

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MARGARET LOWMILLER,	:	NO. 08 – 02,173
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
SUNTEQ, LTD., ENVIROTEQ and	:	
G. DANIEL WOODRING,	:	
Defendants	:	Non-jury Trial

OPINION AND VERDICT

Before the Court are Plaintiff’s claims for breach of contract and violation of the Unfair Trade Practices and Consumer Protection Law, related to the installation by Defendants of a geothermal heating and cooling system at Plaintiff’s home. A non-jury trial was held on November 19, 2010, and the Court now enters the following:

FINDINGS OF FACT

1. In 2003, Plaintiff and her husband contacted Defendants and requested information about their geothermal heating and cooling systems, as they were planning to add on to their home and wished to replace their heating and cooling systems.
2. Defendants provided the information requested and based on that information, including the five-year warranty on the entire system, as well as the “4-way” warranty, which guaranteed comfort, performance, components and labor, Plaintiff requested that Defendants design and install a system at her home.
3. Plaintiff’s choice of Defendants’ product was also based on representations that the system was “beyond state-of-the-art” and that it would be more efficient and cost-effective than others available.
4. Plaintiff relied on Defendants’ recommendation regarding the size of system to be installed.
5. The parties entered a written contract for the purchase and installation of the system on September 13, 2003.

6. Defendants installed a geothermal heating and cooling system at Plaintiff's home in May 2004.
7. Plaintiff paid Defendants a total of \$16,692.80 for the system.
8. The system installed by Defendants never provided sufficient heat for Plaintiff to be comfortable, and Plaintiff contacted Defendants numerous times and complained that the system "must not be working".
9. Defendants responded to these complaints by inspecting the system and, occasionally, making repairs or adjustments. In March 2006, Defendant Woodring told Plaintiff there was nothing more he could do for her. Plaintiff did not contact Defendants after that date.
10. In 2008, Plaintiff had the system disconnected and installed two heat pumps in its place.
11. Plaintiff believes her electric bills while using the geothermal system were more than they should have been had the system worked properly.

DISCUSSION

Although Plaintiff presented the testimony of an expert witness to speculate on the reasons the geothermal system did not properly heat and cool her home, the Court is not called upon to determine why the system did not work. Plaintiff's complaint alleges the system did not work properly, as warranted, and Plaintiff has produced sufficient evidence to support that allegation. Defendants warranted that their geothermal system would provide comfort, and it did not. Defendants warranted that if the system did not provide comfort they would modify it so it would, but they did not. Thus, Defendants breached the contract and Plaintiff is entitled to actual damages. Since Plaintiff had to replace the system, the Court believes Defendants should refund all monies paid by Plaintiff, and Plaintiff should return to Defendants the physical, above-ground equipment.

Plaintiff's claim for excess electric bills is too speculative, however, for the Court to make an award. While the Court can assume that the use of a back-up heat source when the geothermal system did not provide enough heat would cause an increase in electricity use, there are too many variables and the Court would only be guessing as to the actual increase. This claim will, therefore, be denied.

With respect to the claim that Defendants violated the Unfair Trade Practices and Consumer Protection Law, Plaintiff specifically alleges that Defendants supplied a system that “did not meet the representations” they made, provided “written promotional materials that led the Plaintiff to believe that a geothermal heat pump system that would properly heat the property would be provided”, provided “verbal and written representations that a state-of-the-art geothermal heat pump system would be provided”, made “representations that the Defendants’ installation of a geothermal heat pump system at the property would greatly reduce the Plaintiff’s electric costs”, provided “a geothermal heat pump system that was not adequately designed for the property”, and failed “to properly install a geothermal heat pump system at the property”. In her trial memorandum, Plaintiff alleges violations of five sub-sections of the UTPCPL. Based on the evidence, the Court finds a violation of sub-sections (vii) and (xiv) of section 201-2(4), which define “unfair or deceptive acts or practices” as follows:

- (vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- ...
- (xiv) Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made;

73 P.S. Sections 201-2(4)(vii) and (xiv). The Court finds sub-section (vii) applicable because Defendants represented that their systems were “beyond state-of-the-art” and more efficient and cost-effective than others available and, while those terms are not capable of precise definition, the Court assumes they do mean systems that will provide air heated to more than 50 degrees. Sub-section (xiv) is applicable because Defendants guaranteed comfort but did not provide it, and did not modify the system when it became apparent that it was not functioning as guaranteed.

The UTPCPL allows the Court to award actual damages and, in its discretion, up to three times actual damages, costs and reasonable attorneys fees. 73 P.S. Section 201-9.2(a). In this case, the Court believes an additional \$8,000 is appropriate.

CONCLUSIONS OF LAW

1. Defendants breached their contract with Plaintiff.
2. Defendants violated the Unfair Trade Practices and Consumer Protection Law.

VERDICT

AND NOW, this 29th day of November 2010, for the foregoing reasons, the Court finds in favor of Plaintiff and against Defendants. Within sixty (60) days of this date, Defendants shall pay to Plaintiff the sum of \$24,692.80. Plaintiff shall thereafter make arrangements with Defendants for the return to Defendants of all above-ground equipment provided by Defendants as part of the geothermal system they installed at Plaintiff's property.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Ryan Tira, Esq.
James Bryant, Esq., 107 East Main Street, Millheim, PA 16854
Gary Weber, Esq.
Hon. Dudley Anderson