

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

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

Civil No. 08-2020-CV-02235

Plaintiff,

CONSENT JUDGMENT

v.

TYLER HOFLAND, BRIANNE
HOFLAND,
and HOFLAND HOMES, LLC,

Defendants.

CPAT 190043.003

¶1 This matter having come before this Court on a stipulation entered between the Parties in the form of a Consent to Entry of Order and Judgment, which Plaintiff, the Attorney General of the State of North Dakota, by and through Assistant Attorney General Parrell D. Grossman, Consumer Protection and Antitrust Division of the Office of the Attorney General, and Defendants Tyler Hofland, Brianne Hofland, and Hofland Homes, LLC, have agreed to the entry of Order for Consent Judgment by the Court. The Court, having issued an Order for Consent Judgment and being fully advised of the premises, **NOW**, upon the consent of the parties hereto, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

¶2 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.

¶3 This Court has personal jurisdiction over Defendants, and this Court has subject matter jurisdiction pursuant to N.D.C.C. § 51-15-07.

[¶4] The venue of this action in Burleigh County is proper under N.D.C.C. §§ 28-04-03 and 28-04-05 because Defendants had or have a principal place of business in Burleigh County, have transacted business in Burleigh County, and all or part of the cause of action arose in Burleigh County.

[¶5] Defendants hereby accept and expressly waive any defect in connection with service of process issued by the Plaintiff on Defendants, and agree to a tolling of the statute of limitations in connection with their conduct in violation of N.D.C.C. ch. 51-15.

[¶6] Defendants Tyler Hofland and Hofland Homes, LLC, admit that, with the intent that others rely, they engaged in acts or practices constituting violations of the consumer fraud law, N.D.C.C. § 51-15-02, while engaged in the business of, or acting in the capacity of, contractors, within the meaning of N.D.C.C. § 43-07-01(1), in the State of North Dakota. Defendant Brianne Hofland represents that she was not significantly involved in the operation of Hofland Homes, LLC, and, therefore, denies that she has engaged in any acts or practices constituting violations of the consumer fraud law, N.D.C.C. § 51-15-02.

[¶7] Defendants Tyler Hofland and Hofland Homes, LLC, 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 pretense, false promise, or misrepresentations while engaged in the business of, or acting in the capacity of, contractors, within the meaning of N.D.C.C. § 43-07-01(1), in the State of North Dakota. Defendant Brianne Hofland, pursuant to her representations in Paragraph 6, is not adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02. Defendant Brianne Hofland,

however, acknowledges and agrees that in her individual capacity, and as an owner of Hofland Homes, LLC, she is fully bound by and subject to all other terms and provisions of this Consent Judgment, including any modifications or amended judgment, for all purposes of enforcement of or full compliance with this Consent Judgment.

¶8 Pursuant to N.D.C.C. § 51-15-07, Defendants are permanently enjoined and restrained from directly or indirectly engaging in acts or practices in violation of N.D.C.C. § 51-15-02 in connection with the advertisement or sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), including while engaged in the business of, or acting in the capacity of, a contractor, within the meaning of N.D.C.C. § 43-07-01(1), in the State of North Dakota.

¶9 Pursuant to N.D.C.C. § 51-15-07, Defendants are restrained and enjoined from engaging in the business or acting in the capacity of a contractor, within the meaning of N.D.C.C. § 43-07-01(1), in North Dakota for a period of five years, and unless or until: 1) Defendants have paid in full all restitution owed to consumers pursuant to the entry of this Consent Judgment herein; 2) Defendants have paid in full restitution to all aggrieved consumers, whether subject to this Judgment or other consumer judgments independently obtained; 3) Defendants have paid in full all amounts owed to the Attorney General pursuant to the entry of this Consent Judgment; and 4) Defendants have otherwise fully complied with the terms of this Consent Judgment, including paragraphs 19 through 23. "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, unless otherwise agreed to in writing by Defendants, the consumer, and the Attorney General. Subject to the terms of this Paragraph, Defendants may not engage in the business of, or act in the capacity of, a contractor, within the meaning of N.D.C.C. § 43-07-01(1), without written consent of the Attorney General or approval of the Court.

[¶10] Notwithstanding the injunctive relief provided in Paragraph 9, *supra*, Defendant Tyler Hofland may be employed by a contractor business that is not owned, operated, or managed by a family member other than R&D Excavating, LLC, owned by Tyler Hofland's father.

[¶11] Defendants, pursuant to N.D.C.C. § 51-15-07, are permanently enjoined from violating N.D.C.C. chs. 43-07 and 51-15.

[¶12] Nothing in this Consent Judgment limits Defendants' ability to seek payments they believe in good faith are owed by consumers pursuant to the consumers' agreements with Defendants. To the extent that Defendants are determined by a court of competent jurisdiction to be liable for claims brought by consumers to whom Defendants sold services or merchandise while engaged in the business or acting in the capacity of a contractor, and failed to provide services or merchandise for work performed pursuant to the consumers' agreements with Defendants, Defendants shall indemnify and hold harmless such consumers. Defendants agree that the Attorney General has the right to be a party to any suits described in this Paragraph brought by consumers.

[¶13] Nothing in this Consent Judgment limits Defendants' ability to seek payments they believe in good faith are owed by consumers pursuant to the

consumers' agreements with Defendants. To the extent that Defendants are determined by a court of competent jurisdiction to be liable for claims brought by consumers to whom Defendants provided false settlement documents, including while engaged in the business or acting in the capacity of a contractor, Defendants shall indemnify and hold harmless such consumers. Defendants agree that the Attorney General has the right to be a party to any suits described in this Paragraph brought by consumers.

[¶14] Pursuant to N.D.C.C. § 51-15-07, Defendants agree and consent to the entry of a monetary judgment against Defendants, for the benefit of John and Heather Olson, 208 Farmdale Ct., Mobridge, SD 57601, in the amount of \$150,000 as restitution for work not completed or performed, unless the amount of the monetary judgment is otherwise agreed to in writing by Defendants, John and Heather Olson, and the Attorney General.

[¶15] Pursuant to N.D.C.C. § 51-15-07, Defendants agree and consent to the entry of a monetary judgment against Defendants, for the benefit of Bruce and Cindy Darcy, 7201 BIA Rt. 22, Golden Valley, ND 58541 in the amount of \$64,716.74 as restitution for work not completed or performed, unless the amount of the monetary judgment is otherwise agreed to in writing by Defendants, Bruce and Cindy Darcy, and the Attorney General.

[¶16] Defendants acknowledge a default judgment has been entered by the Stark County District Court in Case No. 45-2019-CV-00364 against Tyler Hofland and Hofland Homes, LLC, for the benefit of Jared Hofland and Kaylee Hofland, in the amount of \$64,980.35. The Court denied Defendants' motion to vacate the default

judgment. Tyler Hofland and Hofland Homes, LLC, acknowledge that the current status is that there is a judgment for \$64,980.35, and that they owe said consumer restitution, which will be subject to all terms of this Consent Judgment, including Paragraph 9, unless Tyler Hofland and Hofland Homes, LLC, agree in writing with Jared Hofland and Kaylee Hofland to a different amount that satisfies the judgment entered in Case. No. 45-2019-CV-00364, and the judgment is otherwise altered in any way by a court of competent jurisdiction, pursuant to written consent or agreement by Jared Hofland and Kaylee Hofland. The Defendants further agree that in the event of an amended judgment in the Stark County District Court, the Attorney General may seek modification or amendment of this Consent Judgment accordingly, and the Court may approve an amended judgment, without any further notice to the Defendants. Nothing in this Paragraph shall prevent Jared and Kaylee Hofland from enforcing the existing Stark County District Court Judgment at any time.

[¶17] Defendants acknowledge a monetary judgment has been entered by the Burleigh County Small Claims Court in Case No. 08-2019-SC-00219 against Tyler Hofland and Brianne Hofland, for the benefit of Christopher John Staloch in the amount of \$15,060.00, and that they owe said consumer restitution. Defendants agree that any judgment against Defendants in Case No. 08-2019- SC-00219 will be subject to all terms of this Consent Judgment, including Paragraph 9, unless the amount of the monetary judgment is otherwise agreed to in writing by Defendants, Christopher John Staloch, and the Attorney General.

[¶18] Defendants acknowledge an ongoing dispute between Jaco and Aundrea VanRooyen, Defendants, and First Security Bank – West, Beulah, North

Dakota. Defendants agree that if they are found to be owing money to Jaco and Aundrea VanRooyen pursuant to any court judgment, or agreement between the Defendants and Jaco and Aundrea VanRooyen, or between the Defendants and the Attorney General, any amount owed by Defendants will be subject to all terms of this Consent Judgment, including Paragraph 9. The Defendants further agree that in the event of any district court judgment, by either Jaco and Aundrea VanRooyen or the Attorney General in favor of Jaco and Aundrea VanRooyen and against the Defendants, or written agreement on the amount of consumer restitution owed by the Defendants to the VanRooyens, the Attorney General may seek modification or amendment of this Consent Judgment accordingly, and the Court may approve an amended judgment, without any further notice to the Defendants. Notwithstanding the terms of this Paragraph or the Consent Judgment, nothing herein prevents the Attorney General at any time from initiating proceedings pursuant to this Consent Judgment, or intervening in any pending legal action between the Defendants and Jaco and Aundrea Rooyen, to resolve the restitution claim by Jaco and Aundrea VanRooyen. Nothing in this Paragraph prevents Defendants from filing suit for money they are believed to be owed related to the VanRooyens and/or First Security Bank - West.

[¶19] Pursuant to N.D.C.C. § 51-15-07, Defendants agree that they owe restitution to all aggrieved consumers from whom Defendants solicited and accepted advance payment and did not provide services or to whom Defendants owe any amount in connection with any subcontractor that should have been paid by, but was not paid by, Defendants, if and only if adjudicated by a court of competent jurisdiction

or otherwise agreed to in writing by Defendants, the consumer, and the Attorney General. Pursuant to this Paragraph, Defendants agree they owe restitution to aggrieved consumers whether subject to this Consent Judgment or consumer judgments independently obtained, if and only if adjudicated by a court of competent jurisdiction or otherwise agreed to in writing by Defendants, the consumer, and the Attorney General.

[¶20] Defendants represent and acknowledge that John and Heather Olson, Bruce and Cindy Darcy, Jared and Kaylee Hofland, and Christopher John Staloch are the only consumers, to the best of their knowledge, information and belief, from whom Defendants solicited and accepted advance payment and did not provide services or, to the best of their knowledge, information and belief, to whom Defendants owe any outstanding amount in connection with any vendor or subcontractor that should have been paid by, but was not paid by, Defendants. If Defendants learn of any consumer entitled to restitution but not identified or disclosed pursuant to this Judgment, Defendants shall have 30 days after notice to: 1) consent to an amended judgment pursuant to the Court's continuing jurisdiction (see *infra*, Paragraph 23); or 2) settle the consumer's claim of restitution with the consumer and the Attorney General. After 30 days, the Attorney General may apply to the Court to amend the judgment in accordance with Paragraph 23.

[¶21] In the event of any Notice of Lien, recording of a Lien, or other adverse action by a subcontractor or vendor against the real property of any consumer, related only to work performed by Hofland Homes, LLC, or under a Hofland Homes, LLC, contract, Defendants agree to have the Notice of Lien or Lien vacated, satisfied,

or removed from the consumer's title, by litigation, if necessary. In the event any of Defendants' subcontractors or vendors attempt to maintain or enforce a claim for which said consumer has already paid Defendants for said real property improvements, Defendants agree to litigate and resolve the claim on behalf of the consumer. In the event of any judgment against any consumer aggrieved by the Defendants' failure to act in accordance with the terms of this Paragraph, the Attorney General, after 30 days written notice to Defendants at their last known address, may apply to the Court to amend this Judgment in accordance with Paragraph 23. In the event of a failure by the Defendants to have a Notice of Lien or lien vacated, satisfied or removed from the consumer's title as required in this Paragraph, the Attorney General, after 30 days written notice to Defendants at their last known address, may apply to the Court to amend or enforce this Judgment, or for such other relief as may be appropriate, pursuant to and in accordance with Paragraph 23.

[¶22] Defendants agree that, if there are additional consumers that Defendants failed to identify or disclose, each failure constitutes an individual violation of N.D.C.C. § 51-15-02 and the Attorney General may apply to the Court to impose upon Defendants a penalty and judgment of Five Hundred Dollars and No/100 (\$500.00) in connection with each failure. In furtherance of this Paragraph and upon application to the Court by the Attorney General, the Court shall retain jurisdiction to impose upon Defendants a civil penalty and judgment, pursuant to N.D.C.C. § 51-15-11.

[¶23] Defendants agree that any consumers that have not been identified or disclosed by Defendants, or that otherwise are subject to the provisions of

Paragraphs 19 through 21, and have legitimate claims in which the consumer is determined by a court of competent jurisdiction to be the prevailing party, shall be subject to the relief provided herein, including restitution, pursuant to N.D.C.C. § 51-15-07, for services or merchandise not performed or provided. The parties stipulate that the Court shall retain jurisdiction, and that pursuant to N.D.C.C. § 51-15-07, the Attorney General may apply to the Court, to amend the Consent Judgment and order restitution, or for such other relief as is provided in this Consent Judgment or North Dakota law.

[¶24] Defendants expressly agree that the consumer restitution and related judgment awarded to or for the benefit of John and Heather Olson, as set forth in paragraph 14 of this Consent Judgment, or an amended judgment as provided herein, shall be considered non-dischargeable under 11 U.S.C. §523(a)(2)(A).

[¶25] Defendants expressly agree that the consumer restitution and related judgment awarded to or for the benefit of Bruce and Cindy Darcy, as set forth in paragraph 15 of this Consent Judgment, or an amended judgment as provided herein, shall be considered non-dischargeable under 11 U.S.C. §523(a)(2)(A).

[¶26] Defendants expressly agree that the consumer restitution and related judgment awarded to or for the benefit of Jared Hofland and Kaylee Hofland, as set forth in paragraph 16 of this Consent Judgment, or an amended judgment as provided herein, shall be considered non-dischargeable under 11 U.S.C. §523(a)(2)(A)

[¶27] Defendants expressly agree that the consumer restitution and related judgment awarded to or for the benefit of Christopher John Staloch, as set forth in

paragraph 17 of this Consent Judgment, or an amended judgment as provided herein, shall be considered non-dischargeable under 11 U.S.C. § 523(a)(2)(A).

[¶28] The parties further agree that the Attorney General will not make any other claims of non-dischargeability in bankruptcy proceedings for any consumers not already known and identified in paragraphs 24 through 27.

[¶29] The Defendants agree to execute a stipulation in U.S. Bankruptcy Court District of North Dakota proceeding Ch-7 20-30236 Tyler Steven Hofland and Brianne Elizabeth Hofland, in which the Defendants acknowledge, that for the consumers identified in paragraphs 24 through 27 the Defendants expressly agree that the consumer restitution and related judgment awarded to or for the benefit of the consumers as set forth in paragraphs 24 through 27 of this Consent Judgment, or an amended judgment as provided herein, shall be considered non-dischargeable under 11 U.S.C. § 523(a)(2)(A). The Defendants further agree not to contest or object to any determination of non-dischargeability for these four consumers pursuant to an adversary complaint or proceeding brought or initiated by the Attorney General for a final determination by the Bankruptcy Court of non-dischargeability of the consumer restitution sums more fully identified in paragraphs 24 through 27.

[¶30] Pursuant to N.D.C.C. § 51-15-11, Defendants agree that the Attorney General shall have Judgment against them, jointly and severally, in the amount of Five Thousand Three Hundred Seventy Five Dollars and no/100 Dollars (\$5,375.00) for civil penalties, attorney's fees, investigation costs, and expenses. Said judgment amount, however, is not enforceable or collectible by the Attorney General before May 1, 2022, provided the Defendants have not violated this Consent Judgment or

other written agreement related to this Consent Judgment. If said judgment for civil penalties, attorney's fees, investigation costs, and expenses is paid prior to May 1, 2022, the Defendants may satisfy this obligation in full by payment in the sum of \$3,375.00. Defendants further expressly agree that the civil penalties, attorney's fees, investigations costs, and expenses herein, as set forth in paragraph 30 of this Consent Judgment, or an amended judgment as provided herein, shall be non-dischargeable under 11 U.S.C. § 523(a)(7).

[¶31] Defendants agree violation of this Consent Judgment is a violation of N.D.C.C. § 51-15-02, for which the Attorney General may seek civil penalties, attorney's fees, investigation costs, and any other additional relief allowed by law. Further, any violation of this Consent Judgment, except for a *de minimis* violation, is also punishable as a contempt of court pursuant to N.D.C.C. ch. 27-10 and Defendants are subject to all other civil penalties and sanctions provided by law, including attorney's fees, investigation costs, and expenses.

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

[¶33] This Judgment entered shall be a Judgment for which execution may issue.

Signed: 8/12/2020 8:38:02 AM

CLERK OF DISTRICT COURT

A handwritten signature in black ink that reads "Michele Brung". The signature is written in a cursive style and is positioned above a horizontal line.

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