

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. 07- CV- 363

STATE OF MAINE )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MAINE COAST LOG HOMES, INC., )  
 TIMBER PINE CONSTRUCTION, INC., )  
 and MARK A. HOLMES )  
 )  
 Defendants. )

COMPLAINT

**I. INTRODUCTION**

1. The State brings this action against Maine Coast Log Homes, Inc., Timber Pine Construction, Inc., and Mark A. Holmes (“defendants”) pursuant to the Maine Unfair Trade Practices Act (“UTPA”), 5 M.R.S.A. §§ 206-216 seeking permanent injunctive relief, restitution, civil penalties, costs and attorney’s fees.

**II. 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 Mark A. Holmes (“Holmes”) is an individual residing at 17 Farnham Point Road, Boothbay, Maine.

4. Defendant Maine Coast Log Homes, Inc. (“MCLH”) is a Maine corporation with its principal place of business at 519A Gardiner Road, Wiscasset, Maine.

5. Defendant Mark A. Holmes is the President, Treasurer and sole shareholder of MCLH and its *alter ego*.

6. To adhere to the fiction of separate corporate existence between defendant Holmes and defendant MCLH would serve to sanction fraud and promote injustice.

7. Defendant Timber Pine Construction, Inc. ("Timber Pine") is a Maine corporation with its principal place of business at 519A Gardiner Road, Wiscasset, Maine.

8. Defendant Mark A. Holmes is the President, Treasurer and sole shareholder of Timber Pine and its *alter ego*.

9. To adhere to the fiction of separate corporate existence between defendant Holmes and defendant Timber Pine would serve to sanction fraud and promote injustice.

### **III. JURISDICTION AND VENUE**

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

11. Pursuant to 5 M.R.S.A. § 209, venue is proper in Kennebec County.

### **IV. STATUTORY BACKGROUND**

12. 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.

13. The defendants were at all times relevant to this complaint engaged in trade or commerce in and from the State of Maine, to wit: defendants advertise, offer for sale, manufacture, sell and construct log homes.

## V. FACTS

14. Beginning in 2003 and continuing to the present, Defendants Holmes, MCLH and Timber Pine designed, built, advertised for sale and sold log homes.

15. Holmes demands and consumers pay thousands of dollars in advance deposits for log home kits ordered from Holmes and MCLH.

16. On several occasions beginning in 2003 and continuing to the present, Defendants Holmes and MCLH accepted deposits from consumers for log home kits and failed to deliver the kits as promised.

17. In some instances consumers elected to cancel their contracts with defendants and requested a refund of their deposit money due to the fact that a) defendants failed to deliver the log home kits; b) defendants failed to deliver a complete log home kit; or c) defendants failed to complete construction of the log home kits in a workman like manner.

18. Defendants have failed to honor customers' requests for refunds.

19. In some instances Defendants Holmes and Timber Pine attempted to partially construct log homes but left them unfinished and in shoddy condition.

20. More specifically, but not by way of limitation, the following allegations are pled as illustrations of unlawful practices of defendants and are not meant to be exhaustive. Since 2003, the plaintiff has received 8 complaints against defendants, As of the time this lawsuit is filed, the total amount of money paid by these consumers is \$357,020.45. Plaintiff intends to seek restitution for all of these complainants, as well as for additional consumer complainants the plaintiff discovers.

A. Consumers: Scott and Kirsten Richards

21. Scott and Kirsten Richards are residents of Massachusetts.

22. In 2004, the Richards were looking for a log home to build on property that they own in Maine to be used as a vacation home.

23. The Richards saw an advertisement for MCLH and went to Wiscasset to meet with Mark Holmes.

24. At the initial meeting they told Holmes that they were interested in buying a log home kit and that they were looking for a builder to build it.

25. Holmes told the Richards that he could build the log home that they were buying.

26. In January of 2005 the Richards gave Mark Holmes \$5,039 as a down payment on the log home kit.

27. In April of 2005 the Richards entered into a contract with homes for construction of a log home.

28. At the time they entered the contract in April of 2005, the Richards paid Holmes \$40,000.

29. Holmes told the Richards that \$20,000 was for the log kit and the other \$20,000 was a down payment on the construction.

30. Holmes procured building permits for the Richard's home and the Richard's paid him \$630 for it.

31. After the permit was issued and during the summer of 2005 Holmes did not start construction on the Richards' house.

32. In August of 2005 the Richards came to Maine to visit the building site.

33. The Richards saw that some site work had been done so they gave Holmes a check for \$11,000 on August 26, 2005.

34. After August 26, 2005, Holmes did no more work on the Richards' building site.

35. In early 2006 the Richards' lawyer sent Holmes a letter stating that Holmes was in breach of contract and demanding a refund of the \$45,000 deposit.

36. Holmes did not respond to the letter or refund the money.

37. The Richards hired a second contractor, who went to Holmes' place of business and demanded the Richards' log home kit.

38. Holmes gave the Richards' contractor some logs and wood.

39. Holmes did not provide a complete log home kit and completely omitted items such as doors and windows that were included in the contract.

40. Many of the parts provided by Holmes such as ridge beams were inferior and the Richards had to repurchase them.

B.Consumer: Lisa Saunders

41. Lisa Saunders is a resident of Hancock County, Maine.

42. In the spring of 2003 Lisa went to MCLH to look at log home kits.

43. She decided to purchase a kit from MCLH that needed to be customized.

44. Mark Holmes told her that he understood her log home kit would be customized and that he would sell her a complete customized kit.

45. Lisa paid Mark Holmes \$25,000 when the kit was ordered and another \$25,000 when it was delivered in July of 2003.

46. Lisa hired an independent contractor to build the kit for her.

47. Two weeks after the kit had been delivered and her builder began construction, she learned that the log home kit was incomplete.

48. Lisa called Mark Holmes and asked him about the missing pieces especially the roof and floor trusses.

49. Holmes never gave Lisa the missing pieces.

50. The last time Lisa spoke with Mark Holmes about her missing items, he told her to "go ahead and try to sue me, it doesn't matter." He also warned her "Don't call my office again if you know what's good for you."

C. Consumers: Roger Brocious

51. Roger Brocious is a resident of New York. In March of 2006 his house burned down.

52. He saw an ad in magazine for a New York company that was promoting MCLH.

53. Brocious exchanged phone calls with Mark Holmes and received house plans from him.

54. Based upon this contact with Holmes, Brocious decided to purchase a log home kit from MCLH.

55. In April 2006, Brocious signed a contract with Holmes and paid a deposit.

56. In July of 2006, Brocious paid a second deposit. At this point his deposits to Holmes totaled \$20,000.

57. Holmes stated that the kit would be delivered to Brocious in New York in August of 2006.

58. Holmes did not deliver the log home kit as promised in August of 2006.

59. When Holmes failed to deliver the log home kit as promised in August of 2006, Brocious called him.

60. Starting in August of 2006 and continuing until spring of 2007, Brocious spoke on several occasions to Holmes who promised several delivery dates and gave a series of excuses for his failure to deliver.

61. Brocious' last contact with Holmes was in May of 2007.

62. Holmes has not delivered any product to Brocious and has not refunded his deposit.

D.Consumer: John Guyer

63. John Guyer is a New York resident. He contacted a sales representative for MCLH about purchasing a log home kit.

64. Guyer signed a contract with MCLH and sent Holmes a check for \$19,375.85 in May of 2005.

65. Eventually Guyer received building plans from defendants but they were not adequate for him to obtain a building permit.

66. After some back and forth amending the plan with MCLH, Guyer finally received a building permit in December of 2005.

67. Guyer was unable to start construction in the winter and delayed construction until the spring of 2006.

68. In the spring of 2006 when Guyer was ready to begin construction, he attempted to contact Holmes about delivery of his logs. All of Guyer's emails to Holmes were returned as undeliverable and Holmes' voice mailbox was full.

69. Guyer paid Holmes \$19, 375.85 in 2005 and has received no product and no refund.

E. Consumers: Mary and Michael Fisher

70. Mary and Michael Fisher are residents of Delaware, Ohio.

71. The Fishers were interested in building a log home and looked at one that had been built by an acquaintance of Mr. Fisher, Roy Lover.

72. Mr. Lover told the Fishers that he would build a log home of their choosing.

73. Later, he told them he would only build the home if they purchased the logs from MCLH.

74. In August of 2005 the Fishers entered into the contract with MCLH and paid a deposit of \$9,444.

75. A month later in September of 2005, the Fishers received the initial building plans from MCLH.

76. The plans were inadequate for the building inspector to approve a building permit and from September 2006 through April 2006, the Fishers worked with Holmes and their own architect to get the plans approved.

77. In October of 2006 the Fishers paid defendants an additional deposit of \$37, 760.

78. In May of 2006 the Fishers obtained a building permit.

79. In May of 2006 Holmes told the Fishers that they would have the log kit in 60 days.

80. After 60 days went by, in July of 2006, the Fishers received nothing from Holmes.

81. From July through October of 2006 the Fishers called Holmes in an attempt to get their log home kit.

82. During their telephone conversations with Holmes, he admitted that he had their money and gave them numerous excuses for his failure to deliver such as, the mill broke, the generator broke, the logs were cut incorrectly and needed to be recut, the supplier would not send any more logs, etc.

83. In October of 2006 the Fishers' lawyer sent Holmes a letter stating that Holmes was in default on the contract and demanding either the logs or a refund.

84. Holmes did not provide the logs or a refund.

F. Consumers: Timothy and Patricia Wrobel

85. Timothy and Patricia Wrobel live in Connecticut.

86. In 2000, the Wrobel's purchased land in Boothbay Harbor.

87. In 2004, the Wrobels decided to build a log home on their land in Maine.

88. They saw an advertisement for MCLH in a local Boothbay paper and checked the internet site for the business.

89. They called Mark Holmes and arranged to visit with him. At that time they looked at one log home that he had built.

90. Holmes showed them brochures of log homes which they liked but felt were out of their price range.

91. In the summer of 2004 the Wrobels went to California on vacation.

92. While they were in California, Holmes called them and told them he had a smaller home, that the buyer had cancelled the contract to purchase it and that he would give them a good price on it, but they had to decide within 30 days.

93. The Wrobels decided to buy it and made a down payment of \$24,780 to MCLH.

94. In December of 2004, the Wrobels entered in to a contract with Timber Pine for the construction of the log home kit.

95. According to the contract with Timber Pine, construction was supposed to start in January of 2005 and be completed in June of 2005. It did not start at that time so the Wrobels called Holmes.

96. He gave them excuses and told them it would be February or March of 2005.

97. The Wrobels visited their building site in May of 2005 and found only a foundation with a moat around it.

98. They called him daily to get him to work on the construction. He kept telling them that he needed more money although the construction lender had made payments consistent with the work that had been done.

99. In January of 2006 the Wrobels visited the site again and found that the house was not nearly completed.

100. On January 11, 2006, Mr. Wrobel demanded a list of subcontractors from Holmes.

101. Mr. Wrobel contacted the subcontractors and learned that they had not been paid even though construction loan proceeds had been disbursed to Holmes.

102. Some of the subcontractors have placed mechanics liens on the Wrobel's home.

103. The Wrobels hired other contractors to repair and complete the work begun by Holmes.

104. The Wrobels paid defendants \$104,000 and another \$70,000 to others to finish and correct his work.

### **COUNT I**

105. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

106. Defendants have engaged in the unfair or deceptive practice of inducing consumers to sign purchase agreements based on misrepresentations regarding delivery and completion dates for log home kits.

107. Defendants conduct as described herein is intentional

### **COUNT II**

108. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

109. Defendants have engaged in the unfair or deceptive practice of accepting advance deposits from consumers and failing to deliver or construct consumers' log homes.

110. Defendants conduct as described herein is intentional.

### **COUNT III**

(UTPA – Shoddy Construction)

111. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

112. Defendants have engaged in unfair and deceptive acts or practices by constructing log homes kits and log homes in an unworkmanlike manner..

113. Defendants' conduct as described herein is intentional.

#### **COUNT IV**

114. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

115. Defendants have engaged in the unfair or deceptive practice of accepting advance deposits from consumers and then failing to refund such deposits when they failed to deliver the product or services contracted for.

116. Defendants conduct as described herein is intentional.

#### **COUNT V**

117. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

118. Defendants have engaged in the unfair or deceptive practice of representing to consumers that they will refund consumers' deposits, and then failing to do so.

119. Defendants conduct as described herein is intentional

#### **COUNT VI**

120. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

121. Defendants have engaged in the unfair or deceptive practice of orally representing to consumers that their log home kits would be delivered by a certain date, and then failing to deliver the logs by such date.

122. Defendants conduct as described herein is intentional

**COUNT VII**

123. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

124. Defendants have engaged in the unfair or deceptive practice of orally representing to consumers that their log homes would be constructed by a certain date, and then failing to complete the construction by such date.

125. Defendants' conduct as described herein is intentional.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff requests the following relief:

1. Declare that Defendants have violated the UTPA by:
  - A. Misrepresenting to consumers the dates of delivery for log home kits and the dates for completion of construction of the log homes;
  - B. Accepting deposits for products and services that were not delivered;
  - C. Failing to refund consumers' deposits;
  - D. Constructing log home kits and log homes in a nonworkmanlike manner.
2. 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. advertising, building and selling log home kits;
  - B. entering into agreements to construct homes; and

C. taking deposits or any payment in advance of delivering products or performing services.

3. Pursuant to 5 M.R.S.A. § 209, order the Defendants to provide equitable remedies, including restitution, rescission or repair, sufficient to make whole all consumers injured by their unlawful practices.

4. Pursuant to 5 M.R.S.A. § 209, order Defendants to pay a civil penalty of \$10,000 per violation for each intentional violation of the Unfair Trade Practices Act.

5. Pursuant to 5 M.R.S.A. § 209, order Defendants to pay the Attorney General its costs of suit and investigation, including attorney's fees.

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

Respectfully submitted,

G. STEVEN ROWE  
Attorney General



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