

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-04-042

STATE OF MAINE and)
SECURITIES ADMINISTRATOR,)
)
Plaintiffs,)
)
v.)
)
WILLIAM A. GOURLEY,)
BARBARA R. GOURLEY, and)
BILL & BARB GOURLEY, INC.)
)
Defendants.)

COMPLAINT

INTRODUCTION

1. The State of Maine and Securities Administrator (collectively, “the State”) bring this action against William A. Gourley, Barbara R. Gourley, and Bill & Barb Gourley, Inc. for violations of the Revised Maine Securities Act, 32 M.R.S.A. §§ 10101-10713 (1999 and Supp. 2003) in that they sold unregistered securities, in violation of 32 M.R.S.A. § 10401 (1999), and committed deceptive and other prohibited acts in connection with the sale of securities, in violation of 32 M.R.S.A. § 10201 (1999).

JURISDICTION

2. This Court has jurisdiction pursuant to 32 M.R.S.A. §§ 10602-10603 (1999 and Supp. 2003).

PARTIES

3. Plaintiff State of Maine is a sovereign state. Plaintiff Securities Administrator is responsible for enforcing the Revised Maine Securities Act. 32 M.R.S.A. § 10102, 10103 (Supp. 2003). Plaintiffs bring this action by and through the Attorney General pursuant to 32 M.R.S.A. §§ 10602(1)(D) (1999) and 10603 (1999) and

the powers vested in him by 5 M.R.S.A. § 191 (2002) and the common law as the State's chief law enforcement officer.

4. Defendants William A. Gourley and Barbara R. Gourley (collectively, "the Gourleys") are adult individuals who are married to each other and reside in Dexter Maine.

5. Defendant Bill & Barb Gourley, Inc. ("B&BG") is a Maine corporation with a principal place of business in Dexter, Maine. At all times relevant hereto, the Gourleys were the sole owners and officers of B&BG, through which they engaged in the business of real estate development. With respect to all conduct set forth in this Complaint, the Gourleys acted as officers, employees, and agents of B&BG.

FACTUAL BACKGROUND

6. From approximately 1992 to July 2003, in order to raise capital for their business, Defendants issued, offered and sold securities in the form of notes to dozens of investors. Although some of the investors were located in other states, Defendants made all of these offers and sales from Maine.

7. At no time were the notes registered as securities with the Maine Office of Securities.

8. Each note was secured by a mortgage deed on the Gourleys' personal residence and guaranteed by B&BG.

9. Defendants issued, offered and sold these notes at face values ranging from \$2,500 to \$100,000. The term of each note varied from one to five years, with the interest rate varying from 12% to 20%, depending on the length of the term. The notes generally provided that Defendants would make quarterly interest payments.

10. Defendants deliberately chose a range of interest rates higher than those offered by financial institutions in order to attract investors.

11. In newspaper advertisements for the notes, Defendants solicited investors by characterizing the notes as guaranteed, presenting less risk than the stock market, and providing a greater rate of return than bank accounts and certificates of deposit. These advertisements ran in the Eastern Gazette and the Dexter Gazette in the Spring and Fall of each year from approximately 1996 to the Spring of 2003. Furthermore, William A. Gourley's business card also solicited people to buy notes by stating that the investments were "secured by local real estate."

12. When discussing the notes with prospective investors, William A. Gourley regularly stated that the business was doing well and was a profitable enterprise. Unless specifically requested by a prospective investor, which occurred rarely, Defendants did not disclose the number of existing investors, the amount owed to those investors, the value of the real estate that secured the investments, or the value of Defendants' corporate or personal assets.

13. Defendants have issued and sold approximately 340 notes to approximately 130 different investors, raising a total of approximately \$4,574,000. Currently, over 200 notes issued to over 100 different investors remain outstanding, for a total debt to investors of approximately \$4,387,000.

14. The Gourleys' personal residence, which purportedly secured all of these notes, is valued at less than \$200,000.

15. For several years, Defendants have not had sufficient assets to make the required payments to existing investors without issuing and selling an increasing number of new notes.

STATUTORY BACKGROUND

16. The Revised Maine Securities Act (“the Act”) regulates persons who offer, sell, or purchase securities in the State of Maine.

17. The Act prohibits the offer or sale of securities that are not registered in Maine unless the security or the transaction is exempt from registration. 32 M.R.S.A. § 10401 (1999).

18. Under the Act, a person shall not, in connection with the offer, sale, or purchase of any security, directly or indirectly: (a) employ any device, scheme, or artifice to defraud; (b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or (c) engage in any act, practice, or course of business that operates as a fraud or deceit upon any person. 32 M.R.S.A. § 10201 (1999).

19. The Securities Administrator may refer violations of the Act to the Attorney General for enforcement, and the Attorney General may initiate a civil action in the Superior Court. 32 M.R.S.A. § 10602(1)(D) (1999).

20. In an enforcement action under the Act, the Court may grant a variety of legal and equitable remedies, including injunctions, civil penalties, restitution to investors and disgorgement. 32 M.R.S.A. § 10603 (1999).

COUNT I

(Sale of Unregistered Securities)

21. The State repeats and realleges paragraphs 1 through 20 as if set forth fully herein.

22. Each time they offered for sale or sold a note, Defendants committed a separate violation of the prohibition in 32 M.R.S.A. § 10401 against the sale of unregistered securities.

COUNT II

(Securities Fraud)

23. The State repeats and realleges paragraphs 1 through 22 as if set forth fully herein.

24. Defendants made untrue statements of material fact by representing to prospective investors that their business was a profitable enterprise and that the notes presented less risk than the stock market.

25. Defendants failed to state material facts necessary to make their statements to prospective investors not misleading by not telling the prospective investors the number of existing investors, the amount owed to those investors, the value of the real estate that secured the investments, and the value of existing corporate or personal assets.

26. Defendants engaged in acts, practices, and a course of business that operated as a fraud and deceit upon their investors by making the untrue and misleading statements and omissions described above, and by operating a business that necessarily relied on a constant influx of new investors in order to make payments to existing investors.

27. Each time they made misleading statements or omissions and each time they engaged in acts, practices, or course of business that operated as a fraud or deceit upon their investors, Defendants committed a separate violation of 32 M.R.S.A. § 10201.

REQUEST FOR RELIEF

WHEREFORE, the State requests that this Honorable Court grant the following relief:

1. If necessary, a preliminary injunction freezing Defendants' assets and restraining Defendants from removing, transferring, alienating, pledging or otherwise impairing any assets.
2. A permanent injunction prohibiting Defendants from offering or selling securities in Maine;
3. An order requiring Defendants to make full restitution to each of the investors by returning all monies to them plus interest;
4. An order requiring Defendants to disgorge all funds received in connection with the securities transactions described above;
5. A civil penalty of \$10,000 against each Defendant for each violation of the Act;
6. If necessary, an order appointing a receiver or conservator for Defendants or Defendants' assets; and
7. Such other and further relief as this Court deems appropriate.

DATED: February 23, 2004

Respectfully submitted,

G. STEVEN ROWE
Attorney General

s/Michael J. Colleran
MICHAEL J. COLLERAN
Assistant Attorney General
6 State House Station
Augusta, ME 04333-0006
Tel. (207) 626-8800
Bar. No. 9247
Attorney for Plaintiffs