

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL
DISTRICT

STATE OF NORTH DAKOTA EX REL.
WAYNE STENEHJEM,
ATTORNEY GENERAL,

Plaintiff,

-vs-

CHARLES RICKETTS, DAKOTA
SMARTHOMES, LLC, and doing
business as DAKOTA SOLAR ENERGY,

Defendants.

Civil No. 08-2022-CV-00198

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT**

[¶1] This matter came before the Court on the State's Motion for Summary Judgment filed on March 16, 2022. Defendants were served with the State's Motion for Summary Judgment by mail on March 16, 2022. More than 33 days have passed since Defendants were served with the State's Motion for Summary Judgment, and Defendants are now in default and have failed to dispute the facts and allegations set forth therein.

[¶2] WHEREFORE, the Court, having reviewed the State's Motion for Summary Judgment together with all supporting documents filed therewith and all other documents filed in this matter, and the Court being duly advised on the premises of this action, makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT NOT IN GENUINE ISSUE

[¶3] The State initiated this action by service of the Summons and Complaint on Defendants. Index ## 3, 7.

[¶4] Under N.D.R.Civ.P. 12(a)(1)(A), “a defendant must serve an answer within 21 days after being served with the summons and complaint.” N.D.R.Civ.P. 12(a)(1)(A). Under N.D.R.Civ.P. 8(b)(6), an allegation is admitted if it is not denied where a responsive pleading is required. N.D.R.Civ.P. 8(b)(6).

[¶5] Defendants failed to answer the Complaint and have not appeared in the action.

[¶6] Therefore, Defendants admit the entirety of the State’s Complaint, including the following specific facts that are undisputed and therefore not in genuine issue:

A. Defendants’ contract with Jonathan Haug.

On or about September 29, 2020, Defendants contracted with Jonathan Haug to install solar panels on a shop located in the backyard of Mr. Haug’s home for a total contract price of \$12,000.00.

Defendants intended Mr. Haug to rely on the contract.

According to the terms of the contract, Mr. Haug was to pay 70% of the total contract price to Defendants for materials for the job.

On or about November 3, 2020, Mr. Haug wired \$3,600.00 to Defendants and Defendants received that payment.

On or about November 5, 2020, Mr. Haug wired \$4,800.00 to Defendants and Defendants received that amount.

Defendant Ricketts represented that the solar panels would be delivered to Mr. Haug in 1 – 2 weeks, and that the installation would be completed before the end of 2020.

Defendants stopped communicating with Mr. Haug after Mr. Haug wired his two payments to them.

Defendants ignored Mr. Haug's multiple efforts to communicate with them.

Defendants have never delivered the solar panels or other materials to Mr. Haug, never installed the solar panels on Mr. Haug's shop, and have not issued a refund to Mr. Haug.

Defendants were not licensed as contractors when they contracted to install solar panels on Mr. Haug's shop.

In summary, Defendants engaged in consumer fraud when they solicited and accepted \$8,400.00 from Mr. Haug and provided no services or merchandise in return.

Defendants further engaged in consumer fraud by expressly or impliedly misrepresenting that they were licensed as contractors in North Dakota and permitted to perform the contracted work.

B. Defendants' contract with Tanya Noonan.

On or about September 24, 2020, Defendants contracted with Tanya Noonan to purchase and install solar panels on her home for a total contract price of \$30,000.00.

Defendants intended Ms. Noonan to rely on the contract.

On or about October 2, 2020, Defendants solicited and accepted an advance payment of \$15,000.00 from Ms. Noonan that she paid by check.

On or about October 2, 2020, materials were delivered for the project, including solar panels, cables, and rails.

On or about November 10, 2020, Defendant Ricketts started installing solar panels on the property.

Defendants did not install all of the panels required under their contract with Ms. Noonan and have not returned to complete the job.

The last time Defendants communicated with Ms. Noonan was approximately December 9, 2020.

Respondents did not respond to multiple efforts by Ms. Noonan to communicate with them.

In summary, Defendants engaged in consumer fraud when they solicited and accepted \$15,000.00 from Ms. Noonan and failed to provide the promised services.

Defendants further engaged in consumer fraud by expressly or impliedly misrepresenting that they were licensed as contractors in North Dakota and permitted to perform the contracted work.

Compl., Index # 2, ¶¶ 16 – 36; also, Exs. 1 – 2 to Mot. for Summ. J.

II. CONCLUSIONS OF LAW

[¶7] The State of North Dakota brought this action on the relation of Wayne Stenehjem, Attorney General of the State of North Dakota, in the public interest pursuant to N.D.C.C. ch. 51-15. The State of North Dakota ex rel. Wayne Stenehjem, Attorney General, has authority to act in this matter pursuant to N.D.C.C. ch. 51-15.

[¶8] The Court has subject matter jurisdiction pursuant to N.D.C.C. § 51-15-07.

[¶9] The Court has personal jurisdiction over Defendants.

[¶10] Under N.D.C.C. §§ 51-15-07, 51-15-10, and 51-15-11 this Court has jurisdiction to enter appropriate orders.

[¶11] The venue of this action in Burleigh County is proper under N.D.C.C. § 28-04-05 and § 28-04-03 because all or part of the cause of action arose in Burleigh County.

[¶12] The standard for summary judgment is well-established:

“Summary judgment is appropriate when ‘there is no dispute as to either the material facts or the inferences to be drawn from the undisputed facts, or whenever only a question of law is involved.’ ” Rooks v. Robb, 2015 ND 274, ¶ 10, 871 N.W.2d 468 (quoting First Nat’l Bank v. Clark,

332 N.W.2d 264, 267 (N.D. 1983)). Under Rule 56, N.D.R.Civ.P., the movant bears the burden of showing no genuine issue of material fact exists. Rooks, at ¶ 10. The party resisting the motion for summary judgment is given all favorable inferences which may reasonably be drawn from the evidence. Id. A party resisting summary judgment cannot only rely on the pleadings, but must present competent admissible evidence raising an issue of material fact. Swenson v. Raumin, 1998 ND 150, ¶ 9, 583 N.W.2d 102. A non-moving party cannot rely on speculation. Beckler v. Bismarck Pub. Sch. Dist., 2006 ND 58, ¶ 7, 711 N.W.2d 172.

City of Glen Ullin v. Schirado, 2021 ND 72, ¶ 10.

[¶13] When a reasonable person can draw but one conclusion from the evidence, a question of fact becomes a matter of law for the court to decide. Stockman Bank of Montana v. AGSCO, Inc., 2007 ND 26, ¶ 9, 728 N.W.2d 142, 147; also, Grinnell Mut. Reinsurance Co. v. Ctr. Mut. Ins. Co., 2003 ND 50, ¶ 9, 658 N.W.2d 363, 369. “Although actions involving state of mind, such as fraud, are not usually suited for disposition by summary judgment, if a ... [party] fails to support his opposition to a summary judgment motion with sufficient facts to show that there is a genuine issue for trial, then, even in these cases, summary judgment is appropriate.” Dahl v. Messmer, 2006 ND 166, ¶ 8, 719 N.W.2d 341, 344 (quoting Kary v. Prudential Ins. Co. of Am., 541 N.W.2d 703, 706 (N.D. 1996)).

[¶14] Consumer fraud must be proved by a preponderance of the evidence. State ex rel. Spaeth v. Eddy Furniture Co., 386 N.W.2d 901, 902-03 (N.D. 1986). In civil actions, “preponderance of the evidence” is the “greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability.” Black’s Law Dictionary 1182 (6th ed. 1990); also, Rooks v. N. Dakota Workers' Comp. Bureau, 506 N.W.2d 78, 80 (N.D. 1993).

[¶15] Under N.D.R.Ct. 3.2(c), because Defendants failed to submit a response to the State’s Motion for Summary Judgment, the Court may deem their failure an admission that the State’s motion is meritorious. N.D.R.Ct. 3.2(c).

[¶16] There is no material issue of fact preventing an entry of summary judgment as a matter of law because the material facts of the Complaint are undisputed, and Defendants failed to present competent admissible evidence to raise a genuine issue of material fact. Schirado, 2021 ND at ¶ 10.

[¶17] Defendants are of were engaged in the advertisement, solicitation, and sale of “merchandise,” as that term is defined in N.D.C.C. § 51-15-01, in the State of North Dakota, including services as a “contractor” within the meaning of N.D.C.C. § 43-07-01(1).

[¶18] **Defendants violated N.D.C.C. § 43-07-02(1).** N.D.C.C. § 43-07-02(1) prohibits “engaging in the business or acting in the capacity of a contractor ... when the cost, value, or price per job exceeds the sum of four thousand dollars.” The Supreme Court recognizes that the purpose of the contractor licensing statute “is to protect consumers from fraudulent practices and to protect the public from unqualified or uninsured contractors,” and to “protect the public by ensuring a contractor has liability insurance and has secured workforce safety and insurance coverage.” Snider v. Dickinson Elks Bldg., LLC, 2018 ND 55, ¶ 13, 907 N.W.2d 397, 401.

[¶19] By failing to answer the Complaint and oppose the State’s Motion for Summary Judgment, Defendants admit they violated N.D.C.C. § 43-07-02(1) by

contracting with North Dakota consumers above the statutory amount of four thousand dollars while unlicensed, including consumers Jonathan Haug and Tanya Noonan. Supra, ¶ 6; also, Exs. 1 – 2 to Mot. for Summ. J.

[¶20] **Defendants violated N.D.C.C. § 51-15-02.** N.D.C.C. § 51-15-02 provides:

51-15-02. Unlawful practices – Fraud – Misrepresentation. The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.

N.D.C.C. § 51-15-02.

[¶21] “It is well established that the Unlawful Sales Practices Act is remedial in nature and must be liberally construed to effectuate its purpose.” Staal v. Scherping Enterprises, Inc., 466 F. Supp. 3d 1030, 1034 (D.N.D. 2020) (citing State ex rel. Spaeth v. Eddy Furniture Co., 386 N.W.2d 901, 903 (N.D. 1986)).

[¶22] By failing to answer the Complaint and oppose the State’s motion for summary judgment, Defendants admit that they violated N.D.C.C. § 51-15-02 by: (1) engaging in the business or acting in the capacity of a contractor within North Dakota when the cost, value, or price per job exceeds the sum of four thousand dollars without first having a contractor license issued by the Secretary of State; (2) making false and misleading representations to customers, including implied or express false representations regarding Defendants’ ability to engage in the business or act in the capacity of a contractor; (3) and making untrue, deceptive, and misleading representations, or engaging in deceptive acts or practices, with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02, including by

contracting with consumers and then failing to provide the product or service. Supra, ¶ 6.

[¶23] Specifically, Defendants admit that they (1) contracted with Jonathan Haug and Tanya Noonan; (2) solicited advance deposits from each of them; and (3) performed no work, provided no materials, and/or provided no refunds for work not performed. Id. Instead of performing as promised, Defendants made excuses and ignored efforts to communicate with them. Id.

[¶24] Under N.D.C.C. § 51-15-07, the Attorney General may seek and obtain “an injunction prohibiting [a] person from continuing [an] unlawful practice or engaging in the [an] unlawful practice or doing any act in furtherance of the unlawful practice,” and the Court “may make an order or judgment as may be necessary to prevent the use or employment by a person of any unlawful practices ...” N.D.C.C. § 51-15-07. Pursuant to N.D.C.C. § 51-15-07, injunctive relief is necessary and appropriate in this case to prohibit Defendants from engaging in continued or future violations of N.D.C.C. § 51-15-02, and injunctive relief is justifiable under the circumstances of this case.

[¶25] Under N.D.C.C. § 51-15-07, the Court “may make an order or judgment ... to restore to any person in interest any money, or property that may have been acquired by means of any practice” unlawful under N.D.C.C. ch. 51-15. N.D.C.C. § 51-15-07. Defendants are liable to pay such restitution necessary to restore any loss suffered by persons because of their deceptive acts or practices, pursuant to N.D.C.C. § 51-15-07.

[¶26] Under N.D.C.C. § 51-15-10, the Court “shall award to the attorney general reasonable attorney’s fees, investigation fees, costs, and expenses of any investigation and action brought” under N.D.C.C. ch. 51-15. N.D.C.C. § 51-15-10. Defendants are liable to pay the Attorney General for the fees and costs incurred in investigating and prosecuting this matter, pursuant to N.D.C.C. § 51-15-10.

[¶27] Under N.D.C.C. § 51-15-11, the Court “may assess for the benefit of the state a civil penalty of not more than five thousand dollars for each violation” of N.D.C.C. ch. 51-15. Civil penalties are appropriate in this case based on Defendants’ conduct. N.D.C.C. § 51-15-11.

ORDER FOR JUDGMENT

[¶28] THEREFORE, IT IS HEREBY ORDERED pursuant to N.D.C.C. § 51-15-02 *et seq.*:

- A. Plaintiff’s Motion for Summary Judgment is granted.
- B. Defendants are adjudged in violation of the consumer fraud law and N.D.C.C. § 51-15-02 for engaging in the deceptive acts and practices alleged in the Complaint, including for soliciting advance payments from consumers and then failing to provide the product and service.
- C. Defendants are adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise in the State of North Dakota.

D. Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are permanently enjoined and restrained from directly or indirectly making false statements, false promises, or misrepresentations and the act, use and employment of any deceptive acts or practices in connection with the advertisement or sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), within the State of North Dakota.

E. Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are permanently enjoined and restrained from engaging in deceptive acts or practices and from directly or indirectly making false statements, false promises, or misrepresentations in connection with the advertisement or sale of contracting and home improvements, repairs, or services, or any other merchandise, as defined by N.D.C.C. § 51-15-01(3).

F. Defendants, their agents, employees, representatives, assigns and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are enjoined and restrained from the advertising or sale of contracting and home improvements, repairs, or services, and enjoined and restrained from the advertising or sale of solar panels, in accordance with Paragraph 26(G), *infra*.

G. Pursuant to N.D.C.C. § 51-15-07, Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, are permanently enjoined and restrained from engaging in sales of contracting

and home improvements, repairs, or services, and enjoined and restrained from the advertising or sale of solar panels. Notwithstanding the permanent injunction, Defendants may engage in future contracting services if Defendants apply to the Attorney General and the Court to lift the permanent injunction and the Court finds Defendants have fully complied with the following terms and conditions and otherwise is rehabilitated:

1. Five or more years have expired since the entry of judgment herein;
2. Defendants have paid in full restitution to all consumers that have paid Defendants advance payments for services not performed or merchandise not delivered in the State of North Dakota, including Jonathan Haug and Tanya Noonan;
3. Defendants have paid all amounts owed to the State pursuant to entry of judgment herein;

If the Court thereafter finds, pursuant to an agreement between the Attorney General and Defendants, or after a hearing, that Defendants are sufficiently rehabilitated pursuant to the terms and conditions herein, Defendants, upon order of the Court, may engage in contracting provided they have complied with all requirements appropriate and necessary for the work to be undertaken by them.

“Pay in full” or “paid in full” mean that all amounts must be paid, and does not include any settlement, forgiveness, compromise, reduction, or discharge of any of the debts or refund obligations.

H. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$8,400.00 as restitution for Jonathan Haug.

I. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$2,000.00 as restitution for Tanya Noonan.

J. Plaintiff shall have Judgment against Defendants in the amount of \$2,500.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

K. Plaintiff shall have Judgment against Defendants in the amount of \$892.00 for costs, expenses, and attorney's fees pursuant to N.D.C.C. § 51-15-10, incurred by the Attorney General in the investigation and prosecution of this action.

L. Defendants, pursuant to N.D.C.C. § 51-15-07, shall pay restitution to all North Dakota consumers, which have suffered any ascertainable loss, and to restore to any person in interest any moneys or property, real or personal, which has been acquired by Defendants by means of any practice declared to be unlawful under N.D.C.C. § 51-15-02.

M. Pursuant to N.D.C.C. §§ 51-15-07, Defendant Dakota Smarthomes, LLC is ordered involuntarily dissolved.

N. The Judgment entered shall be a Judgment for which execution may issue.

O. Interest shall accrue on this Judgment in accordance with the interest rate on judgment as provided by N.D.C.C. § 28-20-34.

Signed: 4/20/2022 12:50:16 PM
BY THE COURT:

A handwritten signature in black ink, appearing to read "Douglas B. Baker". The signature is written in a cursive style with a large initial "D".

District Court Judge

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL
DISTRICT

STATE OF NORTH DAKOTA EX REL.
WAYNE STENEHJEM,
ATTORNEY GENERAL,

Plaintiff,

-vs-

CHARLES RICKETTS, DAKOTA
SMARTHOMES, LLC, and doing
business as DAKOTA SOLAR ENERGY,

Defendants.

Civil No. 08-2022-CV-00198

JUDGMENT

[¶1] This action came on before the Honorable Douglas Bahr, Judge of the Burleigh County District Court, South Central Judicial District, on a Motion for Summary Judgment, filed by Plaintiff, the State of North Dakota, on the relation of Wayne Stenehjem, Attorney General, and served upon Defendants by mail on March 16, 2022. Defendants failed to respond in opposition to the State's Motion for Summary Judgment.

[¶2] The Court, having reviewed its file and records herein, including the Motion for Summary Judgment with supporting documents, and being fully advised in the premises, having made and entered its Findings of Fact, Conclusions of Law and Order for Summary Judgment; IT IS NOW ORDERED, ADJUDGED AND DECREED:

A. Plaintiff's Motion for Summary Judgment is granted.

B. Defendants are adjudged in violation of the consumer fraud law and N.D.C.C. § 51-15-02 for engaging in the deceptive acts and practices alleged in the Complaint, including for soliciting advance payments from consumers and then failing to provide the product and service.

C. Defendants are adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise in the State of North Dakota.

D. Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are permanently enjoined and restrained from directly or indirectly making false statements, false promises, or misrepresentations and the act, use and employment of any deceptive acts or practices in connection with the advertisement or sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), within the State of North Dakota.

E. Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are permanently enjoined and restrained from engaging in deceptive acts or practices and from directly or indirectly making false statements, false promises, or misrepresentations in connection with the advertisement or sale of contracting and

home improvements, repairs, or services, or any other merchandise, as defined by N.D.C.C. § 51-15-01(3).

F. Defendants, their agents, employees, representatives, assigns and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are enjoined and restrained from the advertising or sale of contracting and home improvements, repairs, or services, and enjoined and restrained from the advertising or sale of solar panels, in accordance with Paragraph 26(G), *infra*.

G. Pursuant to N.D.C.C. § 51-15-07, Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, are permanently enjoined and restrained from engaging in sales of contracting and home improvements, repairs, or services, and enjoined and restrained from the advertising or sale of solar panels. Notwithstanding the permanent injunction, Defendants may engage in future contracting services if Defendants apply to the Attorney General and the Court to lift the permanent injunction and the Court finds Defendants have fully complied with the following terms and conditions and otherwise is rehabilitated:

1. Five or more years have expired since the entry of judgment herein;
2. Defendants have paid in full restitution to all consumers that have paid Defendants advance payments for services not performed or merchandise not delivered in the State of North Dakota, including Jonathan Haug and Tanya Noonan;
3. Defendants have paid all amounts owed to the State pursuant to entry of judgment herein;

If the Court thereafter finds, pursuant to an agreement between the Attorney General and Defendants, or after a hearing, that Defendants are sufficiently rehabilitated pursuant to the terms and conditions herein, Defendants, upon order of the Court, may engage in contracting provided they have complied with all requirements appropriate and necessary for the work to be undertaken by them.

“Pay in full” or “paid in full” mean that all amounts must be paid, and does not include any settlement, forgiveness, compromise, reduction, or discharge of any of the debts or refund obligations.

H. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$8,400.00 as restitution for Jonathan Haug.

I. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$2,000.00 as restitution for Tanya Noonan.

J. Plaintiff shall have Judgment against Defendants in the amount of \$2,500.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

K. Plaintiff shall have Judgment against Defendants in the amount of \$892.00 for costs, expenses, and attorney’s fees pursuant to N.D.C.C. § 51-15-10, incurred by the Attorney General in the investigation and prosecution of this action.

L. Defendants, pursuant to N.D.C.C. § 51-15-07, shall pay restitution to all North Dakota consumers, which have suffered any ascertainable loss, and to restore to any person in interest any moneys or property, real or personal, which has been

acquired by Defendants by means of any practice declared to be unlawful under N.D.C.C. § 51-15-02.

M. Pursuant to N.D.C.C. §§ 51-15-07, Defendant Dakota Smarthomes, LLC is ordered involuntarily dissolved.

N. The Judgment entered shall be a Judgment for which execution may issue.

O. Interest shall accrue on this Judgment in accordance with the interest rate on judgment as provided by N.D.C.C. § 28-20-34.

Signed: 4/20/2022 4:52:12 PM

CLERK OF DISTRICT COURT

Jackie Keller

08-2022-CV-00198