UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In Re:	)	Chapter 13
	)	Case No.: 11-21207
Joel David Poirier	)	
	)	
	)	
Debtor	)	
	)	
	)	
State of Maine	)	Adv. Proceeding No.
Attorney General,	)	
	)	
Plaintiff	)	
	)	
v.	)	COMPLAINT
	)	
Joel David Poirier	)	
	)	
	)	
Defendant	)	

NOW COMES the State of Maine by and through its Attorney General, William J. Schneider, and complains against the Debtor, Joel David Poirier as follows:

THE PARTIES

1. The Defendant/Debtor, Joel David Poirier, ("Poirier") filed a Chapter 13 petition with this Court on August 16, 2011.

2. The Plaintiff, State of Maine, is a sovereign state acting through its Attorney General.

JURISDICTION AND VENUE

3. The Plaintiff seeks relief pursuant to 11 U.S.C. § 523. The Plaintiff seeks an order finding that any civil penalties ordered in the state court injunctive action are nondischargeable. The Plaintiff also alleges that amounts owed to consumers are nondischargeable under the exception for fraud.

4. Jurisdiction is proper pursuant to 28 U.S.C. §§ 157, 1334, and venue is proper pursuant to 28 U.S.C. §§ 1408, 1409. This action is commenced pursuant to Bankruptcy Rules 7001 and 7003, Fed. R. Civ. P. 3 and Local Rule 7003.

5. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) in that it objects to the Debtor's discharge of a particular debt.

THE FACTS

6. Since 2002, Poirier owned and operated a home construction and repair business, Poirier Construction, Inc. in Buxton, Maine.

7. Having received several complaints from consumers, on or about July 25, 2011 the State sent Poirier a notice of intent to sue and a draft complaint alleging violations the Unfair Trade Practices Act, 5 M. R.S.A. § 207 and Home Construction Contracts Act 10 M.R.S.A. §§ 1486-1490 and seeking injunctive relief restitution and civil penalties as authorized by 5 M.R.S.A. §209.

8. On August 16, 2011 Poirier filed a Chapter 13 Bankruptcy.

PARTICULARS OF THE FRAUD

A. En Wu

9. On or about November of 2007 the Defendant entered into a contract with En Wu for the construction of a single family home in Scarborough.

10. The initial contract price was $347, 930.

11. The contract was amended through a series of change orders increasing its total cost.

12. En Wu speaks limited English as his primary language is Mandarin, Chinese.

13. Defendant Poirier persuaded En Wu to entrust him with direct internet access to En Wu's construction loan account.

14. Defendant suggested to En Wu that it would be better for the bank if Poirier handled the account for him.

15. In reliance on Poirier's representations, En Wu authorized Poirier to withdraw funds from the accounts in accordance with a payment schedule they signed.

16. Poirier withdrew funds from En Wu's construction loan.

17. Poirier told En Wu that he needed large sums of cash in order to provide En Wu with a discounted price.

18. In reliance on these statements, En Wu paid Poirier large sums of cash in addition to the construction loan funds.

19. The defendant started construction on En Wu's project in December of 2007.

20. The project was never completed.

21. Poirier withdrew funds from En Wu's construction loan account exceeding the amount authorized by En Wu.

22. Defendant Poirier did not pay subcontractors who performed work on En Wu's project.

B. Anthony Mignosa

23. Anthony Mignosa resides in Terwksbury, Massachusetts.

24. On or about July of 2008, Mr. Mignosa entered into a contract with Joel Poirier for the construction of a home in Maine.

25. Defendant Poirier told Mignosa that the home would be completed by the end of December 2008.

26. Relying on Poirier's statement that the home would be completed by the end of December 2008, Mignosa paid Poirier the full contract price, $121,000.

27. In September of 2008, the subcontractors stopped all work and left the job site.

28. The portion of the home that had been constructed was left open to the elements and was not habitable.

29. Defendant never completed the project.

C. Christine and Thomas Walczak

30. Christine and Thomas Walczak reside in Casco, Maine.

31. On October 20, 2008, the Walczaks gave Defendant Poirier a check for $54, 367.

32. Of the amount the Waclzak's paid to the Defendant, $49,480 was for the excavation, foundation, septic and well. The remainder was to go toward the construction of the house.

33. In February of 2009, the excavation, foundation, septic and well had not been completed.

34. In February of 2009, Defendant Poirier called the Waclzaks and told them that he wanted more money from them to continue the project.

D. Paul and Eileen Palmer

35. Paul and Eileen Palmer live in Massachusetts.

36. In August of 2010, the Palmers hired Defendant Poirier to build a home for them in Naples, Maine.

37. The Palmers paid Poirier a down payment of $45,674.39 on or about August 28, 2010.

38. Defendant Poirier did not begin or perform work on the home in accordance with his promises that the project would be completed in two months.

39. When the Palmers asked about the lack of progress on the construction, Defendant Poirier demanded additional money to continue the work.

40. Defendant demanded additional funds to complete work the Palmers had already paid for.

41. Defendant Poirier refused to complete work he had been paid for unless the Palmers paid him additional funds.

42. The Palmers paid Poirier additional money requested in reliance on his representations that the work would be finished.

43. The work was not finished by Poirier.

44. The Palmers paid $40,000 Poirier for work he did not complete.

45. Defendant Poirier did not pay subcontractors who worked on the Palmer's house.

46. The Palmers paid subcontractors $20,000

E. Richard Briganti

47. **Richard** Briganti resides in East Waterboro, Maine.

48. Defendant Poirier told Mr. Brignati that he would build a garage and breezeway attached to his home.

49. Based upon Defendant Poirier's representations that he would begin and complete the addition, Mr. Brignanti paid him $51,000 of the total contract price of $60,000 in October of 2009.

50. Although he was paid in advance for the work, Defendant Poirier has not completed the project.

F. Beth Shurman

51. Beth Schurman resides in Portland, Maine.

52. Defendant Poirier told her that he would construct an addition to her cape style home that would include a garage with two bedrooms and a bathroom above it.

53. In reliance on Defendant Poirier's representations, Ms. Schurman entered into a contract with him on August 9, 2009.

54. Ms. Schurman paid Defendant Poirier $82,000 for the addition but it was never completed.

55. In February of 2010 Defendant Poirier agreed to pay Ms. Schurman $64,574.25 for work that he was paid to do but did not complete.

56. Defendant Poirier has not repaid the amount he agreed to repay Ms. Schurman.

G. Medora Cain

57. In June of 2011 Medora Cain entered into a contract with Defendant Poirier for the construction of a deck and a dog house and the installation of new siding and windows.

58. Before she entered into the contract Ms. Cain asked Defendant Poirier if he could begin the job immediately. It was important to her to have the job done in the summer. He said yes and that he had no other jobs ongoing so she hired him.

59. In June of 2011, Ms. Cain paid Defendant Poirier $8,600 about half of the total contract price.

60. Contrary to his statement that he could begin immediately, Defendant Poirier showed up to work on Ms. Cain's project for the first time on July 27, 2011.

61. On July 27, 2011 Defendant Poirier removed the old and dug new post holes.

62. The following week, two crew members showed up. Defendant Poirier took the week off.

63. The workers showed up off and on for the following 8 to 9 days. They left the work site often to get supplies.

64. Defendant Poirier asked Ms. Cain for $3400.

65. Ms. Cain agreed to pay him the $3,400 if Defendant Poirier agreed to complete her job in September of 2011.

66. Defendant Poirier agreed to finish Ms. Cain's job and accepted her payment.

67. Neither Defendant Poirier nor his crew showed up in September of 2011.

68. In October of 2011 the crew partially installed some siding.

69. Ms. Cain has repeatedly asked Defendant Poirier for copies of receipts that he has for materials he purchased for her job. He refuses to provide the requested receipts.

70. Ms. Cain has hired another contractor to complete the project.

COUNT I
FRAUD, 11 U.S.C. § 523(a)(2)(A)

71. The Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

72. Section 523 (a)(2)(A) of the United States Bankruptcy Code disallows a debtor in bankruptcy from being discharged for a debt incurred through fraudulent means.

73. The Defendant violated Maine's Unfair Trade Practices Act, through his intentional and knowing misrepresentations as to the Defendant's ability and willingness to begin and complete home improvement projects that he has been paid to perform.

74. The consumers, in reasonable reliance upon the Defendant's fraudulent misrepresentations, made payments to the Defendant for services which the Defendant did not perform.

WHEREFORE, the State of Maine Department of Attorney General prays this Court determine that the State's unliquidated claim [for restitution for consumers, who are incidental beneficiaries of the State's enforcement action] is a nondischargeable debt pursuant to 11 U.S.C. § 523(a)(2)(A).

COUNT II
CIVIL PENALTIES, 11 U.S.C. § 523(a)(7)

75. The Plaintiff repeats, realleges and incorporates the foregoing paragraphs as though fully set forth herein.

76. Section 523(a)(7) of the United States Bankruptcy Code excepts from discharge any debt which is related to a fine, penalty or forfeiture payable to and for the benefit of a governmental unit which is not payment for actual pecuniary loss.

WHEREFORE, the State of Maine Department of Attorney General prays this Court determine that its claim against the Defendant/Debtor for civil penalties is a nondischargeable debt pursuant to 11 U.S.C. § 523(a)(7).

WHEREFORE, the State of Maine Department of Attorney General prays this Court:

A. Enter judgment in favor of the Plaintiff and against the Defendant by finding that the State's claim for restitution for consumers is nondischargeable due to Defendant's fraud pursuant to 11 U.S.C. § 523(a)(2)(A);

B. Enter a judgment in favor of the Plaintiff and against the Defendant by determining that the State's unliquidated claim for civil penalties in the State Court action is nondischargeable pursuant to 11 U.S.C. § 523 (a)(7);

C. Order the Defendant to pay the cost of this action; and

D. Grant the Plaintiff such other relief as the Court may deem just and proper.

DATED: November 15, 2011

WILLIAM J. SCHNEIDER
Maine Attorney General

/s/ Linda J. Conti
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