

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WARD

NORTH CENTRAL JUDICIAL DISTRICT

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

Civil No. 51-2017-CV-00047

Plaintiff,

JUDGMENT

-vs-

JOHN F MOSER III, J3 CONSTRUCTION,
LLC, and individually,

Defendants.

CPAT 150125.002

[¶1] This action came on before the Honorable Todd Cresap, Judge of the Ward County District Court, North 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 February 13, 2017.

[¶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 John F. Moser III and J3 Construction, LLC be adjudged in violation of the contractor law, N.D.C.C. § 43-07-02, for engaging in the business or acting in the capacity of a contractor within North Dakota without first having a contractor license when the cost, value, or price per job exceeded the sum of four thousand dollars.
- c. Defendants John F. Moser III and J3 Construction, LLC be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for abandoning contracts

without legal excuse after a deposit of money or other consideration has been provided in violation of N.D.C.C. § 43-07-14(1)(a).

d. Defendants John F. Moser III and J3 Construction, LLC be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for diverting funds or property received under express agreement for the prosecution or completion of a specified contract, or for a specified purpose in the prosecution or completion of any contract, and applying or using funds and property for another contract obligation or to defraud or deceive credits or the owner in violation of N.D.C.C. § 43-07-14(1)(b).

e. Defendants John F. Moser III and J3 Construction, LLC be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in fraudulent or deceptive acts or practices or misrepresentations as a contractor in consequence of which one or more persons is injured in excess of three thousand dollars in violation of N.D.C.C. § 43-07-14(1)(c).

f. Defendants John F. Moser III and J3 Construction, LLC be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for making false or misleading statements in an application for a license or renewal in violation of N.D.C.C. § 43-07-14(1)(d).

g. Defendants John F. Moser III and J3 Construction, LLC be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for failing to refund fully a contracting party's advance payment where a rebuttable presumption of abandonment has arisen and a contracting party has made a request for a refund in violation of N.D.C.C. § 43-07-14(1)(f).

h. Defendants John F. Moser III and J3 Construction, LLC be 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.

i. Defendants John F. Moser III and J3 Construction, LLC, 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, be 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.

j. Defendants John F. Moser III and J3 Construction, LLC, 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, be 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).

k. Defendants John F. Moser III and J3 Construction, LLC, 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, be enjoined and restrained from the advertising or sale of contracting and home improvements, repairs, or services for a period

of five (5) years and until Defendants refunds and pay in full amounts owed to all consumers that have paid Defendants advance payments for services not performed or merchandise not delivered. "Pay in full" means 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.

I. After five (5) years from entry of judgment and until Defendants John F. Moser III and J3 Construction, LLC refund and pay in full amounts owed to all consumers that have paid Defendants advance payments for services not performed or merchandise not delivered, Defendants John F. Moser III and J3 Construction, LLC, 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, be permanently enjoined and restrained from engaging in sales of contracting and home improvements, repairs, or services, including construction work, in the state of North Dakota unless Defendants John F. Moser III and J3 Construction, LLC have obtained a Contractor's License pursuant to N.D.C.C. ch. 43-07 and have complied with all contractor licensing requirements appropriate and necessary for the work to be undertaken by them. "Pay in full" means 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.

m. For a period of ten (10) years from entry of judgment, Defendants John F. Moser III and J3 Construction, LLC, 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, be enjoined and restrained from soliciting or accepting from consumers

advance payments or consumer deposits in excess of ten percent of the total contract price in connection with any sale of merchandise, as defined by N.D.C.C. § 51-15-01(3).

n. Plaintiff shall have Judgment against Defendants John F. Moser III and J3 Construction, LLC, jointly and severally, in the amount of \$10,000.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

o. Plaintiff shall have Judgment against Defendants John F. Moser III and J3 Construction, LLC, jointly and severally, in the amount of \$2,439.84 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.

p. Defendants John F. Moser III and J3 Construction, LLC, jointly and severally, 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.

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

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

Dated this _____ day of _____, 2017.

CLERK OF DISTRICT COURT

Signed: 5/4/2017 11:44:56 AM

Lisa Beggs

By: _____