

STATE OF VERMONT

**SUPERIOR COURT
WASHINGTON UNIT**

**CIVIL DIVISION
DOCKET NO. _____**

STATE OF VERMONT,)
)
 Plaintiff,)
)
 v.)
)
 CODLING BROTHERS LOGGING,)
 and DAVID CODLING, JOE)
 CODLING, and PAUL CODLING,)
 each d/b/a CODLING BROTHERS)
 LOGGING,)
)
 Defendants.)

COMPLAINT

The Vermont Attorney General brings this suit against Defendants for violations of the Vermont Consumer Protection Act, 9 V.S.A. § 2453, which prohibits unfair and deceptive acts and practices. Defendants have conducted fraudulent business practices in logging in the State of Vermont.

Defendants' acts constitute unfair and deceptive consumer fraud in violation of the Vermont Consumer Protection Act. For such violations, the Attorney General seeks injunctive relief, damages, civil penalties, disgorgement, fees and costs, and other relief deemed appropriate by the court.

Parties, Jurisdiction, and Venue

1. The Vermont Attorney General is authorized under the Vermont Consumer Protection Act, 9 V.S.A. § 2458, to sue to enforce the Act's prohibitions on unfair and deceptive acts and practices in commerce.
2. The Vermont Attorney General also has the right to appear in any civil action in which the State has an interest. 3 V.S.A. § 157. The Attorney General has an interest in ensuring that entities that do business in Vermont do so in a lawful manner.
3. Pursuant to 9 V.S.A. § 2460, the Vermont Attorney General conducted an investigation prior to filing this complaint, including the issuance of Civil Investigative Demands, and the review of responsive documents and written responses.
4. Defendant Codling Brothers Logging is a general partnership with its principal place of business in Washington County, Vermont.
5. Defendant David Codling is an individual residing in Washington County, Vermont.
6. Defendant Joe Codling is an individual residing in Washington County, Vermont.
7. Defendant Paul Codling is an individual residing in Washington County, Vermont.

8. Defendants David Codling, Joe Codling, and Paul Codling operate a timber harvesting company in the name of Codling Brothers Logging, located at 1165 Maple Hill Road in Plainfield, Vermont.
9. This Court has personal jurisdiction over Defendants because they reside in and conduct business in Vermont, including in Washington County.
10. Venue in this court is proper because Defendants reside in and do business in Washington County.
11. This action is in the public interest.

Statutory Background

12. The Vermont Consumer Protection Act prohibits “unfair or deceptive acts or practices in commerce.” 9 V.S.A. § 2453(a).
13. Violations of the Consumer Protection Act are subject to civil penalties of up to \$10,000 per violation. 9 V.S.A. § 2458(b)(1). Each day that a violation continues is a separate violation.
14. In interpreting the Act, Vermont courts are “guided by the construction of similar terms contained in . . . the Federal Trade Commission Act and the courts of the United States.” 9 V.S.A. § 2453(b).

Factual Background

Pattern and Practice

15. Defendants provide logging services to individual landowners in Vermont.

16. Between February 2018 and February 2020, Defendants made unsolicited contact with at least five Vermont landowners to offer logging services.
17. Defendants solicited these landowners at their homes, promising compensation for timber harvested from their land, to be paid in regular installments by check or cash.
18. Defendants first reached verbal agreements with the landowners about the limitations for logging on their land.
19. Defendants misled the landowners about the nature and amount of timber to be harvested from their land. Defendants then provided the landowners with form contracts that did not reflect the verbal agreements reached with landowners.
20. Defendants' form contracts included payment to the landowners for all logs cut at rates defined in the contract for different types of timber.
21. Defendants' form contracts included that due care would be used in logging, that the log landing would be cleaned and left in a condition satisfactory to the owners, and that all cut trees and brush would be dragged out of the woods. Defendants' form contracts also failed to disclose to the landowners their three-day right to cancel Defendants' home solicitation sale.
22. Defendants cut more trees than approved by the landowners.

23. Defendants failed to provide timely and accurate records to the landowners about the amount of timber harvested.
24. Defendants underpaid or failed to pay the landowners their share of profit for the logs taken from their land.
25. Defendants avoided contact with the landowners inquiring about missing payments or unauthorized cutting.
26. Defendants caused significant damage to the landowners' properties.
27. Defendants caused water quality issues on the landowners' properties.
28. The landowners incurred significant costs to remediate Defendants' damage to their properties.

February 2018: Landowner 1

29. Landowner 1 owns a 50-acre parcel of land on High Street in Plainfield, Vermont. Landowner 1 does not reside on this land.
30. Landowner 1's property is enrolled in Vermont's Use Value Appraisal (UVA) program and has a forest management plan, as well as a conservation easement, in place.
31. In late 2017 or early 2018, Defendant David Codling made an unsolicited visit to the property on High Street.
32. Defendants asked permission from Landowner 1's then-spouse to cross the property because it provided best access to an adjoining parcel where Defendants were logging.

33. Defendants offered Landowner 1's spouse tree removal services for dead trees they had noticed on the property.
34. Defendants told Landowner 1's spouse that they would provide compensation from timber sales of any wood taken from the property.
35. Landowner 1's spouse verbally agreed to allow Defendants to use the property as an access to the neighboring parcel.
36. Landowner 1's spouse verbally agreed to allow Defendants to remove fallen trees from the property.
37. In February 2018, Landowner 1 received a call from the Department of Forests, Parks, and Recreation (FPR) Washington County Forester, who had conducted a UVA inspection of Landowner 1's property. The FPR forester said he had observed that a wood chip pile was blocking a stream on the property.
38. Landowner 1 was unaware that his spouse had authorized removal of fallen or dead trees from the land.
39. On or around February 16, 2018, Landowner 1 and two FPR foresters inspected the land.
40. Landowner 1 and the FPR foresters observed cut trees, debris, and wood chip piles blocking a waterway.
41. The FPR foresters estimated Defendants removed three to four truckloads of logs from the property.

42. Landowner 1's spouse had only agreed to Defendants' removal of fallen or dead trees.
43. Defendants did not pay Landowner 1 or Landowner 1's spouse for the lumber removed from the land.
44. Defendants did not remove all cut trees and brush or exercise due care in logging.
45. Landowner 1 received a list of required actions from the FPR foresters to remediate the property in order to remain UVA-compliant.
46. After the inspection, Landowner 1 called Defendant David Codling about the logging and remediation of his land.
47. Defendants promised to remove the wood piles and debris, and to install water bars by February 23, 2018.
48. Defendants did not return to the property to conduct the remediation as agreed.
49. In late Spring 2018, Defendants returned to the property and added the water bars.
50. Defendants never returned to the property to remove the wood chip piles or the debris.
51. In Summer 2018, Landowner 1 rented an excavator and hired a contractor to clear the debris and wood chip piles.
52. Between late 2018 and early 2019, Landowner 1 encountered Defendants socially several times.

53. During each social encounter, Defendants promised Landowner 1 payment of \$1,300.00 for the lumber Defendants took from the property.
54. Defendants failed to provide Landowner 1 any payment for the lumber.
55. Defendants have not contacted the consumer since early 2019.

May 2018: Landowner 2

56. Landowner 2 is two owners of a 6.6-acre parcel of land and residence located on Country Club Road in Plainfield, Vermont.
57. In early May 2018, Defendant David Codling made an unsolicited visit to the property.
58. Defendants offered to remove trees from Landowner 2's property that had fallen during a windstorm.
59. Defendants promised to pay Landowner 2 profits from the resulting lumber sales.
60. Shortly after their first meeting, Defendants returned to the property with a proposed contract.
61. Defendants told Landowner 2 that the estimated value of the pulp and pine timber was between \$3,000 and \$4,000.
62. Defendants told Landowner 2 that they would be paid every two weeks.
63. On May 30, 2018, Landowner 2 signed Defendants' contract.
64. Defendants began logging on the property shortly after signing.

65. By mid-summer, Defendants hadn't paid Landowner 2 for any lumber removed from the property.
66. Defendants created logging debris on the property.
67. In mid-December 2018, Defendants removed their equipment from the area at the request of Landowner 2's neighbor.
68. After Defendants removed their equipment, Landowner 2 called Defendants to inquire about the missing payments.
69. Defendants stated they spent the logging profits on personal matters and could not provide payment to Landowner 2 at that time.
70. In January 2019, Defendants gave Landowner 2 the first and only payment in the amount of \$3,686.46 for lumber removed from the property.
71. Defendants provided some mill slips to Landowner 2, but they declined to provide all of them. Landowner 2 received other mill slips from neighbors indicating that more logs had been removed than what they had been compensated for.
72. Defendants never paid Landowner 2 for all of the lumber removed from Landowner 2's land.
73. Defendants never returned to the property to remove the logging debris.
74. Landowner 2 required use of a tractor to make the property accessible again after Defendants failed to remove the logging debris.

May 2018: Landowner 3

75. Landowner 3 is two former owners of a 7-acre parcel of land and residence located on Country Club Road in Plainfield, Vermont. They no longer reside at the property.
76. In early May 2018, Defendant David Codling made an unsolicited visit to the property to offer logging services.
77. Defendant during this visit mentioned his ongoing work on the adjacent property.
78. Landowner 3 signed Defendants' contract for logging services on May 7, 2018.
79. Defendants told Landowner 3 that they would pay them \$1,000 per truckload of logs removed from the property.
80. Landowner 3 verbally required that only pine be cut, not any hardwood.
81. Defendants conducted their work at the property periodically over several months.
82. Defendants did not pay Landowner 3 for all of the lumber, which included some hardwood, removed from the land.
83. Landowner 3 observed Defendants remove 12 to 14 truckloads of logs from the property.
84. Defendants gave Landowner 3 two checks: one for \$1,716.00 on June 9, 2018, and one for \$1,717.65 on June 24, 2018.

85. Landowner 3 received no further payments from Defendants.
86. Approximately 200 yards from Landowner 3's residence, Defendants set up on Landowner 3's property a single staging area for the logging operations conducted on all three of the neighboring properties on Country Club Road in Plainfield.
87. The landowners of the three neighboring properties discovered that Defendants were inadequately recording which logs came from which property.
88. Landowner 3 without success attempted to contact Defendants on several occasions to inquire about the missing payments.
89. When Landowner 3 asked why payment was missing, Defendants cited unrelated matters.
90. Landowner 3 attempted to sell their property in late 2018 and grew concerned that Defendants' logging debris interfered with their ability to sell the land.
91. In December 2019, Landowner 3 asked Defendants to remove their equipment from the property.
92. Defendants left pulp piles and debris on the property and did not return to remove them.
93. Landowner 3 incurred costs to remediate the damage caused by Defendants.

September 2018: Landowner 4

94. Landowner 4 is the owner of a 7-acre parcel of land and residence on Country Club Road in Plainfield, Vermont.
95. In approximately 2015, Defendant Paul Codling approached Landowner 4 with an unsolicited offer to harvest timber from the property. Landowner 4 did not agree to any logging work with Defendants at that time.
96. In September 2018, Landowner 4 called Defendants to seek logging services after he observed Defendants working on two neighboring properties.
97. Defendants visited the property on September 6, 2018, shortly after Landowner 4's initial call.
98. During Defendants' visit, Landowner 4 and Defendants signed a logging contract.
99. Landowner 4 required and Defendants agreed that only pine, ash, and cherry trees would be cut.
100. Landowner 4 walked his land with a logger working with Defendants to indicate which trees were to be cut and which were to remain untouched.
101. Defendants clear cut Landowner 4's trees, including hardwood and other trees that Landowner 4 had indicated were not to be cut, from five to six acres of the land.

102. By the end of October 2018, Defendants had not compensated Landowner 4 for any of the lumber taken from the property.
103. Landowner 4 discovered that Defendants also failed to compensate his neighbors.
104. Landowner 4 asked Defendants two or three times to take their equipment and vacate the property.
105. Defendant David Codling verbally threatened Landowner 4 during one of their interactions.
106. By December 31, 2018, Defendants finally removed their equipment from Landowner 4's property.
107. Landowner 4 incurred costs to remediate the damage Defendants caused on his land.
108. Defendants did not pay Landowner 4 for the lumber removed from the land.
109. Landowner 4 filed a complaint with the Vermont Consumer Assistance Program (CAP), which offers a voluntary letter mediation process. Defendants refused to pay.
110. Landowner 4 filed a complaint in small claims court and won a judgment against Defendants. Defendants have failed to comply with the judgment.

February 2020: Landowner 5

111. Landowner 5 is two previous owners of a 10-acre parcel of land with a residence located on Hollister Hill Road in Marshfield, Vermont.
Landowner 5 has since sold this property and relocated.
112. On or around February 1, 2020, Defendants made an unsolicited visit to Landowner 5's residence to offer logging services.
113. During that visit, Defendants and Landowner 5 signed a contract for timber removal.
114. Defendants' contract terms differed from the verbal agreement reached with Landowner 5.
115. Landowner 5 told Defendants they did not want them to remove any apple trees.
116. Defendants began working at the property a few days after their initial meeting.
117. Defendants continued logging on the property until the end of April 2020.
118. Defendants abruptly ceased work in April 2020, but left their equipment on the property.
119. Defendants removed approximately two full truckloads of logs and one apple tree from the land.
120. In September 2020, Landowner 5 called Defendants and Defendants promised to pay \$3,500.00 for the removed timber.

121. Defendants also promised Landowner 5 that they would return to the property to clear and remove the logging debris.
122. Defendants did not return to the property in September 2020.
123. On October 7, 2020, Landowner 5 called the Vermont State Police for assistance in removing Defendants' equipment.
124. On October 8, 2020, Defendants retrieved their equipment from the property.
125. That day, Defendants talked harshly and expressed a lot of anger toward Landowner 5. Defendants' large dog growled and barked at Landowner 5.
126. Defendants did not pay Landowner 5 for the lumber removed from the land.
127. Defendants did not clear the debris left on the land.
128. Landowner 5 paid a contractor \$5,000.00 to remediate the damage Defendants caused on their land.

Deceptive Acts and Practices in Violation of 9 V.S.A. § 2453

129. The State realleges and incorporates by reference each of the allegations contained in all paragraphs of this Complaint as though fully alleged herein.
130. Defendants by the above outlined conduct engaged in deceptive acts and practices in commerce, in violation of the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a), by making materially false or

misleading statements regarding Defendants' services to be provided to the consumers.

131. These misrepresentations were likely to mislead consumers, affecting their decisions regarding whether to purchase a product. The meaning ascribed to Defendants' misrepresentations was reasonable.

Unfair Acts and Practices in Violation of 9 V.S.A. § 2453

132. The State realleges and incorporates by reference each of the allegations contained in all paragraphs of this Complaint as though fully alleged herein.
133. These acts and practices are unfair because they offend public policy, are immoral, unethical, oppressive, and unscrupulous, and cause substantial injury to consumers that is not outweighed by any countervailing benefits.

The State of Vermont respectfully requests that the Court enter judgment in its favor and grant the following relief:

1. A judgment determining that Defendants violated the Vermont Consumer Protection Act;
2. A permanent injunction prohibiting Defendants from engaging in unfair and deceptive acts and practices such as those identified herein;
3. An order levying civil penalties against Defendants in accordance with 9 V.S.A. § 2458(b)(1);

4. Restitution to Vermont consumers who were inadequately compensated for Defendants' removal of lumber from their land;
5. Damages for costs of remediation undertaken by consumers as a result of Defendants' activities on their respective properties;
6. An order requiring Defendants to disgorge all profits obtained as a result of their violations of the Vermont Consumer Protection Act;
7. The award of investigative and litigation costs and fees to the State of Vermont; and
8. Such other and further relief as the Court may deem appropriate.

Dated: January 31, 2024.

STATE OF VERMONT

**CHARITY R. CLARK
ATTORNEY GENERAL**

By: /s/ David Golubock
David Golubock
Megan R.H. Hereth
Assistant Attorneys General
109 State Street
Montpelier, Vermont 05609
david.golubock@vermont.gov
megan.hereth@vermont.gov
(802) 828-3186