

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. 09-2016-CV-03628

Plaintiff,

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

-vs-

GLEN ROBERT COLLINS, doing business
as TRI CITY BUILDING SERVICES and
COLLINS HANDYMAN & RESTORATION,

Defendant.

CPAT 160115.002

[¶1] This matter came before the Court on Plaintiff's Motion for Summary Judgment, dated January 13, 2017 and filed on January 13, 2017. Defendant, Glen Robert Collins, doing business as Tri City Building Services and Collins Handyman & Restoration, was served with the Motion for Summary Judgment by mail on January 13, 2017. Defendant has failed to respond or otherwise appear in opposition to the Motion for Summary Judgment. More than 33 days have passed since the 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.

[¶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 Glen Robert Collins, doing business as Tri City Building Services and Collins Handyman & Restoration, has never applied for or been issued a North Dakota contractor license.

[¶5] Defendant Glen Robert Collins, doing business as Tri City Building Services and Collins Handyman & Restoration, has never registered the trade name "Tri City Building Services" or "Collins Handyman & Restoration" with the Secretary of State.

[¶6] On September 10, 2015, Defendant, doing business as Collins Handyman & Restoration, entered into a contract (#1265) with Jory Baumbach and Baumbach Properties, LLC ("Baumbach Properties"), PO Box 1676, Fargo, ND 58107, to perform work as a contractor at 2608 Pacific Drive in Fargo, North Dakota for a total contract price of \$1,100.00. The contract specified that Defendant was to: first, "[Remove and Replace] both front decks, new support poles on all corners, new main frame beams, new deck beams where needed;" second, "[remove and replace] complete new steps system on back of house. New stringers. Boards, hangers. Kick plates;" and "work all done to present code." The contract specified that the work under the contract was to begin the week of September 21, 2015. Defendant solicited and accepted an advance payment of \$550.00 from Baumbach Properties that was paid with check # 4000 on September 10, 2015. Defendant and Jory Baumbach executed the contract on September 10, 2015. Mr. Baumbach noted on the memo line of the check that it was payment for "2608 decks, stairs."

[¶7] On September 10, 2015, Defendant, doing business as Collins Handyman & Restoration, entered into a contract (#1266) with Jory Baumbach and Baumbach

Properties to perform work as a contractor at two apartment building complexes located at 2608 and 2614 Pacific Drive in Fargo, North Dakota for a total price of 1,000.00. The contract specified that Defendant was to: first, "remove doors and steps on 2614 and 2608. Frame up. Insulate. Sheet. Install siding;" second, "sheetrock, tape texture interior to match existing;" and "dispose of all material." Defendant solicited and accepted an advance payment of \$500.00 from Baumbach Properties that was paid with check # 4001. Defendant and Jory Baumbach executed the contract on September 10, 2015. Mr. Baumbach noted on the memo line of the check that it was payment for "2608 and 2614 remove stairs."

[¶8] Defendant endorsed check # 4000 and presented it for payment at Gate City Bank on September 10, 2015. Defendant endorsed check # 4001 and presented it for payment at Gate City Bank on September 16, 2015. Defendant provided his driver's license to Gate City Bank when both checks were presented for payment.

[¶9] On October 22, 2015, Defendant, doing business as Collins Handyman & Restoration, entered into an add-on contract to contract # 1266 on October 22, 2015. Under the terms of the contract, Defendant was to "install 46 x 48" window in north unit." This work was further described as "install [remove and replace] window in existing door opening." Defendant solicited and accepted an advance payment of \$450.00 that was paid by Jory Baumbach of Baumbach Properties on October 22, 2015 with check # 4009. Defendant noted on the add-on contract that the \$450.00 payment was payment in full and signed for receipt of the payment. Mr. Baumbach noted on the memo line of the check that it was payment for "2608 #4 window."

[¶10]Defendant endorsed the \$450.00 check and presented it for payment at Gate City Bank on October 23, 2015.

[¶11]Defendant represented to Mr. Baumbach that the advance payments were needed so that he could purchase supplies for the work he was contracted to complete.

[¶12]Subsequent to receiving three advance payments from Jory Baumbach and Baumbach Properties, Defendant performed no work under the contracts. Mr. Baumbach attempted to contact Defendant for months following execution of the contracts. Defendant either ignored Mr. Baumbach's communications or gave excuses as to why he could not start the work.

[¶13]On December 10, 2015, Mr. Baumbach requested a refund from Defendant since no work had been done under the three contracts. Defendant told Mr. Baumbach that he was out of the state but that he would mail her money towards issuing a refund of her advance payments. Mr. Baumbach never received a refund from Defendant. During one of her communications with Defendant, Defendant told Mr. Baumbach that he had spent her advance payments on personal matters but was attempting to put together the money to issue her a complete refund.

[¶14]On April 27, 2016, a Small Claims judgment was entered against Glen Collins in favor of Jordell Baumbach for \$1,551.00. The judgment was satisfied on July 5, 2016.

[¶15]On March 4, 2016, Defendant, doing business as Tri City Building Services, entered into a contract with Breen Maii, 686 Westminster Dr., Moorhead, MN 56560, to perform a number of services as a contractor including: sheetrock and insulation installation in a garage, building a television display area, moving an electrical outlet;

and, in a laundry room, install sheetrock and insulation, install a door, and texture and paint the walls. Defendant noted that the price of \$1,850.00 included all materials and labor. The work was to start "approximately on week of March 21st, 2016." Defendant solicited and accepted an advance payment in cash of \$700.00 on March 4, 2016 and reflected the advance payment on the contract that was executed by Defendant and Mr. Maii.

[¶16] On March 17, 2016, Defendant, doing business as Tri City Building Services, entered into a second contract with Breen Maii to perform services as a contractor. Under the terms of the contract, Defendant was to finish Mr. Maii's basement that required completion of a large number of tasks including: framing the basement, framing steps from the basement to a recreational area, installing insulation and a vapor barrier, installing, texturing, and painting sheetrock. Defendant, not licensed to perform plumbing or electrical work in North Dakota, contracted to install lighting, install plumbing, install electrical switches, and install a "4 electric buse [sic] board." Defendant contracted to perform all of the work under the contract for a total price of \$5,400.00. Defendant solicited and accepted an advance payment in cash of \$2,000.00 on March 17, 2016 and reflected the advance payment on the contract that was executed by Defendant and Mr. Maii.

[¶17] On May 13, 2016, Defendant, doing business as Tri City Building Services, executed an agreement on May 13, 2016. Defendant promised to start on Breen Maii's garage on Monday May 16, 2016 and complete the work on the basement and upstairs. Defendant promised that if he didn't start the work on May 16, 2016, he would refund Mr. Maii \$2,700.00 plus 30%.

[¶18]On June 16, 2016, Mr. Maii filed a consumer fraud complaint with the Attorney General's Office. Defendant did not complete any work under the contract he entered into with Mr. Maii and never provided a refund of the advance payments he solicited and accepted.

[¶19]On March 2, 2016, Joseph Davenport, 330 Rivertree Blvd, PO Box 43, Harwood, ND 58042, filed an action in Small Claims against Defendant as Case No. 09-2016-SC-00116. Mr. Davenport alleged that he paid Defendant \$3,300.00 on August 8, 2015 as an advance payment for Defendant to perform services as a contractor, specifically to re-side his home. Mr. Davenport paid to Defendant a second advance payment on August 22, 2015, in the amount of \$1,330.00, for additional re-siding work. On March 30, 2016, a monetary judgment was entered against Defendant in the amount of \$4,762.00 that remains unsatisfied.

[¶20]On March 7, 2016, Trever Speidel, 4734 Woodhaven St. S., Fargo, ND 58104, filed an action in Small Claims against Defendant as Case No. 09-2016-SC-00140. Mr. Speidel alleged that he paid Defendant \$2,120.00 for Defendant to perform services as a contractor. Defendant was retained in order to finish Mr. Speidel's basement by framing, installing sheetrock, installing insulation, taping, and texturing. Defendant performed minimal work, including some framing and installation of some insulation but thereafter quit performing work for which he had been paid. On July 7, 2016, a monetary judgment was entered against Defendant for \$2,166.00 that remains unsatisfied.

[¶21]On March 16, 2016, Kyle Erickson, PO Box 72, Hope, ND 58046, filed an action in Small Claims against Defendant as Case No. 09-2016-SC-00156. Mr. Erickson

alleged that he paid Defendant a total of \$1,600.00 on or about January 18, 2016 for Defendant to perform services as a contractor by performing work on his home. Mr. Erickson alleged that the work was so poorly done that he required Defendant to return to his home in order to make further repairs. After Defendant failed on multiple occasions to return and finish the paid-for work, Mr. Erickson was forced to pay another contractor to make the repairs. On May 4, 2016, a monetary judgment was entered against Defendant in the amount of \$2,059.27 that remains unsatisfied.

[¶22] On April 6, 2016, Defendant, doing business as Tri City Building Services, entered into a contract with Michael Jennings, 4791 50th Ave. S., Fargo, ND 58104, to perform services as a contractor, specifically to replace a ceiling. Defendant solicited and accepted an advance payment of \$2,350.00 that Mr. Jennings paid to Defendant with check # 1218. The advance payment was for materials to replace the ceiling. Defendant endorsed the check and presented it to Gate City Bank for payment.

[¶23] On April 15, 2016, Defendant, doing business as Tri City Building Services, entered into a second contract with Michael Jennings to perform services as a contractor, specifically to remodel Mr. Jennings's kitchen. Defendant solicited and accepted an advance payment of \$8,577.08 that Mr. Jennings paid to Defendant with check # 1223. The advance payment was for materials in connection with the kitchen remodel. Defendant endorsed the check and presented it to Gate City Bank for payment.

[¶24] On May 2, 2016, Defendant, doing business as Tri City Building Services, entered into a third contract with Michael Jennings to perform services as a contractor, specifically to replace flooring on the upstairs level of Mr. Jennings's home. Defendant

solicited and accepted an advance payment of \$2,505.00 that Mr. Jennings paid to Defendant with check # 1228. The advance payment was for materials in connection with the upstairs floor replacement. Defendant endorsed the check and presented it to Gate City Bank for payment.

[¶25] On May 16, 2016, Defendant, doing business as Tri City Building Services, entered into a fourth contract with Michael Jennings to perform services as a contractor, specifically to remove, install, and paint all interior doors on the upstairs level of Mr. Jennings's home. Defendant solicited and accepted an advance payment of \$1,994.00 that Mr. Jennings paid to Defendant with check # 1235. The advance payment was primarily for the purchase of materials in connection with the door replacement work, but also included advance payment towards labor. Defendant endorsed the check and presented it to Gate City Bank for payment.

[¶26] On May 26, 2016, Defendant, doing business as Tri City Building Services, entered into a fifth contract with Michael Jennings to perform services as a contractor, specifically to install new cabinets in Mr. Jennings's kitchen. Defendant solicited and accepted an advance payment of \$1,100.00 that Mr. Jennings paid to Defendant with check # 1238. The advance payment was for the purchase of the necessary cabinetry but also for labor in connection with the flooring work. Mr. Jennings issued this advance payment because Defendant represented to Mr. Jennings that he needed additional funds in order to get his (Defendant's) truck out of service. Defendant endorsed this check and presented it to Gate City Bank for payment.

[¶27] In total, Defendant solicited and accepted a total \$16,476.08 in advance payments from Mr. Jennings.

[¶28]Defendant represented to Mr. Jennings that he was licensed to perform contracting work in North Dakota and showed his purported license to Mr. Jennings. Defendant has never been licensed to operate as a contractor in North Dakota.

[¶29]The only work that Defendant performed under the five contracts entered into with Mr. Jennings was a small amount of work on the ceiling and demolition work on the flooring, cabinets, and doors that comprised approximately two days' worth of work. Defendant did not purchase the materials for which he received the five advance payments. Mr. Jennings's home was left in disrepair as a result of Defendant's failure to complete the contracted work. Mr. Jennings hired other contractors to perform the work that Defendant had been hired – and paid – to complete. Defendant also removed \$4,500.00 of materials from Mr. Jennings's home that was supposed to be left with Mr. Jennings following their demolition.

[¶30]On June 28, 2016, Defendant executed a Confession of Judgment and Stipulation for Payment on behalf of Michael Jennings wherein he admitted that he owed Mr. Jennings \$15,976.08 that he had received as payment for materials and prepayment of labor. Defendant agreed to pay this amount to Mr. Jennings on or before July 1, 2016.

[¶31]After Defendant failed to pay Mr. Jennings the \$15,976.08 by July 1, 2016, the Confession of Judgment and Stipulation for Payment was filed with the Cass County District Court as Case No. 09-2016-CV-01874 and a monetary judgment was entered against Defendant in the amount of \$16,066.08.

[¶32] On August 30, 2016, the Cass County State's Attorney charged Defendant with one count of Construction Fraud and one count of Contracting Without A License by Information as Case No. 09-2016-CR-3229.

[¶33] On August 29, 2016, Summit Condos, 3434 28th St. S. #101, Fargo, ND 58104, filed an action in Small Claims alleging that it had paid Defendant \$640.00 to remove and replace the deck trim from eleven units. Defendant executed the bid with Summit Condos on July 30, 2015. Defendant performed no work under the contract as of the date that the Small Claims action was filed. On November 3, 2016, Summit Condos' Small Claims action was dismissed without prejudice for failure to prosecute.

II. CONCLUSIONS OF LAW

[¶34] 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;

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

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

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

[¶38] 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.

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

[¶40] 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.

[¶41] 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.

[¶42] 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 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 without first having a license as required by N.D.C.C. § 43-07-02 on three occasions when Defendant:

- a. Contracted with Joseph Davenport in August 2015 for a total price of \$4,330.00;
and
- b. Contracted with Michael Jennings in April and May 2016 for a total price of \$16,476.08.

[¶43] 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 abandoned a contract without legal excuse after a deposit of money or other consideration has been provided to him. The presumption of abandonment arose because Defendant failed to substantially commence any work as agreed upon within sixty days of a starting date agreed upon in writing or within ninety days of the contract date if no starting date was

agreed upon in violation of N.D.C.C. § 43-07-14(1)(a) on fourteen occasions when Defendant:

- a. Failed to substantially commence work under his September 10, 2015 contract with Jory Baumbach and Baumbach Properties;
- b. Failed to substantially commence work under his second September 10, 2015 contract with Jory Baumbach and Baumbach Properties;
- c. Failed to substantially commence work under his October 22, 2015 add-on contract with Jory Baumbach and Baumbach Properties;
- d. Failed to substantially commence work under his March 4, 2016 contract with Breen Maii;
- e. Failed to substantially commence work under his March 17, 2016 contract with Breen Maii;
- f. Failed to substantially commence work under his August 8, 2015 contract with Joseph Davenport;
- g. Failed to substantially commence work under his August 22, 2015 contract with Joseph Davenport;
- h. Failed to substantially commence work under his contract with Trever Speidel;
- i. Failed to substantially commence work under his April 6, 2016 contract with Michael Jennings;
- j. Failed to substantially commence work under his April 15, 2016 contract with Michael Jennings;

- k. Failed to substantially commence work under his May 2, 2016 contract with Michael Jennings;
- l. Failed to substantially commence work under his May 16, 2016 contract with Michael Jennings;
- m. Failed to substantially commence work under his May 26, 2016 contract with Michael Jennings; and
- n. Failed to substantially commence work under his July 30, 2015 contract with Summit Condos.

[§44] 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 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 in violation of N.D.C.C. § 43-07-14(1)(b) on fourteen occasions when Defendant:

- a. Diverted the \$550.00 he received from Jory Baumbach and Baumbach Properties on September 10, 2015;
- b. Diverted the \$500.00 he received from Jory Baumbach and Baumbach Properties on September 10, 2015;
- c. Diverted the \$450.00 he received from Jory Baumbach and Baumbach Properties on October 22, 2015;
- d. Diverted the \$700.00 he received from Breen Mail on March 4, 2016;
- e. Diverted the \$2,000.00 he received from Bree Mail on March 17, 2016;

- f. Diverted the \$3,300.00 he received from Joseph Davenport on August 8, 2015;
- g. Diverted the \$1,330.00 he received from Joseph Davenport on August 22, 2015;
- h. Diverted the \$2,120.00 he received from Trever Speidel;
- i. Diverted the \$2,350.00 he received from Michael Jennings on April 6, 2016;
- j. Diverted the \$8,577.08 he received from Michael Jennings on April 15, 2016;
- k. Diverted the \$2,505.00 he received from Michael Jennings on May 2, 2016;
- l. Diverted the \$1,994.00 he received from Michael Jennings on May 16, 2016;
- m. Diverted the \$1,100.00 he received from Michael Jennings on May 26, 2016;
and
- n. Diverted the \$640.00 he received from Summit Condos on July 30, 2015.

[§45] 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 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 in violation of N.D.C.C. § 43-07-14(1)(c) on the following two occasions when Defendant:

- a. Abandoned his August 8, 2015 and August 22, 2015 contracts with Joseph Davenport and diverted a total of \$4,630.00; and
- b. Abandoned his April 6, 2016 through May 26, 2016 contracts with Michael Jennings and diverted a total of \$16,476.00.

[¶46] 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 engaged in work without any trade or professional license as required for the work pursuant to local, state, or federal law in violation of N.D.C.C. § 43-07-14(1)(e) when Defendant contracted with Breen Maii on March 17, 2016 to perform electrical and plumbing work when not licensed to perform such work under local, state, or federal law, including in North Dakota and Minnesota.

[¶47] 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 failed to refund fully a contracting party's advance payment after a rebuttable presumption of abandonment arose and the contracting party made a request to Defendant for a refund in violation of N.D.C.C. § 43-07-14(1)(f) on the following fourteen occasions when Defendant:

- a. Failed to fully refund Jory Baumbach and Baumbach Properties after abandoning the first September 10, 2015 contract and not providing the requested refund;
- b. Failed to fully refund Jory Baumbach and Baumbach Properties after abandoning the second September 10, 2015 contract and not providing the requested refund;
- c. Failed to fully refund Jory Baumbach and Baumbach Properties after abandoning the October 22, 2015 add-on contract and not providing the requested refund;
- d. Failed to fully refund Breen Maii after abandoning the March 4, 2016 contract and not providing the requested refund;

- e. Failed to fully refund Breen Maii after abandoning the March 17, 2016 contract and not providing the requested refund;
- f. Failed to fully refund Joseph Davenport after abandoning the August 8, 2015 contract and not providing the requested refund;
- g. Failed to fully refund Joseph Davenport after abandoning the August 22, 2015 contract and not providing the requested refund;
- h. Failed to fully refund Trever Speidel after abandoning the contract and not providing the requested refund;
- i. Failed to fully refund Michael Jennings after abandoning the April 6, 2016 contract and not providing the requested refund;
- j. Failed to fully refund Michael Jennings after abandoning the April 15, 2015 contract and not providing the requested refund;
- k. Failed to fully refund Michael Jennings after abandoning the May 2, 2016 contract and not providing the requested refund;
- l. Failed to fully refund Michael Jennings after abandoning the May 16, 2016 contract and not providing the requested refund;
- m. Failed to fully refund Michael Jennings after abandoning the May 26, 2016 contract and not providing the requested refund; and
- n. Failed to fully refund Summit Condos after abandoning the July 30, 2015 contract and not providing the requested refund.

[¶48]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 engaged in business in North Dakota under trade names ("Tri City Building Services" and "Collins Handyman &

Restoration”) not registered with the Secretary of State in violation of N.D.C.C. § 47-25-02.

[¶49] Under N.D.C.C. § 43-07-14(3), Defendant’s two violations of N.D.C.C. § 43-07-02, acting in 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.

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

[¶51] 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 on the following three occasions when Defendant expressly, impliedly, or by omission falsely represented to consumer that he was a licensed contractor by soliciting and accepting business above the North Dakota statutory amount of four thousand dollars or operated the contracting businesses “Tri City Building Services” or “Collins Handyman & Restoration”:

- a. Contracted with Breen Mail on March 17, 2016 while doing business as Tri City Building Services for a total price of \$5,400.00;
- b. Entered into two contracts with Joseph Davenport in August 2015 for a total price of \$4,630.00; and
- c. Entered into five contracts with Michael Jennings for a total price of \$16,476.08.

[¶52] 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 on the following fourteen occasions when Defendant misrepresented his intent or ability to perform services as a contractor for consumers and, instead of purchasing materials or rendering services with their advance deposits, used consumer advance deposits for personal expenses:

- a. Entered into a contract with Jory Baumbach and Baumbach Properties on September 10, 2015, solicited and accepted an advance deposit of \$550.00, and then abandoned the contract without legal excuse, diverted the funds, and failed to provide a refund;
- b. Entered into a second contract with Jory Baumbach and Baumbach Properties on September 10, 2015, solicited and accepted an advance deposit of \$500.00, and then abandoned the contract without legal excuse, diverted the funds, and failed to provide a refund;
- c. Entered into an add-on contract with Jory Baumbach and Baumbach Properties on October 22, 2015, and then abandoned the contract and accepted an advance deposit of \$450.00, and then abandoned the contract without legal excuse, diverted the funds, and failed to provide a refund;

- d. Entered into a contract with Breen Maii on March 4, 2016, solicited and accepted an advance deposit of \$700.00, and then abandoned the contract without legal excuse, diverted the funds, and failed to provide a refund;
- e. Entered into a second contract with Breen Maii on March 17, 2016, solicited and accepted an advance deposit of \$2,000.00, and then abandoned the contract without legal excuse, diverted the funds, and failed to provide a refund;
- f. Entered into a contract with Joseph Davenport on August 8, 2015 and August 22, 2015, solicited and accepted advance deposits totaling \$4,330.00, and then abandoned the contract without legal excuse, diverted the funds, and failed to provide a refund;
- g. Entered into a contract with Trever Speidel, solicited and accepted an advance deposit of \$2,120.00, and then abandoned the contract without legal excuse, diverted the funds, and failed to provide a refund;
- h. Entered into a contract with Kyle Erickson on January 18, 2016, solicited and accepted an advance deposit of \$1,600.00, and then abandoned the contract without legal excuse, diverted the funds, and failed to provide a refund;
- i. Entered into a contract with Michael Jennings on April 6, 2016, solicited and accepted an advance deposit of \$2,350.00, and then abandoned the contract without legal excuse, diverted the funds, and failed to provide a refund;
- j. Entered into a second contract with Michael Jennings on April 15, 2016, solicited and accepted an advance deposit of \$8,577.08, and then abandoned

the contract without legal excuse, diverted the funds, and failed to provide a refund;

- k. Entered into a third contract with Michael Jennings on May 2, 2016, solicited and accepted an advance deposit of \$2,505.00, and then abandoned the contract, diverted the funds, and failed to provide a refund;
- l. Entered into a fourth contract with Michael Jennings on May 16, 2016, solicited and accepted an advance deposit of \$1,994.00, and then abandoned the contract, diverted the funds, and failed to provide a refund;
- m. Entered into a fifth contract with Michael Jennings on May 26, 2016, solicited and accepted an advance deposit of \$1,100.00, and then abandoned the contract, diverted the funds, and failed to provide a refund; and
- n. Entered into a contract with Summit Condos on July 30, 2015, solicited and accepted an advance deposit of \$640.00, and then abandoned the contract, diverted the funds, and failed to provide a refund.

[¶53] 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.

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

[¶55] 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.

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

ORDER FOR SUMMARY JUDGMENT

[¶57] 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 Glen Robert Collins 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 when the cost, value, or price per job exceeded the sum of four thousand dollars without first having a contractor license.
- C. That Defendant Glen Robert Collins 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. That Defendant Glen Robert Collins 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. That Defendant Glen Robert Collins 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. That Defendant Glen Robert Collins be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in work without any trade or professional license as required for the work pursuant to local, state, or federal law in violation of N.D.C.C. § 43-07-14(1)(e).

G. That Defendant Glen Robert Collins 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. Engaging in business in North Dakota under trade names not registered with the Secretary of State in violation of N.D.C.C. § 47-25-02.

I. That Defendant Glen Robert Collins 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.

J. That Defendant Glen Robert Collins, 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.

K. That Defendant Glen Robert Collins, 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).

L. That Defendant Glen Robert Collins, 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 for a period of five (5) years and until Defendant refunds and pays in full amounts owed to all consumers that have paid Defendant 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.

M. That, after five (5) years from entry of judgment and until Defendant Glen Robert Collins refunds and pays in full amounts owed to all consumers that have paid Defendant advance payments for services not performed or merchandise not delivered, Defendant Glen Robert Collins, 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 sales of contracting and home improvements, repairs, or services, including construction work, in the state of North

Dakota unless Defendant Glen Robert Collins has obtained a Contractor's License pursuant to N.D.C.C. ch. 43-07 and has complied with all contractor licensing requirements appropriate and necessary for the work to be undertaken by him. "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.

N. . That, for a period of ten (10) years from entry of judgment, Defendant Glen Robert Collins, 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 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).

O. That Plaintiff shall have Judgment against Defendant Glen Robert Collins in the amount of \$1,000.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

P. That Plaintiff shall have Judgment against Defendant Glen Robert Collins in the amount of \$2,574.00 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.

Q. That Defendant Glen Robert Collins 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.

R. That Defendant Glen Robert Collins shall pay to Plaintiff the sum of \$2,700.00, together with interest accruing thereon, as restitution for Breen Mail.

S. That Defendant Glen Robert Collins shall pay to Plaintiff the sum of \$640.00, together with interest accruing thereon, as restitution for Summit Condos.

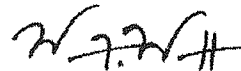
T. The Judgment entered shall be a Judgment for which execution may issue.

U. 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 _____, 201Y.

BY THE COURT:

Signed: 2/16/2017 2:07:52 PM



Honorable Wade L. Webb
District Court Judge