

ELECTRONICALLY FILED
2019 May 21 PM 3:26
CLERK OF THE ANDERSON COUNTY DISTRICT COURT
CASE NUMBER: 2019-CV-000011



Court: Anderson County District Court
Case Number: 2019-CV-000011
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Dustin Welsh, et al.
Type: Journal Entry of Consent Judgment

SO ORDERED.

A handwritten signature in cursive script, reading "Eric Godderz".

/s/ Honorable Eric Godderz, District Court Judge

**IN THE DISTRICT COURT OF ANDERSON COUNTY, KANSAS
FOURTH JUDICIAL DISTRICT**

STATE OF KANSAS, <i>ex rel.</i>)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
v.)	
)	2019-CV-000011
DUSTIN WELSH, an individual,)	
and)	
PHOENIX FRAMING, LLC,)	
a Kansas limited liability company,)	
)	
Defendants.)	
)	
<hr/>		
(Pursuant to K.S.A. Chapter 60)		

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this date, the parties’ Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. §50-632(b). The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Melanie Jack, Assistant Attorney General. Defendants Dustin Welsh and Phoenix Framing, LLC, (“Defendants”) appear Pro Se.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

PARTIES, JURISDICTION AND VENUE

1. Derek Schmidt is the duly elected, qualifying and acting Attorney General for the State of Kansas.

2. The Attorney General's authority to bring this action is derived from the statutory and

common law of the State of Kansas, specifically the Kansas Consumer Protection Act ("KCPA"), K.S.A. §50-623 *et seq.*, and the Kansas Roofing Registration Act ("KRRR"), K.S.A. §50-6,121, *et seq.*

3. Defendant Dustin Welsh ("Defendant Welsh") is an individual with a residential and business address at 25665 NE Oregon Road, Garnett, Kansas, 66032.

4. Phoenix Framing, LLC, ("Defendant Phoenix Framing") was a Kansas limited liability company owned, managed and organized by Dustin Welsh on January 20, 2017. It was forfeited on July 15, 2018.

5. All references to the Defendants herein include acts performed individually, in concert, or by or through employees, directors, officers, owners, managers, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, including their predecessors, subsidiaries, affiliates and successors.

6. Jurisdiction and venue are appropriate in District Court of Anderson County, Kansas, pursuant to K.S.A. §50-638(a) and (b), respectively.

ALLEGATIONS

7. Plaintiff alleges that Defendants acted as a "supplier" in Kansas, as that term is defined by K.S.A. §50-624(1).

8. Plaintiff alleges that Defendants are a "roofing contractor," as that term is defined by K.S.A. §50-6,122(a)(1).

9. At all times relevant hereto, and in the ordinary course of business, Defendants made or caused to be made "consumer transactions" as that term is defined by K.S.A. §50-624(c).

10. Plaintiff alleges that at all times relevant hereto, Defendants engaged in acts and practices in violation of the KRRR, K.S.A. §50-6,121 *et seq.*

11. Any violation of the KRRRA shall be deemed to a deceptive or unconscionable act or practice under the KCPA, K.S.A. §50-623, *et seq.*

12. Defendants have violated the KRRRA, K.S.A. §50-6,133(a) by:

No roofing contractor or any person providing services as a roofing contractor shall:

(3) engage in fraudulent or deceptive acts or practices or misrepresentation of products, services or qualifications as a roofing contractor; and

(6) engage in roofing services with at least four (4) Kansas consumers without a valid registration certificate as required for roofing contractors.

13. Defendants voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law, solely for the purpose of settlement and without admitting any allegations contained herein.

INJUNCTIVE RELIEF

14. Defendants agree to comply with all Kansas laws, statutes, rules and regulations relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. §50-623 *et seq.*

15. Defendants agree to comply with the Kansas Roofing Registration Act, K.S.A. §50-6,121 *et seq.*, while acting as a general contractor and performing roofing services in the state of Kansas.

16. Defendants shall not cause or encourage third parties, nor knowingly permit third parties acting on their behalf, to engage in practices from which Defendants are prohibited by this Consent Judgment.

17. Defendants shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices which are prohibited in this

Consent Judgment or for any other purpose which would otherwise circumvent the spirit or purposes of this Consent Judgment.

18. Defendants agree that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, affiliates, assignees and successors.

CIVIL PENALTIES

19. Defendants agrees to pay the Office of the Kansas Attorney General \$5,000.00 in civil penalties for violations of the KRRRA, pursuant to K.S.A. §50-6,123 and KCPA, pursuant to K.S.A. §50-636.

20. Defendants agrees to make monthly payments to the Office of the Attorney General In the total amount of five thousand dollars (\$5,000) total, paid in twenty (20) monthly installments of two hundred fifty dollars (\$250.00) beginning June 1, 2019, and the first of the month thereafter until paid in full.

21. If, upon motion by Plaintiff, the Court finds that Defendants have violated the payment plan of this Consent Judgment, the entire judgment amount of \$5,000.00 shall become immediately due and payable by Defendants.

22. Payment will be in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General, marked **CP-17-3398** and mailed to:

Melanie Jack, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612

OTHER PROVISIONS

23. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to

this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

24. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions, or parts.

25. Compliance with this Consent Judgment does not relieve Defendants of any obligation imposed by applicable federal, state, or local law, nor shall this Consent Judgment preclude the Plaintiff from taking appropriate legal action to enforce any other statutes under his jurisdiction or from any other Federal or State agency to enforce any other federal, state, or local law under its jurisdiction.

26. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the Defendants business practices, nor shall the Defendants represent the Consent Judgment as such approval. The parties further understand and agree that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to this Consent Judgment shall not be construed to be an approval of or sanction of any representations, acts, or practices of Defendants, nor shall any inaction by the Attorney General be considered a waiver by the Attorney General of any rights under this Consent Judgment or applicable law.

27. Defendants agree that pursuant to 11 U.S.C. §523(a)(2)(A) and §523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

28. This Consent Judgment represents the entire agreement between Plaintiff and

Defendants, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Consent Judgment which are not fully expressed herein or attached hereto.

29. Defendants hereby represent and warrant that Defendants had the opportunity to consult with and receive the advice of legal counsel regarding all matters relative to this Consent Judgment, including the rights and obligations of Defendants under this Consent Judgment and the consequences of breach hereunder.

30. Defendants represents that Defendants have read the Consent Judgment and know and understand the contents thereof. Defendants further represents and warrants that Defendant Welch is signing this Consent Judgment as the result of his own free act, and that Defendant Welsh has not relied on any statement(s) or representation(s) of the Attorney General or anyone acting on his behalf, except for those contained in this Consent Judgment.

31. By signing this Consent Judgment, Defendant Welsh represents and warrants that he is duly and legally authorized to execute this Consent Judgment on behalf of himself and Phoenix Framing, LLC, thus binding the Defendants to the provisions of this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendants immediately becomes a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against the Defendants in favor of Plaintiff in the amount of \$5,000.00, five thousand dollars. Payment will be in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General.


IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are jointly and severally liable for the aforementioned violations of the KCPA, K.S.A. §50-623, *et seq.* and KRRRA, K.S.A. §50-6,121 *et seq.*,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, the provisions of K.S.A. §50-632(b) and the Kansas Roofing Registration Act, the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME OF THE ELECTRONIC FILE STAMP.

Respectfully submitted,



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Approved by:

A handwritten signature in black ink, appearing to read "Dustin Welsh", is written over a horizontal line.

Dustin Welsh, Owner

On his own behalf and as owner on behalf
of Phoenix Framing, LLC.