

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

NATHAN HOLMES  
4528 Ravine Drive  
Westerville, OH 43081

Plaintiff,

vs.

CUSTOM TOUCH LLC.  
3130 Valleycreek Drive  
Columbus, Ohio 43223

and

ANTHONY OTWORTH  
3130 Valleycreek Drive  
Columbus, Ohio 43223

Defendants.

CASE NO.:

JUDGE:

**COMPLAINT**

**Jury Demand Endorsed Hereon**

Now comes Plaintiff Nathan Holmes (hereinafter “Plaintiff”), by and through undersigned counsel, and for its Complaint against Defendants Custom Touch LLC. (“Custom Touch”) and Anthony Otworth (“Otworth”) states and avers as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff is an individual residing in Franklin County, Ohio.
2. Defendant Custom Touch is an Ohio limited liability company with its principal place of business in Franklin County, Ohio.
3. Defendant Otworth is an individual residing in Franklin County, Ohio.
4. Jurisdiction in this Court is proper because the matter in controversy exceeds the sum of \$25,000.00, exclusive of interest and costs.
5. Venue is proper as all actions for which relief is sought occurred in Franklin County, Ohio.

## **FACTUAL ALLEGATIONS**

6. Plaintiff incorporates all preceding paragraphs as if fully rewritten herein.
7. Plaintiff owns the property located at 4528 Ravine Drive, Westerville OH 43081 (hereafter the “Property”).
8. On March 5, 202, Plaintiff contracted with Defendant to build a garage with a living space above the garage on the Property for \$195,000.00 (the “Project”). A true and accurate copy of the Agreement is attached hereto as Exhibit “A.”
9. Pursuant to the Agreement, the Project included surveying and grading of the Project area, soil testing and septic system designed and installed, supplying gas, water, and electric to the new construction, pouring footers and concrete slab, approach, and pad beside the building, construction of the garage to the plan specifications, and landscape the area with mulch.
10. Defendants required all payments be made to Defendant Otworth directly.
11. On March 12, 2023, Plaintiff contracted with Defendant to build an overhang and install a man door on the existing garage for an additional cost of \$2,875.00 to the Project. A true and accurate copy of this contract is attached hereto as Exhibit B.
12. On March 12, 2023 Defendant Otworth was paid \$50,000.00 to commence the Project, and Defendant thereafter began work.
13. On August 28, 2023, Defendant Otworth was paid \$75,000.00 to allow work on the Project to continue.
14. On December 15, 2023, Defendant Otworth was paid \$25,000.00 to allow work on the Project to continue.
15. On March 19, 2024, Defendant Otworth was paid \$20,000.00 to allow work on the Project to continue.

16. On May 6, 2024, Defendant Otworth was paid \$10,000.00 to allow work on the Project to continue.
17. On June 9, 2024, Defendant Otworth was paid \$10,000.00 to allow work on the Project to continue.
18. Despite being paid \$190,000.00 for the Project as set forth above, Defendants informed Plaintiff there were no funds left to complete the Project, and walked off the project, despite it being substantially incomplete.
19. Defendants furnished receipts to Plaintiff purporting to show materials purchased for the Project; in fact, many of the items purchased were not for the Project at Plaintiff's Property.
20. On or about September 16, 2024, Defendants walked off the Project, and have not returned to the Property since that time.
21. Plaintiff has received estimates from another contractor to complete the Project. The estimated cost to complete the work that was to be done by Defendants is \$168,149.25. A true and accurate copy of the estimate to complete the Project is attached hereto as Exhibit C.
22. Defendants failed to perform the work specified in the Agreement.
23. At all relevant times, Defendant Otworth has exerted control over Custom Touch so complete that Custom Touch has no separate mind, will, or existence of its own.
24. Otworth has exercised control over Custom Touch in such a manner as to commit unlawful acts, including fraud, illegal and unlawful acts as set forth herein.
25. Plaintiff has sustained injury or unjust loss as a result of Otworth's control and wrongdoing, and hereby seeks to pierce the corporate veil to hold Otworth personally liable for the injuries and damages as set forth below.

26. Defendant Otworth has previously violated the Consumer Sales Practices Act and Home Solicitation Sales Act, and was prosecuted for same in the matter of *State of Ohio v. Anthony Otworth*, Franklin County Common Pleas Case No. 10 CV 006124.

27. In that prior litigation, Defendant Otworth entered into a Consent Judgment Entry and Order which included findings that Defendant Otworth violated the Consumer Sales Practices Act and Home Solicitation Sales Act by accepting payment for home improvement work and then failing to complete the projects, failed to complete the projects in a workmanlike manner, and failed to complete projects within a specified time, among other violations.

28. Pursuant to the August 12, 2012 Consent Judgment Entry and Order in Case No. 10 CV 006124, Defendant Otworth was permanently enjoined from engaging in acts or practices in violation of the Consumer Sales Practices Act or Home Solicitation Sales Act.

29. Defendant Otworth's conduct in the instant matter is a violation of that Consent Judgment Entry and Order.

### **COUNT I – BREACH OF CONTRACT**

30. Plaintiff incorporates the allegations in the preceding paragraphs as if fully rewritten herein.

31. Plaintiff and Defendants entered into the Agreement on March 12, 2023.

32. Plaintiff performed pursuant to the terms of the contract and made timely payments to Defendants.

33. Defendants failed to perform the Project as set forth in the Agreement.

34. Defendants breached the contract.

35. As a result of Defendants' breach, Plaintiff suffered damages in an amount to be determined at trial.

## **COUNT II – UNJUST ENRICHMENT**

36. Plaintiff incorporates the allegations in the preceding paragraphs as if fully rewritten herein.

37. Plaintiff provided a benefit to Defendants and paid for Defendants' services to complete the Project.

38. Defendants retained the benefits of Plaintiff's payment without rendering the services promised.

39. It would be unjust for Defendants to retain the benefit of Plaintiff's payment without rendering the services.

40. As a direct result of Defendant's conduct, Defendants were unjustly enriched and Plaintiff suffered actual damages in an amount to be determined at trial.

## **COUNT III – BREACH OF IMPLIED/EXPRESS WARRANTIES**

41. Plaintiff incorporates the allegations in the preceding paragraphs as if fully rewritten herein.

42. Pursuant to the Agreement, Defendants expressly and impliedly warranted its work against all deficiencies, defects, or faulty workmanship.

43. Defendants' work was defective, faulty and/or deficient, and therefore in breach of its express and implied contractual warranty obligations.

44. As a result of Defendants' defective, faulty and/or deficient work, Plaintiff was and will be required to retain other contractors to complete the Project, at significant additional expense.

45. Defendants are therefore liable for the damages caused as a direct and proximate result of their breach of the express or implied contractual warranty obligations, including but not limited to the cost to repair and replace the defective work.

#### **COUNT IV – NEGLIGENCE**

46. Plaintiff incorporates the allegations in the preceding paragraphs as if fully rewritten herein.

47. Defendants owed Plaintiff a duty to perform the Project in a workmanlike manner.

48. Defendants' work on the Project was defective, faulty and/or deficient.

49. Defendants breached his duty to perform work in a workmanlike manner, which proximately caused Plaintiff to sustain damages.

50. Defendants are therefore liable for the damages caused as a direct and proximate result of their negligent breach duties owed to Plaintiff, including but not limited to the cost to repair and replace the defective work and damaged building material.

#### **COUNT V – FRAUD AND/OR INTENTIONAL MISREPRESENTATION**

51. Plaintiff incorporates the allegations in the preceding paragraphs as if fully rewritten herein.

52. Defendants represented to Plaintiff that all work would be completed in a workmanlike manner and Plaintiff relied on this representation to his detriment.

53. Defendants represented and charged Plaintiff for materials that were not used for Plaintiff's Project.

54. Defendants collected proceeds totaling \$190,000.00 for work on the Project, then failed to perform the work.

55. Defendants represented to Plaintiff that the work would be completed timely.

56. Defendant made material misrepresentations and omissions with the intent to deceive Plaintiff and induce payment for the Project, and Plaintiff reasonably relied on those misrepresentations to Plaintiff's detriment.

57. Plaintiff has been damaged by the intentional misrepresentations and omissions of Defendant.

58. It was reasonable for Plaintiff to rely on Defendant's representations.

59. The intentional misrepresentations and omissions Defendant made were malicious and in conscious disregard of the contractual and statutory rights of Plaintiff.

60. As a direct and proximate cause of Defendant's fraudulent material misrepresentations, Plaintiff suffered actual damages and is entitled to recover compensatory, consequential, and incidental damages in an amount to be determined at trial.

**COUNT VI - VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT**  
**(R.C. § 1345.01 *et seq.*)**

61. Plaintiff incorporates the foregoing allegations as if fully rewritten herein.

62. Plaintiff engaged in a consumer transaction with Defendant for repairs and improvements to his Property and is a consumer as defined in R.C. § 1345.01(D).

63. Defendants engaged Plaintiff in a consumer transaction to make repairs and improvements to his Property and are a supplier as defined in R.C. § 1345.01(C).

64. Defendants contracted to provide home improvement services to Plaintiff as set forth in the Agreement.

65. Defendants accepted substantial payments from Plaintiff for the purchase of goods and services, and then failed to deliver the goods and services for which Plaintiff paid, and failed to return the payments after refusing to complete the Project.

66. Defendants failed to complete the Project as required by the Agreement.

67. Defendants have performed shoddy and unworkmanlike services in connection with the Project, and failed to correct such work.

68. Defendants failure to perform the Project as set forth in the Agreement has resulted in great harm to Plaintiff, and will require Plaintiff to pay significant additional money to have Defendants' work corrected and completed.

69. Defendants have failed to honor implied warranties of merchantability.

70. Defendants' actions were unconscionable and misleading to Plaintiff's detriment.

71. As a direct and proximate cause of Defendant's actions, Plaintiff suffered damages, including but not limited to compensatory damages, an award of treble damages, attorney fees and costs.

WHEREFORE, Plaintiff demands judgement in his favor against Defendants as follows:

- a. Compensatory damages in an amount in excess of \$25,000.00, the exact amount to be proven at trial;
- b. An award of Plaintiff's costs incurred relating to this action;
- c. An award of treble damages for violation of the Ohio Consumer Sales Practices Act;
- d. Piercing the corporate veil to hold Defendant Otworth personally liable for all of the damages sought;
- e. Punitive damages and reasonable attorney's fees;
- f. And for such other relief as may be just, necessary and proper.

Respectfully submitted,  
Kemp, Schaeffer & Rowe Co., LPA

*/s/ Michael P. Ferguson*

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*Attorney for Plaintiff*



**JURY DEMAND**

Now comes Plaintiff, by and through counsel, and hereby demands that a jury hear the  
above case.

*/S/ Michael P. Ferguson*

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Michael P. Ferguson (0082851)

*Attorney for Plaintiff*