

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.