

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

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

Civil No. 09-2018-CV-01271

Plaintiff,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT AS TO
JOSHUA JAMES VANCE**

-vs-

JMB BUILDERS, LLC, JMB BUILDERS,
INC., JOSHUA JAMES VANCE, and
ASHLIE DANIELLE VANCE, and
individually,

Defendants.

CPAT 170189.001

[[1] This matter came before the Court on Plaintiff's Motion for Summary Judgment, dated June 29, 2018 and filed on June 29, 2018. Defendant Joshua James Vance was served with the Motion for Summary Judgment by mail on June 29, 2018. More than 33 days have passed since Defendant was served with the Motion, and Defendant is now in default and has failed to dispute the facts and allegations set forth in Plaintiff's Motion for Summary Judgment. Defendant also failed to dispute the facts and allegations set forth in Plaintiff's Complaint, and, under N.D.R.Civ.P. 8(b)(6), the facts and allegations of the Complaint are admitted.

[[2] WHEREFORE, the Court, having reviewed Plaintiff'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

[¶3] Defendant held a contractor's license for the business Vance Construction that expired on March 1, 2014.

[¶4] On October 31, 2014, the North Dakota Secretary of State received a contractor license from Defendant that required him to disclose civil and criminal actions against him. Defendant failed to disclose civil judgments and criminal cases that he was required to disclose on his application.

[¶5] Defendant was advised by the Secretary of State that he would not be granted a contractor's license after recommendation by the North Dakota Attorney General's Office. Defendant was advised by e-mail on December 18, 2014 that the Attorney General would recommend against him receiving a contractor's license.

[¶6] On April 9, 2015, Defendant, with Ashlie Danielle Vance ("A. Vance"), formed the entity JMB Builders, Inc., indicating that the purpose of the business corporation would be to engage in general contracting and construction. Defendant executed the application on March 23, 2015.

[¶7] On April 20, 2015, A. Vance submitted a contractor's license application for JMB Builders, Inc. without identifying Defendant on the application. A. Vance did not disclose the civil or criminal actions corresponding to Defendant on the application. Included with the contractor's license application was a copy of a letter from North Dakota Workforce Safety & Insurance, dated May 15, 2015, indicating JMB Builders, Inc. signed a Verification of Non-Employment indicating the company did not have employees. Defendant was not disclosed on subsequent applications for JMB Builders, Inc. submitted to the North Dakota Secretary of State by A. Vance.

[¶8]On July 18, 2016, the Secretary of State received a Domestic Corporation Annual Report for JMB Builders, Inc. Defendant is identified on the annual report as the vice president and director of the corporation and was provided as the person to contact regarding the annual report.

[¶9]A. Vance subsequently dissolved JMB Builders, Inc. and, on March 27, 2017, filed Articles of Incorporation to form JMB Builders, LLC. On March 31, 2017, A. Vance submitted a contractor's license application to obtain a contractor's license for JMB Builders, LLC. Defendant was not identified on the application to form JMB Builders, LLC or the application to obtain a contractor's license for JMB Builders, LLC.

[¶10]While unlicensed, and while not an employee of JMB Builders, Inc. and JMB Builders, LLC, Defendant engaged in the business and acted in the capacity of a contractor in North Dakota when the cost, value, or price per job exceeded the sum of four thousand dollars.

[¶11]On or about August 2016, Defendant, while operating JMB Builders, Inc., contracted with North Dakota consumer Shawn Mollet, 726 10 ½ Street West, West Fargo, ND 58078, in connection with building an addition to Mr. Mollet's home for a total price of \$111,670.50. Defendant's contract with Mr. Mollet required Defendant to engage in the business of a contractor, as defined by N.D.C.C. § 43-07-01(1). In connection with this contract, Defendant obtained a building permit for the project and advised Mr. Mollet of this by text message. Subsequently, Defendant solicited and accepted payments from Mr. Mollet in connection with work Defendant performed, including \$25,508.50, in October 2016, for concrete work, and \$13,922.00, in November 2016, for framing and related work. Defendant solicited and accepted other amounts

from Mr. Mollet in excess of four thousand dollars. Defendant was not licensed when he entered into this contract.

[¶12] On November 18, 2016, JMB Builders, Inc. invoiced Mr. Mollet in the amount of \$48,283.00 for additional framing; a window and doors allowance; siding, soffit, and fascia; insulation; drywall; kitchen remodeling; and roofing. The invoice was provided to Mr. Mollet by e-mail from A. Vance, and included the representation that Defendant and A. Vance “purchased all [Mr. Mollet’s] materials this week.” However, Defendant had not, in fact, purchased all of the materials represented. During a telephone call with Mr. Mollet’s attorney on January 30, 2017, Defendant admitted that the siding, soffit, and fascia material had not been ordered. On December 29, 2016, Defendant represented to Mr. Mollet that he was making “good” progress on his kitchen cabinets, while, on January 30, 2017, Defendant admitted that the cabinets were still not complete.

[¶13] In a letter dated March 3, 2017, Defendant’s attorney acknowledged that Defendant solicited and accepted payments totaling \$98,920.10, but that Defendant only performed labor and purchased materials totaling \$53,250.68. Defendant, therefore, received \$45,669.42, an amount above three thousand dollars, for materials not provided and labor not performed.

[¶14] Defendant misrepresented to consumers Shawn Mollet, Lucas and Elizabeth Brand, and Haley Bruggeman that he would perform services as a contractor for them and solicited and accepted advance payments that were represented as necessary for materials and future labor. Defendant solicited and accepted advance payments greater than four thousand dollars from Haley Bruggeman and Lucas and

Elizabeth Brand. Defendant misrepresented his intent or ability to perform services for them; and, instead of purchasing materials or performing labor, Defendant used their advance deposits for personal expenses.

II. CONCLUSIONS OF LAW

[¶15]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;

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

[¶17]The Court has personal jurisdiction over Defendant.

[¶18]Under N.D.C.C. §§ 51-15-07, 51-15-10, and 51-15-11 the district court has jurisdiction to enter appropriate orders.

[¶19]The venue of this action in Cass 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 Cass County.

[¶20]There is no material issue of fact preventing an entry of summary judgment as a matter of law.

[¶21]Defendant is or was 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.

[¶22]In connection with the solicitation and sale of merchandise, Defendant made untrue, deceptive, and misleading representations with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02. Defendant's actions constituted false pretense, false representation, or actual fraud.

[¶23] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, without a contractor license issued by the North Dakota Secretary of State, engaged in the business or acted in the capacity of a contractor within North Dakota when the cost, value, or price per job exceeded the sum of four thousand dollars when he contracted with consumers Shawn Mollet, Haley Bruggeman, and Lucas and Elizabeth Brand.

[¶24] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, in violation of N.D.C.C. § 43-07-14(1)(b), diverted funds or property received under express agreement for the prosecution or completion of a specific contract, or for a specified purpose in the prosecution or completion of a contract, and applied or used the funds for another contract obligation or to defraud or deceive the owner when Defendant diverted the advance payments received from consumer Shawn Mollet.

[¶25] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, in violation of N.D.C.C. § 43-07-14(1)(c), engaged in fraudulent or deceptive acts or practices or misrepresentations as a contractor in consequence of which one or more persons was injured in a total amount exceeding three thousand dollars when Defendant diverted advance payments received from consumer Shawn Mollet.

[¶26] Under N.D.C.C. § 43-07-14(3), Defendant's violations of N.D.C.C. § 43-07-02, acting in the capacity of a contractor where the cost, value, or price per job is over four thousand dollars, constitute violations of N.D.C.C. ch. 51-15.

[¶27] Under N.D.C.C. § 43-07-14(3), Defendant's violations of N.D.C.C. § 43-07-14 constitute violations of N.D.C.C. ch. 51-15.

[¶28] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, through written and oral representations made by Defendant, his agents, employees, or representatives, made untrue, deceptive, and misleading representations, or engaged in deceptive acts or practices, with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02, when Defendant expressly, impliedly, or by omission falsely represented to consumers Shawn Mollet, Haley Bruggeman, and Lucas and Elizabeth Brand that he was a licensed contractor by soliciting and accepting business above the North Dakota statutory amount of four thousand dollars while operating the contracting businesses JMB Builders, Inc. and JMB Builders, LLC.

[¶29] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, through written and oral representations made by Defendant, his agents, employees, or representatives, made untrue, deceptive, and misleading representations, or engaged in deceptive acts or practices, with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02, when Defendant misrepresented his intent or ability to perform services as a contractor for consumers Shawn Mollet, Haley Bruggeman, and Lucas and Elizabeth Brand, and, instead of purchasing materials or rendering services with their advance deposits, used consumer advance deposits for personal expenses.

[¶30] Injunctive relief is necessary and appropriate in this case in order to prohibit Defendant 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.

[¶31] Defendant is liable to pay such restitution necessary to restore any loss suffered by persons as a result of their deceptive acts or practices, pursuant to N.D.C.C. § 51-15-07.

[¶32] Defendant is 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.

[¶33] Civil penalties are appropriate in this case based on Defendant's conduct.

ORDER FOR JUDGMENT

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

- A. Plaintiff's Motion for Summary Judgment is granted.
- B. That Defendant Joshua James Vance 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 in North Dakota without first having a license when the cost, value, or price per job exceeded the sum of four thousand dollars.
- C. That Defendant Joshua James Vance 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).

D. That Defendant Joshua James Vance 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).

E. That Defendant Joshua James Vance 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.

F. That Defendant Joshua James Vance, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, 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.

G. That Defendant Joshua James Vance, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, 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).

H. That Defendant Joshua James Vance, his agents, employees, representatives, assigns and all other persons in active concert or participation with him, 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 in accordance with paragraph I.

I. That, pursuant to N.D.C.C. § 51-15-07, Defendant Joshua James Vance, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is permanently enjoined and restrained from engaging in sales of contracting and home improvements, repairs, or services, including construction work. Notwithstanding the permanent injunction, Defendant may engage in future contracting services if Defendant applies to the Attorney General and the Court to lift the permanent injunction and the Court finds the Defendant has fully complied with the following terms and conditions and otherwise is rehabilitated:

1. Three or more years have expired since the entry of judgment herein;
2. Defendant has paid in full all restitution to consumers pursuant to the judgment herein;
3. Defendant has paid in full restitution to all consumers that have paid Defendant advance payments for services not performed or merchandise not delivered in the state of North Dakota;
4. Defendant has paid all amounts owed to the Attorney General pursuant to entry of judgment herein;

If the Court thereafter finds, pursuant to an agreement between the Attorney General and Defendant, or after a hearing, that Defendant is sufficiently rehabilitated pursuant to the terms and conditions herein, Defendant, upon order of the Court, may engage in contracting provided he has obtained a Contractor 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 him.

"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.

J. That in the event Joshua James Vance, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is lawfully engaged in contracting pursuant to the terms in this judgment, said Defendant, pursuant to N.D.C.C. § 51-15-07 and for a period of three years after becoming, lawfully engaged in contracting, is 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).

K. That Plaintiff shall have Judgment against Defendant Joshua James Vance in the amount of \$2,500.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

L. That Plaintiff shall have Judgment against Defendant Joshua James Vance in the amount of \$4,500.00 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.

M. That Defendant Joshua James Vance, 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 Defendant by means of any practice declared to be unlawful under N.D.C.C. § 51-15-02.

N. That Defendant Joshua James Vance, pursuant to N.D.C.C. § 51-15-07, shall pay restitution to Plaintiff the sum of \$45,669.42, together with interest accruing thereon, as restitution for Shawn Mollet.

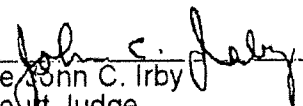
O. The Judgment entered shall be a Judgment for which execution may issue.

P. 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 _____, 2018

BY THE COURT:

Signed: 8/2/2018 12:04:11 PM



Honorable John C. Irby
District Court Judge

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

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

Civil No. 09-2018-CV-01271

Plaintiff,

**JUDGMENT AS TO JOSHUA
JAMES VANCE**

-VS-

JMB BUILDERS, LLC, JMB BUILDERS,
INC., JOSHUA JAMES VANCE, and
ASHLIE DANIELLE VANCE, and,
individually,

Defendants.

CPAT 170189.001

[¶1] This action came on before the Honorable John C. Irby, Judge of the Cass County District Court, East 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 Defendant by mail on June 29, 2018. Defendant failed to respond in opposition to the 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. That Defendant Joshua James Vance 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 in North Dakota without first having a license when the cost, value, or price per job exceeded the sum of four thousand dollars.

C. That Defendant Joshua James Vance 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).

D. That Defendant Joshua James Vance 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).

E. That Defendant Joshua James Vance 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.

F. That Defendant Joshua James Vance, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, 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.

G. That Defendant Joshua James Vance, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, 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).

H. That Defendant Joshua James Vance, his agents, employees, representatives, assigns and all other persons in active concert or participation with him, 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 in accordance with paragraph I.

I. That, pursuant to N.D.C.C. § 51-15-07, Defendant Joshua James Vance, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is permanently enjoined and restrained from engaging in sales of contracting and home improvements, repairs, or services, including construction work. Notwithstanding the permanent injunction, Defendant may engage in future contracting services if Defendant applies to the Attorney General and the Court to lift the permanent injunction and the Court finds the Defendant has fully complied with the following terms and conditions and otherwise is rehabilitated:

1. Three or more years have expired since the entry of judgment herein;

2. Defendant has paid in full all restitution to consumers pursuant to the judgment herein;

3. Defendant has paid in full restitution to all consumers that have paid Defendant advance payments for services not performed or merchandise not delivered in the state of North Dakota;

4. Defendant has paid all amounts owed to the Attorney General pursuant to entry of judgment herein;

If the Court thereafter finds, pursuant to an agreement between the Attorney General and Defendant, or after a hearing, that Defendant is sufficiently rehabilitated pursuant to the terms and conditions herein, Defendant, upon order of the Court, may engage in contracting provided he has obtained a Contractor 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 him.

"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.

J. That in the event Joshua James Vance, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is lawfully engaged in contracting pursuant to the terms in this judgment, said Defendant, pursuant to N.D.C.C. § 51-15-07 and for a period of three years after becoming, lawfully engaged in contracting, is 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).

K. That Plaintiff shall have Judgment against Defendant Joshua James Vance in the amount of \$2,500.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

L. That Plaintiff shall have Judgment against Defendant Joshua James Vance in the amount of \$4,500.00 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.

M. That Defendant Joshua James Vance, 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 Defendant by means of any practice declared to be unlawful under N.D.C.C. § 51-15-02.

N. That Defendant Joshua James Vance, pursuant to N.D.C.C. § 51-15-07, shall pay restitution to Plaintiff the sum of \$45,669.42, together with interest accruing thereon, as restitution for Shawn Mollet.

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

P. 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 _____, 2018.

Signed: 8/7/2018 3:22:59 PM

CLERK OF DISTRICT COURT

J. Swenson, Deputy
