

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL
DISTRICT

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

Plaintiff,

-vs-

RYAN ISAAH DENNING, KRISTINA
HELEY, CONSTRUCTION GURUS,
LLC,

Defendants.

Civil No. 09-2021-CV-01837

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

[¶1] This matter came before the Court on the State's Motions for Summary Judgment filed on August 3, 2021. Index ## 12-21. Defendants were served with the State's Motion for Summary Judgment by mail on August 3, 2021. Index # 21. 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

[¶3] The State initiated this action by service of the Summons and Complaint on Defendants. Index ## 3, 11.

[¶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 have failed to answer the Complaint or otherwise appear in this action.

[¶6] Therefore, Defendants admit the entirety of the State’s Complaint, including the following specific facts that the Court now finds:

On or about November 25, 2020, Defendants, while intending consumer reliance, contracted with North Dakota consumer Honggang Bu, 3329 23rd Ave. S., Fargo, ND 58103, to construct a deck for a total of \$6,800.00. At the time the contract was executed, Defendants solicited and accepted an advance payment of \$5,100.00 from Mr. Bu. Defendants promised Mr. Bu that the work would be completed by December 17, 2020. At the time that Defendants contracted with Mr. Bu and solicited and accepted his advance payment, they did not hold a North Dakota contractor’s license and were not in compliance with N.D.C.C. § 43-07-02(1).

On December 9, 2020, intending reliance and before Defendants even started performance under their contract with Mr. Bu, they solicited and accepted an additional payment of \$1,750.00 that Mr. Bu paid. In total, then, Defendants solicited and accepted \$6,850.00 from Mr. Bu, an amount greater than the total value of their original contract and estimate. When Defendants solicited this additional payment from Mr. Bu, Defendants were unlicensed.

At the same time that Defendants solicited additional payment from Mr. Bu, they executed a second contract with him and intended him to rely on the contract. Their contract promised that the new deck would be constructed by 5:00 p.m. on December 16, 2020. Defendants failed to

complete the project by December 16, 2020 and did not complete it at all. In the approximately two hours' time that Defendants performed under their contract with Mr. Bu, they only managed to dig three holes. After Mr. Bu expressed concern that they were not performing under their contract with him, Defendants unilaterally declared that they would neither complete performance nor refund his \$6,850.00.

As a result, Defendants abandoned their contract with Mr. Bu without a legal excuse and, because they failed to complete the work within 90 days of the promised completion date of December 16, 2020, Defendants have presumptively abandoned the contract and are in violation of N.D.C.C. § 43-07-14(1)(a). Furthermore, Defendants are in violation of N.D.C.C. §§ 43-07-14(1)(b), 43-07-14(1)(c), and 43-07-14(1)(f) because they diverted Mr. Bu's advance payments from completion of his project to personal expenses, harmed Mr. Bu in an amount of three thousand dollars, and failed to refund Mr. Bu's advance payments after presumptively abandoning his project.

Upon information and belief, Defendants have engaged in other unlicensed contracting work without proper licensure, including work for their landlord.

Compl., Index # 2, ¶¶ 19-22.

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 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.

[¶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 his 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 or 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), 43-07-14(1)(a), 43-07-14(1)(b), 43-07-14(1)(c), and 43-07-14(1)(f). N.D.C.C. § 43-07-02(1) provides:

43-07-02. License Required – Construction Fraud – Penalty.

1. A person may not engage in the business nor act in the capacity of a contractor within this state when the cost, value, or price per job exceeds the sum of four thousand dollars nor may that person maintain any claim, action, suit, or proceeding in any court of this state related to the person's business or capacity as a contractor without first having a license as provided in this chapter.

N.D.C.C. § 43-07-02(1).

[¶19] About N.D.C.C. § 43-07-02(1), the Supreme Court has said:

The purpose of the statute is to protect consumers from fraudulent practices and to protect the public from unqualified or uninsured contractors. The licensing requirements allow the registrar to investigate and determine the license applicant's fitness to act in the capacity of a contractor, including requesting information about the applicant's criminal history. N.D.C.C. § 43-07-04(1). The licensing requirements also 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.

[¶20] By failing to answer the Complaint and oppose the State's motion for summary judgment, Defendants admit that, while intending consumer reliance, they solicited or contracted with North Dakota consumers above the statutory amount of four thousand dollars while unlicensed, including consumer Honggang Bu. Supra, ¶ 6. Defendants admit that they contracted with additional consumers above the statutory amount while unlicensed, including their landlord. Id. Furthermore, Defendants admit abandoning their contract with Honggang Bu, diverting his advance payment to personal expenses, harming him in an amount of three thousand dollars, and failing to provide a refund after the presumption of abandonment has arisen, conduct constituting violations of N.D.C.C. § 43-07-14(1)(a), 43-07-14(1)(b), 43-07-14(1)(c), and 43-07-14(1)(f).

[¶21] 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. Under N.D.C.C. § 43-07-14(3), violation of N.D.C.C. §§ 43-07-02 and 43-07-14 constitutes a violation of N.D.C.C. ch. 51-15.

[¶22] “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)). The purpose of the contracting licensing statute “is to protect consumers from fraudulent practices and to protect the public from unqualified or uninsured contractors.” Snider, 2018 ND at ¶ 13, 907 N.W.2d at 401.

[¶23] 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 engaging in the business or acting in the capacity of a contractor without a license and by making false or misleading representations to customers, including implied or express false representations regarding their ability to engage in the business or act in the capacity of a contractor. Supra, ¶ 6. Defendants also admit that they violated N.D.C.C. § 51-15-02 by abandoning their contract with Honggang Bu, diverting his advance payment to personal expenses, harming him in an amount of three thousand

dollars, and failing to provide a refund after the presumption of abandonment has arisen. 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 his 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. Defendants are 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.

B. 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.

C. 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.

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 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).

E. Defendants, their agents, employees, representatives, assigns and all other persons in active concert or participation with him, 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 in accordance with Paragraph 28(F), *infra*.

F. 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, including construction work. 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 are rehabilitated:

1. Three 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;

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 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 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.

G. Plaintiff shall have Judgment against Defendants, jointly and severally, in the amount of \$1,000.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

H. Plaintiff shall have Judgment against Defendants, jointly and severally, in the amount of \$3,190.64 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.

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

J. Pursuant to N.D.C.C. §§ 51-15-07, Defendant Construction Gurus, LLC is ordered involuntarily dissolved.

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

L. 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: 9/21/2021 2:01:28 PM

BY THE COURT:



District Court Judge

STATE OF NORTH DAKOTA
COUNTY OF CASS

IN DISTRICT COURT
EAST CENTRAL JUDICIAL
DISTRICT

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

Plaintiff,

-vs-

RYAN ISALIAH DENNING, KRISTINA
HELEY, CONSTRUCTION GURUS,
LLC,

Defendants.

Civil No. 09-2021-CV-01837

JUDGMENT

[¶1] This action came on before the Honorable Steven E. McCuollogh, Judge of the Cass County District Court, Northeast 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 August 3, 2021. 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. Defendants are 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.

B. 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.

C. 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.

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 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).

E. Defendants, their agents, employees, representatives, assigns and all other persons in active concert or participation with him, 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 in accordance with Paragraph 28(F), *infra*.

F. 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, including construction work. 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 are rehabilitated:

1. Three 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;
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 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 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.

G. Plaintiff shall have Judgment against Defendants, jointly and severally, in the amount of \$1,000.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

H. Plaintiff shall have Judgment against Defendants, jointly and severally, in the amount of \$3,190.64 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.

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

J. Pursuant to N.D.C.C. §§ 51-15-07, Defendant Construction Gurus, LLC is ordered involuntarily dissolved.

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

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

CLERK OF DISTRICT COURT

Signed: 9/21/2021 2:45:00 PM

Nicola Lunski, Deputy
