

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In Re:)	Chapter 7
)	Case No. 05-22665
Mikel W. Tuttle,)	
d/b/a MT Construction,)	
DMI Industries, Inc., and)	
MT Construction, Inc.,)	
)	
Debtor)	
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State of Maine,)	Adv. Proceeding No.
)	
Plaintiff)	
)	
v.)	COMPLAINT
)	
Mikel W. Tuttle,)	
d/b/a MT Construction,)	
DMI Industries, Inc., and)	
MT Construction, Inc.,)	
)	
Defendant)	

INTRODUCTION

1. The Maine Attorney General (the “Attorney General”) brings this action on behalf of the State of Maine (the “State”) seeking relief, pursuant to 11 U.S.C. § 523(a)(2) and (7), from discharge of the State’s unliquidated claim for restitution on behalf of consumers who were harmed by the unfair and deceptive trade practices of Mikel W. Tuttle, d/b/a MT Construction, DMI Industries, Inc., and MT Construction, Inc. (“Tuttle” or “Defendant”), in violation of 5 M.R.S.A.

§ 207 of the Maine Unfair Trade Practices Act (the “UTPA”); and from discharge of the State’s unliquidated claim for civil penalties for Defendant’s intentional violations of the UTPA.

THE PARTIES

2. Plaintiff, State of Maine, is a sovereign state.
3. Defendant Tuttle filed a Chapter 7 petition with this Court on October 14, 2005.

JURISDICTION AND VENUE

4. Jurisdiction is proper pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
5. Pursuant to F.R.B.P. 7008(a), this is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

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 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 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. . . .

Each intentional violation of section 207 in which the Attorney General establishes that the conduct giving rise to the violation is either unfair or deceptive is a violation for which a civil penalty of not more than \$10,000 shall be adjudged.

8. Pursuant to 11 U.S.C. § 523(a)(2)(A), debts incurred by a debtor for “money, property, services, or an extension, renewal, or refinancing of credit” that were obtained by “false pretenses, a false representation, or actual fraud” are excepted from discharge.

9. Pursuant to 11 U.S.C. § 523(a)(7), any debt that is “for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit,” and not for actual pecuniary loss, is excepted from discharge.

FACTS

10. Tuttle, d/b/a MT Construction, began doing home construction, including new construction, renovation and repair, approximately 9 years ago. In 2003, he incorporated his business under the name of “DMI Industries, Inc.,” with an assumed name of “MT Construction, Inc.,” which was administratively dissolved by the Secretary of State in 2004.

11. Between 2004 and 2005, the Consumer Protection Division of the Attorney General’s Office received eleven complaints against Defendant from consumers¹ who had hired him for home repair and construction jobs.

¹ The “Consumers” are: Sharon and Vance Deppe, Thomas Noury, Jeremy Meservey, Linda and John Desrossiers, Janice Melnick, Richard and Heidi Ruddell, Lori Caron,

12. In the fall of 2005, the Attorney General began investigating the complaints with the intention of bringing an action against Defendant under the UTPA for injunctive relief, restitution for consumers harmed by his unlawful actions, civil penalties, costs, and attorney's fees.

13. During this time, Tuttle filed a Chapter 7 petition, following his withdrawal of the Chapter 13 petition that he had filed the year before.

14. The Consumers collectively lost tens of thousands of dollars as a result of Defendant's unfair and deceptive practices, which are set forth below:

A. Tuttle usually collected down payments of one-half of the total contract price from Consumers, in violation of 10 M.R.S.A. § 1487. Said violation is *prima facie* evidence of a violation of § 207 of the UTPA.

B. In addition to substantial down payments, Tuttle induced Consumers to pay future progress payments before the requisite work had been completed under the contracts, in violation of § 207 of the UTPA.

C. Tuttle failed to perform the work for which he had contracted, or to refund deposits to Consumers, in violation of § 207 of the UTPA.

Shirley and Robert Freeman, Ling-Zhou Chen, Steven Hughes, and Connie Cole. Many are named, or have come forward, as creditors in the Chapter 7 proceeding.

D. Tuttle performed substandard and incomplete work, and failed to respond to Consumer complaints, in violation of § 207 of the UTPA.

E. Tuttle failed to pay his subcontractors, some of whom sought payment by placing, or attempting to place, mechanic's liens on Consumers' properties, in violation of § 207 of the UTPA.

F. Tuttle induced one consumer, Richard Ruddell, to co-sign for a charge account at Lowe's so that he could buy materials for his job. Without Mr. Ruddell's knowledge or consent, Defendant subsequently increased the line of credit to buy materials for other jobs, and then failed to make the required payments, in violation of § 207 of the UTPA.

COUNT I

False Representations to Collect Down Payments 11 U.S.C. § 523(a)(2)

15. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

16. Defendant knowingly made false representations, or statements in reckless disregard of the truth, to induce Consumers to give him down payments that usually met or exceeded one-half of the total contract prices.

17. The Consumers justifiably relied upon Defendant's false representations to their financial detriment as Defendant did not pay for

materials or subcontractors for which he had been paid, or satisfactorily complete the work for which he had been paid.

COUNT II

False Representations to Collect Progress Payments 11 U.S.C. § 523(a)(2)

18. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

19. Defendant knowingly made false representations, or statements in reckless disregard of the truth, to induce Consumers to give him progress payments before the requisite work had been completed pursuant to the contracts.

20. The Consumers justifiably relied upon Defendant's false representations to their financial detriment as Defendant did not pay for materials and subcontractors for which he had been paid, or satisfactorily complete the work for which he had been paid.

COUNT III

False Representations to Obtain Credit 11 U.S.C. 523(a)(2)

21. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

22. Defendant knowingly made false representations, or statements in reckless disregard of the truth, to induce Richard Ruddell to sign as a guarantor on an account in order to obtain credit to buy building materials for Mr. Ruddell's job.

23. Mr. Ruddell justifiably relied upon Defendant's false representations to his financial detriment as Defendant, without informing him, increased the credit limit on the account to buy materials for jobs other than Mr. Ruddell's, and then failed to make the required payments.

COUNT IV

Civil Penalties
11 U.S.C. § 523(a)(7)

24. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

25. The State intends to bring an UTPA action in the Maine Superior Court against Defendant for his unfair and deceptive trade practices as set forth herein. The relief requested shall include a prayer for the imposition of civil penalties of up to \$10,000 for each adjudged intentional violation.

RELIEF REQUESTED

WHEREFORE, the State prays that this Court:

1. Enter judgment in favor of Plaintiff on Counts I, II and III, and thereby determine that the State's unliquidated claim for restitution, on behalf of the Consumers named herein, is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2).

2. Enter judgment in favor of Plaintiff on Count IV and thereby determine that the State's unliquidated claim for civil penalties against Defendant is excepted from discharge pursuant to 11 U.S.C. § 523(a)(7).

3. Order Defendant to pay the cost of this action; and
4. Grant Plaintiff such other relief as the Court may deem just and proper.

Dated: March 29, 2006

G. STEVEN ROWE
Maine Attorney General

/s/ Linda J. Conti
LINDA J. CONTI
Maine Bar No. 3638
CAROLYN A. SILSBY
Maine Bar No. 3030
Assistant Attorneys General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8800