the State prevail in an action brought by the Attorney General to enforce 5 M.R.S.A. § 207.

13. Pursuant to 10 M.R.S.A. § 1487 of the Home Construction Contract Act (the "HCCA," 10 M.R.S.A. §§ 1486 - 1490), a home construction contract for more than \$3,000 in materials or labor must be in writing and must contain the provisions that are set forth in the statute.

14. Pursuant to 10 M.R.S.A. § 1486(4), a "home construction contract" is a contract to build, remodel or repair a residence, but includes a contract for

“nonstructural” work such as electrical, plumbing, heating, carpeting, and window replacements.

15. Pursuant to 10 M.R.S.A. § 1487(3), a home construction contract must specify the estimated date of commencement of work and the estimated date when the work will be substantially completed.

16. Pursuant to 10 M.R.S.A. § 1487(5), an initial down payment for a home construction contract is limited to no more than one-third of the total contract price.

17. Pursuant to 10 M.R.S.A. § 1487(7), a home construction contractor warrants, in relevant part, that:

. . . [T]he 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.

18. Pursuant to 10 M.R.S.A. § 1490(1), any violation of the HCCA constitutes *prima facie* evidence of a violation of the UTPA.

19. Pursuant to 32 M.R.S.A. § 1201, an electrical installation must be made by an electrician licensed by the Maine Electricians’ Examining Board, unless the installer is excepted from licensure by 32 M.R.S.A. § 1201-A.

20. Pursuant to 32 M.R.S.A. § 1201-A and 02-318 C.M.R. ch. 120, § 1 (2017) of the Electrical Installations Standards Rule, all installations of electrical installations on or after July 1, 2017 must comply with the 2017 edition of *The National Electrical Code*.



## VI. FACTS

21. In February of 2017, Defendants began to provide, or offered to provide, home construction services to consumers in Maine.

22. Defendants aggressively marketed their services to consumers through practices that included hiring telemarketers to cold-call consumers to solicit them for home construction services, putting up signs at job sites, and renting booths at county fairs to solicit potential customers.

23. At all times material to this Complaint, alone or in concert with others, Stewart formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices set forth in this Complaint.

24. In the alternative, Stewart is an alter ego of Castle Builders.

25. At all times material to this Complaint, alone or in concert with others, E. Stewart formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices set forth in this Complaint.

26. In the alternative, E. Stewart is an alter ego of Castle Builders.

27. Defendants entered into home construction contracts with consumers in which Defendants agreed to provide services and materials in exchange for a consumer's payment of a contract price.

28. Defendants collected an initial down payment from consumers of one-third or more of the contract price when a consumer signed Defendants' home construction contract.

29. Defendants failed to state in their home construction contracts the estimated date of commencement of the work and the estimated date when the work would be substantially completed.

30. Defendants' home construction contracts typically required consumers to pay a second advance payment of at least one-third of the contract price at the "start" of the work by Defendants.

31. Typically, consumers who paid Defendants a second advance payment had not received services and materials equivalent in value to their initial down payment.

32. Many consumers who paid Defendants an initial down payment and a second advance payment received little or nothing from Defendants in the way of services and materials.

33. Defendants employed workers who did not possess the requisite skills to perform the work for consumers that Defendants had contracted to provide.

34. Defendants failed to give their workers the information necessary to perform the contracted work and to adequately supervise them.

35. Defendants' work was unskilled and shoddy, and they failed to correct it.

36. Defendants caused damage to some homes they worked on by failing to ensure that they were protected from rain or snow.

37. Defendants performed unlicensed electrical work.

38. Defendants performed electrical work that does not comply with

the 2017 edition of *The National Electrical Code*.

39. Defendants were deceptive and untimely in responding to consumer complaints or inquiries.

40. Defendants continued to enter into home construction contracts with, and to collect advance payments from, consumers until a few days before they finally closed the doors to Castle Builders on or about September 6, 2019.

41. Defendants gave no notice to consumers with whom they had home construction contracts that they were closing the business.

42. Defendants gave no notice that they were closing the business to the subcontractors to whom they owed money for materials and services provided to consumers.

43. In failing to pay the subcontractors, Defendants have exposed consumers to liability for Defendants' debts, including possible mechanic's liens that could be filed by the subcontractors against their property.

44. Since Defendants closed Castle Builders, the Attorney General's Office has interviewed 47 consumers who complained that they did not receive the contracted work and materials for which they had paid Defendants in advance.

45. Consumers have sustained significant financial losses due to Defendants' failure to provide refunds to consumers for advance payments that Defendants did not earn.

46. Some consumers have sustained additional financial loss caused by Defendants' conduct because they must hire, or have hired, other contractors to correct or complete Defendants' work.

COUNT I

(Excessive Initial Down Payments)

47. The State repeats and realleges Paragraphs 1 through 46 of the Complaint.

48. Pursuant to 10 M.R.S.A. § 1490(1), a violation of the HCCA is *prima facie* evidence of a violation of § 207 of the UTPA.

49. Defendants required some consumers to pay an initial down payment that exceeded one-third of the contract price, which constitutes a violation of § 1487(5) of the HCCA, and an unfair and deceptive trade practice in violation of § 207 of the UTPA.

50. Defendants' conduct as described herein was intentional.

COUNT II

(Failure to Specify Dates in Contract)

51. The State repeats and realleges Paragraphs 1 through 46 of the Complaint.

52. Pursuant to 10 M.R.S.A. § 1490(1), a violation of the HCCA is *prima facie* evidence of a violation of § 207 of the UTPA.

53. Defendants failed to specify the estimated date of commencement of the work and the estimated date of substantial completion of the work in their home construction contracts with consumers, which constitutes a



violation of § 1487(3) of the HCCA, and an unfair and deceptive trade practice in violation of § 207 of the UTPA.

54. Defendants' conduct as described herein was intentional.

COUNT III

(Excessive Advance Payments)

55. The State repeats and realleges Paragraphs 1 through 46 of the Complaint.

56. Defendants required consumers to pay them a second advance payment of one-third of the contract price at the "start" of a job and before they had provided services and materials equivalent in value to the initial down payment, which constitutes an unfair and deceptive trade practice in violation of § 207 of the UTPA.

57. Defendants' conduct as described herein was intentional.

COUNT IV

(Failure to Provide Work and Materials)

58. The State repeats and realleges Paragraphs 1 through 46 of the Complaint.

59. Defendants failed to provide contracted work and materials for which consumers had paid them in advance, and they failed to refund consumers for advance payments that they had not earned.

60. Defendants' conduct as described herein constitutes an unfair and deceptive trade practice, in violation of § 207 of the UTPA.

61. Defendants' conduct was intentional.

COUNT V

(Unskilled and Shoddy Workmanship)

62. The State repeats and realleges Paragraphs 1 through 46 of the Complaint.

63. Pursuant to 10 M.R.S.A. § 1490, any violation of the HCCA constitutes *prima facie* evidence of a violation of § 207 of the UTPA.

64. Defendants' work was unskilled and shoddy and they failed to correct it, which constitutes a violation of § 1487(7) of the HCCA, and an unfair and deceptive trade practice, in violation of § 207 of the UTPA.

65. Defendants' conduct as described herein was intentional.

COUNT VI

(Damage to Property)

66. The State repeats and realleges Paragraphs 1 through 46 of the Complaint.

67. Defendants caused damage to some homes they worked on by failing to ensure that they were protected from exposure to rain and snow, which constitutes an unfair and deceptive trade practice, in violation of § 207 of the UTPA.

68. Defendants' conduct as described herein was intentional.

COUNT VII

(Unlicensed Electrical Work)

69. The State repeats and realleges Paragraphs 1 through 46 of the Complaint.

70. Defendants performed electrical work that was done by a person not licensed by the Maine Electricians' Examining Board and who was not excepted from licensure, which constitutes a violation of 32 M.R.S.A. § 1201, and an unfair and deceptive trade practice, in violation of § 207 of the UTPA.

71. Defendants' conduct as described herein was intentional.

#### COUNT VIII

(Non-Compliant Electrical Work)

71. The State repeats and realleges Paragraphs 1 through 45 of this Complaint.

72. Defendants performed electrical work that is not in compliance with the 2017 edition of *The National Electrical Code*, which constitutes a violation of 32 M.R.S.A. § 1201-A and 02-318 C.M.R. ch. 120, § 1 (2017) of the Electrical Installations Standards Rule, and an unfair and deceptive trade practice, in violation of 5 M.R.S.A. § 207.

73. Defendants' conduct as described herein was intentional.

#### COUNT IX

(Poor Customer Service)

74. The State repeats and realleges Paragraphs 1 through 46 of the Complaint.

75. Defendants were deceptive and untimely in responding to consumer inquiries or complaints which constitutes an unfair and deceptive trade practice, in violation of § 207 of the UTPA.

76. Defendants' conduct as described herein was intentional.

COUNT X

(Failure to Pay Subcontractors)

77. The State repeats and realleges Paragraphs 1 through 46 of the Complaint.

78. Defendants failed to pay subcontractors who provided material and services to consumers.

79. Defendants' failure to pay subcontractors has exposed consumers to liability for Defendants' debts, including possible mechanic's liens that could be filed against them, constitutes an unfair and deceptive trade practice, in violation of § 207 of the UTPA.

80. Defendants' conduct as described herein was intentional.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests that this Court grant the following relief:

1. Declare that Defendants violated § 1487 of the HCCA and § 207 of the UTPA by:

- A. Requiring consumers to pay more than one-third of the contract price as an initial down payment;
- B. Failing to specify in their contracts with consumers the date that the work and the date on which the work would be substantially complete; and
- C. Providing unskilled and shoddy work to consumers, and failing to correct it.



2. Declare that Defendants violated 32 M.R.S.A. § 1201 and 5 M.R.S.A. § 207 by performing unlicensed electrical work.

3. Declare that Defendants violated 32 M.R.S.A. § 1201-A and 02-318 C.M.R. ch. 120, § 1 (2017) of the Electrical Installations Standards Rule, and 5 M.R.S.A. § 207 by performing electrical work that is not in compliance with the 2017 National Electrical Code.

4. Declare that Defendants violated § 207 of the UTPA by:

- A. Requiring consumers to pay excessive second advance payments before providing work and materials of equivalent value;
- B. Failing to provide work and materials for which consumers had paid them in advance and failing to refund consumers for such unearned advance payments;
- C. Failing to respond in an honest or timely manner to consumers' inquiries and complaints;
- D. Failing to ensure that the homes they worked on were protected from exposure to rain and snow; and
- E. Failing to pay subcontractors whom they hired to provide consumers with materials and services;

5. Pursuant to 5 M.R.S.A. § 209 and M.R. Civ. P. 65, permanently enjoin Defendants, their agents, servants, employees and those persons in active concert or participation with them who receive actual notice of the injunction from:

- A. Soliciting consumers as a general contractor in the State of Maine, directly or indirectly, including by telephone or by operating a booth at a fair attended by consumers, to buy home construction or repair services. Stewart may do home construction and repair work as a W-2 employee of another general contractor or subcontractor whose business he does not control or have an ownership interest in;
- B. Contracting directly with consumers who are not primarily engaged in the construction industry, including individuals who are not professional contractors but who are acting as the general contractor for properties in which they personally have an ownership interest.
- C. Advertising their services to consumers as a home construction contractor;
- D. Taking payment from any consumer for any home construction or repair services; and
- E. Hiring any subcontractor to perform home construction or repair services for a consumer;

6. Pursuant to 5 M.R.S.A. § 209, order Defendants, jointly and severally, to pay restitution to the Attorney General on behalf of consumers who suffered financial loss because of their unlawful practices;

7. Pursuant to 5 M.R.S.A. § 209, order Defendants, jointly and severally, to pay a civil penalty of up to \$10,000 per violation for each intentional violation of § 207 of the UTPA;

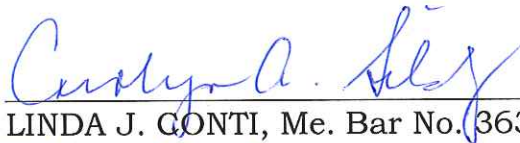
8. Pursuant to 5 M.R.S.A. § 209 and 14 M.R.S.A. § 1522(1)(A), order Defendants, jointly and severally, to pay the Attorney General his costs of suit and investigation, including attorney's fees; and

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

Dated: December 5, 2019

Respectfully submitted,

AARON M. FREY  
Attorney General



LINDA J. CONTI, Me. Bar No. 3638

[linda.conti@maine.gov](mailto:linda.conti@maine.gov)

CAROLYN A. SILSBY, Me. Bar No. 3030

[carolyn.silsby@maine.gov](mailto:carolyn.silsby@maine.gov)

Assistant Attorneys General

Office of the Attorney General

6 State House Station

Augusta, Maine 04333-0006

Tel. (207) 626-8800

Attorneys for the State of Maine

OCT 20 2022

OFFICE OF ATTORNEY GENERAL  
OFFICE OF

STATE OF MAINE  
KNOX, ss.

SUPERIOR COURT  
CIVIL ACTION  
Docket No.: CV-19-041

STATE OF MAINE,

Plaintiff,

v.

CASTLE BUILDERS, INC.,  
MALCOLM I. STEWART, and  
ELIZABETH J. STEWART,

Defendants.

**JUDGMENT**

Plaintiff State of Maine (the “State”) filed a Complaint against Defendants Castle Builders, Inc., a Maine business corporation, Malcolm I. Stewart, and Elizabeth J. Stewart. The State alleged that Defendants engaged in conduct that violates the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A-214 (“UTPA”).

This matter was scheduled for trial beginning on August 23, 2022. The State appeared in person through its attorneys. Defendant Castle Builders, Inc. did not appear. Defendants Malcolm I. Stewart and Elizabeth J. Stewart and their attorney initially appeared remotely via Zoom video conference. However, shortly after the proceedings began, Defendants Malcolm I. Stewart and Elizabeth J. Stewart and their attorney intentionally terminated their video conference connection. The State then moved orally for a default judgment against all Defendants. The Court granted the State’s motion. *See Owen v. Healy*, 2006 ME 57, ¶ 8, 896 A.2d 965 (“[A] default may be entered against a party who fails to appear either personally or through counsel at trial.”). Because the Parties had already stipulated to the amount of restitution to be paid in the event any Defendant was found liable and the State orally dismissed its claim



for civil penalties, a damages hearing was not necessary and a default judgment against Defendants for the stipulated amount of restitution is warranted.

Now therefore, it is hereby ORDERED, JUDGED and DECREED as follows:

I. FACTUAL FINDINGS AND CONCLUSIONS OF LAW

The Court makes the following factual findings and conclusions of law.

A. Jurisdiction and Venue

The Court has personal jurisdiction pursuant to 14 M.R.S.A. § 704-A. The Court has subject matter jurisdiction with respect to the State's claim against Defendants under 4 M.R.S.A. § 105 and 5 M.R.S.A. § 209. The Complaint states a claim for relief under the UTPA. Venue is proper in this Court under 5 M.R.S.A. § 209.

B. UTPA Violations

In violation of 5 M.R.S.A. § 207, Defendants engaged in a pattern or practice of unfair and deceptive acts in the conduct of trade and commerce, specifically in connection with their home construction and repair business.

These unfair and deceptive acts and practices include:

- (i) With respect to home construction contracts to which the requirements of 10 M.R.S.A. §§ 1486-1490 apply:
  - a. Requiring and receiving initial down payments from customers in excess of one-third (1/3) of the total contract price (Count I of Complaint);
  - b. Failing to include in their written contracts the estimated date of commencement of work and the estimated date when the work will be substantially completed (Count II of Complaint);

- c. Providing work that was shoddy, unskilled and/or unworkmanlike, and failing to correct that work (Count V of Complaint);
- (ii) Requiring customers to pay a second advance payment to commence work and/or before or contemporaneously with the commencement of work (Count III of Complaint);
- (iii) Failing to provide work and materials for which consumers had paid Defendants in advance, and failing to refund consumers for advance payments Defendants had not earned (Count IV of Complaint);
- (iv) Causing damage to the property of customers through shoddy, unskilled and/or unworkmanlike work (Count VI of Complaint);
- (v) Performing unlicensed electrical work (Count VII of Complaint);
- (vi) Performing electrical work that was not in compliance with the 2017 edition of *The National Electrical Code* (Count VIII of Complaint);
- (vii) Providing untimely and/or deceptive responses to customer inquiries and/or complaints (Count IX of Complaint); and
- (viii) Failing to pay subcontractors, which exposed customers to liabilities and/or mechanic's lien claims against their homes (Count X of Complaint).

C. Civil Penalties

As noted above, the State has dismissed its claim for civil penalties. Accordingly, this judgment does not assess civil penalties against Defendants.

D. Restitution

Pursuant to 5 M.R.S.A. § 209, for the ascertainable loss resulting from their unfair and deceptive acts, Defendants jointly and severally owe restitution to their customers in the amounts

indicated on Schedule A hereto. The Attorney General shall distribute the restitution paid by Defendants to the consumers at his sole discretion.

E. Injunctive Relief

The State is entitled to a permanent injunction pursuant to 5 M.R.S.A. § 209.

E. Costs and Fees

The State has dismissed its claim for fees and costs. Accordingly, this judgment does not award fees and costs to the State as the prevailing party. This judgment does not bar or otherwise limit the State from collecting allowed fees and costs that may be incurred in any future collections proceedings.

II. RELIEF

The Court hereby enters JUDGMENT against Defendants and in favor of the State on all counts of the Complaint and grants the following relief:

A. Pursuant to 5 M.R.S.A. § 209 and M.R. Civ. P. 65, Defendants, their agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Judgment, are hereby permanently enjoined from:

(i) Soliciting consumers in any way as a general contractor in the State of Maine, directly or indirectly, including but not limited to by telephone, in person, or by operating a booth at a fair attended by consumers, to purchase home construction or repair services. Malcolm I. Stewart may perform home construction and repair work as a W-2 employee of another general contractor or subcontractor in whose business he does not have a controlling or ownership interest;

(ii) Contracting for home construction or repair services directly with consumers who are not primarily engaged in the construction industry, including

individuals who are not professional contractors but who are acting as the general contractor for properties in which they personally have an ownership interest;

(iii) Advertising their services to consumers for home construction or repair services;

(iv) Taking payment from any consumer for any home construction or repair services;

(v) Hiring any subcontractor to perform home construction or repair services for a consumer; and

(vi) In any other way acting as a general contractor in the State of Maine.

B. Defendants shall jointly and severally pay restitution in the amount of \$744,252.86 to the Office of the Maine Attorney General for the benefit of those customers of Defendants, as described in Schedule A hereto.

SO ORDERED.

September 22, 2022

  
Hon. Bruce C. Mallonee  
Justice, Maine Superior Court

Judgment entered on: October 18, 2022