

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS, *ex rel.*
LESLIE RUTLEDGE, ATTORNEY GENERAL

PLAINTIFF

v. CASE NO. _____

DAVID TYLER d/b/a TYLER POOLS &
CONSTRUCTION

DEFENDANT

COMPLAINT

The State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General (“the State”), for its Complaint against David Tyler doing business as Tyler Pools & Construction (“TPC” or “Defendant”), states:

I. INTRODUCTION

1. This is a consumer protection action brought to redress and restrain violations of the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. § 4-88-101 *et al.*

2. Defendant operates a business that purports to build residential pools. Defendant owns, controls, and operates TPC as the sole proprietor. Defendant advertised that he could install in-ground pools. However, after accepting consumers’ money for the construction of in-ground swimming pools, retainer walls, and other related goods and services, Defendant failed to complete promised services or provide purchased goods. Defendant has a history of misrepresenting himself to consumers

including material falsehoods about being licensed and insured and being a member of the Better Business Bureau. Defendant's history of incomplete jobs and poor workmanship have cost consumers thousands of dollars. When consumers complained to Defendant, either he or his business associates responded with threats of physical violence.

3. The State seeks an injunction, an order imposing civil penalties, restitution for affected consumers, and other relief against Defendant.

II. PARTIES

4. Plaintiff is the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General. Attorney General Rutledge is the chief legal officer of the State. Pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113, the State may seek civil enforcement of the ADTPA.

5. Defendant is David Tyler, an Arkansas resident at all times relevant to this Complaint and the owner and sole proprietor of TPC. TPC is not registered to do business with the Arkansas Secretary of State. TPC lists its address on invoices as 18769 Clear Water Road, Fayetteville, AR 72704.

III. JURISDICTION

6. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104 and the common law of the State of Arkansas. This Court has personal jurisdiction pursuant to Ark. Code Ann. § 16-4-101.

7. Venue is proper pursuant to Ark. Code Ann. §§ 4-88-104, 4-88-112, and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

8. The installation of a swimming pool is a significant financial undertaking for a homeowner, oftentimes costing thousands of dollars.

9. Consumer advocates advise that consumers should use licensed contractors that are insured to lessen the risk of loss in large home improvement projects.¹

10. In Arkansas, a person who constructs or renovates swimming pools must be a licensed home improvement or residential building contractor by the Arkansas Contractors Licensing Board (“ACLB”).²

11. Since at least 2020, Defendant has owned and operated TPC, a home improvement contract business that purportedly specializes in swimming pool installations and related services at consumers’ residences.

12. TPC is currently located in Fayetteville and serves the Northwest Arkansas area.

13. According to reports from consumers, Defendant contracted with consumers to construct pools typically costing over \$25,000.00.

¹ See “How to Avoid a Home Improvement Scam,” <https://consumer.ftc.gov/articles/how-avoid-home-improvement-scam>. (April 12, 2022).

² According to Ark. Code Ann. § 17-25-502(1), a “home improvement contractor” means “any person . . . [who] undertakes . . . the reconstruction, alteration, renovation, repair, modification, improvement, removal, demolition, or addition to any preexisting single family residence or the property and structures appurtenant thereto[.]”

14. During 2020 and 2021, the Arkansas Attorney General's Office and the ACLB received complaints against Defendant from Arkansas residents primarily located in Rogers, Siloam Springs, Springdale, and Tontitown. The complaints submitted to the Attorney General's Office are attached as Exhibits A through C.³ Consumers submitted substantially similar complaints to the ACLB, which are attached as Exhibits D through E.⁴

15. In the complaints, consumers described similar accounts which allege that, from the beginning of their interactions with Defendant, he represented that he had a valid contractor's license, which induced them to hire him to build swimming pools at their homes.⁵

16. Defendant never held a license issued by the ACLB to operate TPC.⁶ In fact, the ACLB unanimously determined that Defendant failed to comply with the provisions of Ark. Code Ann. § 17-25-505 when he continued to perform work for individuals as a residential contractor without the requisite license.⁷ As a result of Defendant's unauthorized work, the ACLB ordered that Defendant pay a civil penalty

³ See Exhibit A, ARAG Consumer Complaint by Jonathan Huckeby; Exhibit B, ARAG Consumer Complaint by William Winn; and Exhibit C, ARAG Consumer Complaint by Brian Dizney.

⁴ See Exhibit D, ACLB Kody White Complaint; and Exhibit E, ACLB Sherry Rodriguez Complaint.

⁵ *Id.*

⁶ Exhibit F, Arkansas Residential Contractors Committee Finding of Fact, Conclusions of Law and Order, Case ID # 48833.

⁷ *Id.*

and refrain from bidding on or performing work as a residential contractor until being licensed with the Residential Contractors Committee.⁸

17. On October 6, 2020, the ACLB issued Defendant a license to operate another pool installation company called Custom Care Pools (“CCP”). However, due to consumer complaints, the ACLB revoked Defendant’s CCP license for misconduct on May 19, 2021.⁹

18. After the revocation of Defendant’s license, he continued to operate TPC.

19. Defendant printed the revoked CCP license number on the TPC contracts, which he then presented to consumers to make it appear that TPC was licensed when, in actuality, it was not.

20. Consumers reported that Defendant also told them that he was insured and bonded, but Defendant never provided such proof.¹⁰

21. Additionally, consumers consistently complained that Defendant never obtained the required permits for the construction projects, despite his promises that he would.¹¹

22. Consumers reported that Defendant would begin working on the installations, but after receiving payment from consumers, he stopped showing up to

⁸ *Id.*

⁹ Exhibit G, Arkansas Residential Contractors Committee Finding of Fact, Conclusions of Law and Order, Case ID # 48139.

¹⁰ *See* Exhibits B and E.

¹¹ *Id.*

continue work on the project. When questioned by the homeowners, he typically made excuses for the reasons he had stopped work. He would promise to return to finish the project but never did.

23. In some cases, Defendant excavated the dirt necessary to install an in-ground pool but would stop working on the project, thereby leaving a large hole in the homeowners' backyards.¹²

24. To date, Defendant has not completed any of the aforementioned projects.

25. Defendant knew that his conduct, specifically the failure to install in-ground pools after excavating the dirt, would harm consumers.

26. In all cases, the homeowners would not have entered into any agreements with Defendant had they known of the systemic practices of delay and excuses.

27. Defendant has refused to provide any refunds to any of his customers, despite multiple requests to do so.

28. As a result of Defendant's conduct and misrepresentations, consumers suffered loss and harm at Defendant's hands. In total, these consumers lost \$148,435.00.¹³

¹² See Exhibits F and G.

¹³ See Exhibits A through E.

29. Upon information and belief, other persons who have not yet been named as Defendants in this Complaint may have participated in the activities described herein, and additional violations, which are not presently known to the State, may be discovered and added to this Complaint.

30. Discovery is ongoing, and the State reserves the right to amend this Complaint and to plead further.

V. VIOLATIONS OF LAW

31. The ADTPA sets forth the State's statutory program prohibiting deceptive and unconscionable trade practices.¹⁴

32. At all times relevant herein, Defendant was a "person" who engaged in the practices alleged herein which constitute the sale of "goods" or "services."¹⁵

33. Additionally, Defendant's practices constitute business, commerce, or trade.¹⁶

34. The ADTPA prohibits a person from "knowingly mak[ing] a false representation as to the characteristics . . . uses, benefits, alterations, source . . . approval, or certification of goods or services"¹⁷

35. Defendant violated the ADTPA when he knowingly misrepresented that he:

¹⁴ Ark. Code Ann. §§ 4-88-101, *et seq.*

¹⁵ Ark. Code Ann. § 4-88-102.

¹⁶ Ark. Code Ann. § 4-88-107.

¹⁷ Ark. Code Ann. § 4-88-107(a)(1).

- a. Told consumers that he possessed the requisite licenses and permits to construct pools;
- b. Told consumers that he was licensed and bonded so consumers would hire him; and
- c. Informed consumers that he would complete projects in a timely manner.

36. The ADTPA prohibits the use of “concealment, suppression, or omission of any material fact with the intent that others rely upon the concealment, suppression or omission” while selling any goods or services.¹⁸

37. Defendant violated the ADTPA when he concealed and suppressed material facts such as:

- a. Failing to disclose complaints lodged against him with the Arkansas Contractor’s Licensing Board; and
- b. Concealing the fact that the Arkansas Contractor’s Licensing Board suspended his contractor’s license.

38. The ADTPA prohibits a person from engaging in an “unconscionable, false, or deceptive act or practice in business, commerce, or trade.”¹⁹ An act is unconscionable “if it affronts the sense of justice, decency, and reasonableness.”²⁰

¹⁸ Ark. Code Ann. § 4-88-108(2).

¹⁹ Ark. Code Ann. § 4-88-107(a)(10).

²⁰ See *GulfCo of Louisiana, Inc. v. Brantley*, 2013 Ark. 367, 430 S.W.3d 7 (2013).

39. Defendant engaged in unconscionable, false, and deceptive acts or practices when he:

- a. Required consumers to pay upfront costs and fees to start construction but failed to complete projects; and
- b. Refused to offer or pay refunds when he failed to complete projects.

VI. PRAYER FOR RELIEF

40. The Attorney General may bring a civil action to seek to prevent persons from engaging in the use or employment of prohibited practices.²¹

41. Likewise, the Attorney General may bring a civil action to seek to restore to any purchaser who has suffered any ascertainable loss by reason of the use or employment of the prohibited practices any moneys or real or personal property which may have been acquired by means of any practices declared to be unlawful, together with other damages sustained.²²

42. The Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice.²³

43. Any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to \$10,000.00 per violation.²⁴

²¹ Ark. Code Ann. § 4-88-113(a)(1).

²² Ark. Code Ann. § 4-88-113(a)(2)(A).

²³ Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1).

²⁴ Ark. Code Ann. § 4-88-113(a)(3).

44. In addition, any person who violates the provisions of the ADTPA shall be liable to the Office of the Attorney General for all costs and fees, including but not limited to, expert witness fees and attorney's fees, incurred by the Office of the Attorney General in the prosecution of such actions.²⁵

45. A "person" is an individual, organization, group, association, partnership, corporation, or any combination thereof.²⁶

46. Defendant is a "person" who has engaged in an unconscionable, false, or deceptive act or practice in business, commerce, or trade.

47. The State will exercise its right to a trial by jury.

WHEREFORE, the above premises considered, the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General, respectfully requests that this Court:

- a. Issue such orders, pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), as may be necessary to prevent the use or employment by the Defendant of the practices described herein which are violations of the ADTPA;
- b. Issue an injunction against Defendant from performing any pool construction work as a general contractor, subcontractor, or handyman that would require him to obtain either a license from the ACLB or a permit from a city or county;

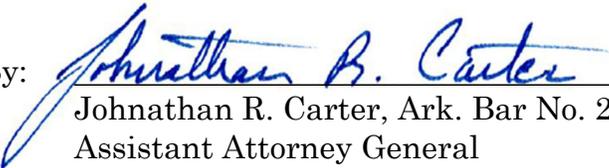
²⁵ Ark. Code Ann. § 4-88-113(e).

²⁶ Ark. Code Ann. § 4-88-102(5).

- c. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(a)(2)(A), requiring Defendant to pay consumer restitution to those Arkansas consumers affected by the activities outlined herein; in addition, or in the alternative, enter an order requiring Defendant to remit to affected consumers all sums obtained from Arkansas consumers by methods prohibited by Arkansas law;
- d. Impose civil penalties pursuant to Ark. Code Ann. § 4-88-113(b), to be paid to the State by the Defendant in the amount of \$10,000.00 per each violation of the ADTPA proved at a trial of this matter;
- e. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(e), requiring Defendant to pay the State's costs in this investigation and litigation, including, but not limited to, attorneys' fees and costs; and
- f. For all other just and proper relief to which the State may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE
ATTORNEY GENERAL

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