



Court: Shawnee County District Court
Case Number: 2018-CV-000331
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Charles Wayne Smith, et al.
Type: Journal Entry of Consent Judgment

SO ORDERED.

A handwritten signature in black ink, appearing to read "T. Watson", is written over a large, stylized circular flourish.

/s/ Honorable Teresa L Watson, District Court Judge

Robert Reynolds, #27703
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
Tel: (785) 296-3751
Fax: (785) 291-3699
robert.reynolds@ag.ks.gov

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 3**

**STATE OF KANSAS, *ex rel.*,
DEREK SCHMIDT, Attorney General,**

Plaintiff,

v.

Case No. 18-CV-331

**CHARLES WAYNE SMITH, d/b/a Asphalt
Paving a/k/a Lone Star Paving, a/k/a Lone Star
Asphalt, a/k/a Bailey Paving, a/k/a Carl Bailey
Construction**

and

**STEVEN BAILEY, d/b/a Asphalt
Paving a/k/a Lone Star Paving, a/k/a Lone Star
Asphalt, a/k/a Bailey Paving, a/k/a Carl Bailey
Construction**

Defendants

(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 Robert Reynolds, Assistant Attorney General. Defendants Steven Bailey and Charles W. Smith appear through Michelle David pro hac vice for Jim Ochs.

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.*
3. Defendant Steven Bailey, d/b/a Asphalt, Paving a/k/a Lone Star Paving, a/k/a Lone Star, Asphalt, a/k/a Bailey, Paving, a/k/a Carl Bailey Construction has a residential address of 9814 County Road 284, Carl Junction, MO 64834.
4. Defendant Charles W. Smith, /b/a Asphalt, Paving a/k/a Lone Star Paving, a/k/a Lone Star, Asphalt, a/k/a Bailey, Paving, a/k/a Carl Bailey Construction has a residential address at 160 Oak Ridge Drive, Gainesville, Texas, 76240.
5. "Settling Defendants" refers to Defendants Steven Bailey and Charles W. Smith collectively throughout the Judgment.
6. Defendants principal place of business is 9814 Co. Rd. 284
Carl Junction MO 64834
_____.
7. Jurisdiction and venue are appropriate in District Court of Shawnee County, Kansas, pursuant to K.S.A. § 50-638(a) and (b), respectively.

8. Defendant Steven Bailey consents to being subject to the jurisdiction of this court and being named a co-defendant in this litigation.

ALLEGATIONS

9. Settling Defendants have acted as “suppliers” in Kansas, as that term is defined by K.S.A. § 50-624(1).

10. Settling Defendants have engaged in “consumer transactions” in Kansas, as that term is defined by K.S.A. § 50-624(c).

11. Plaintiff alleges that at all times relevant hereto, the Settling Defendants engaged in acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*, which acts and practices include, but are not limited to:

- a. The Settling Defendants conducted door-to-door sales in the State of Kansas and failed to provide consumers with a written notice of their three-day right to cancel.
- b. The Settling Defendants conducted door-to-door sales in the State of Kansas and failed to provide consumers with duplicate notice of their three-day right to cancel.
- c. The Settling Defendants negotiated evidence of indebtedness prior to midnight of the fifth business day following the consumer transaction.
- d. The Settling Defendants willfully used falsehood and ambiguity as to material facts, that is the quality of materials used in paving of consumes drives and the quality of work.
- e. The Settling Defendants induced consumers to enter into excessively one-sided consumer transactions in favor of the supplier.

f. The Settling Defendants made, or caused to be made, consumer transactions in which the consumers were unable to receive a material benefit from the subject of the transaction.

12. The parties voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law as a compromise settlement of all issues raised herein. It is further understood that compliance with this judgment is not an admission of guilt by Respondent.

INJUNCTIVE RELIEF

13. The Settling 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.*

14. The Settling Defendants agree to refrain, and to be permanently enjoined, from conducting consumer transactions in the State of Kansas.

15. The Settling Defendants agree to refrain, and to be permanently enjoined, from conducting door-to-door transactions in the State of Kansas.

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

17. The Settling 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. The Settling 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.

MONETARY RELIEF

19. The Settling Defendants are jointly and severally liable for and agree to pay consumer restitution in the amount of \$33,652.00 in the form of a cashier's check, money order or other certified funds payable to The Office of the Kansas Attorney General, to be dispersed to affected consumers named in the petition, mailed to:

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

20. The Settling Defendants are jointly and severally liable for and agree to pay the Office of the Kansas Attorney General \$10,000.00 in investigative fees and expenses, pursuant to K.S.A. § 50-636, in a second and separate payment in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General, mailed to:

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

21. The Settling Defendants are jointly and severally liable for and agree to pay civil penalties in the amount of \$10,000.00 in the form of a cashier's check, money order or other certified funds payable to The Office of the Kansas Attorney General, mailed to:

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

22. Payment of the consumer restitution is due upon entry of judgment. Payment of civil penalties and investigative fees and expenses shall be made by paying \$5,000.00 per month until those amounts are satisfied in full. The first payment for civil penalties and investigative fees is due within 30 days of entry of judgment.

SUSPENDED MONETARY JUDGMENT

23. Additional civil penalties are hereby entered in favor of plaintiff and against Settling Defendants in the amount of \$240,000.00 for the payment of civil penalties for violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-636, K.S.A. 50-676, K.S.A. 50-677. *Provided, however,* these civil penalties shall be suspended against Settling Defendants as long as the Court makes no finding(s), as provided in the following section of this Consent Judgment titled “right to Reopen,” that Settling Defendants have violated any provision of this Consent Judgment.

RIGHT TO REOPEN

27. Plaintiff’s agreement to Suspended Monetary Judgment contained in this Consent Judgment is expressly premised upon Settling Defendants’ material compliance with the terms of this Consent Judgment.

28. Settling Defendants’ “material compliance” with the terms of this Consent Judgment shall mean material compliance with all of the provisions included in Paragraphs 13-42.

29. If, upon motion by the Attorney General to the Court, the Court finds that the Settling Defendants have violated a material term of this Consent Judgment, the suspension of the monetary judgment as to the Settling Defendants will be terminated and the entire judgment amount of \$293,652.00 shall become immediately due and payable to the Plaintiff, and interest

computed at the rate prescribed under Kansas law, shall begin immediately to accrue on the unpaid balance.

30. Settling 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.

31. Proceedings instituted under the foregoing paragraphs are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Consent Judgment.

NOTICE OF CRIMINAL LIABILITY

32. Settling Defendants are hereby notified that so long as this Order remains in place, if the Settling Defendants participate, directly or indirectly, in any door-to-door sales in the state of Kansas in violation of this Order, Settling Defendants may be subject to prosecution pursuant to K.S.A. 21-6423, a Level 9, Person Felony.

33. Settling Defendants are hereby notified that so long as the Order remains in place, if the Settling Defendants cause, direct, employ, enable or assist others in engaging in door-to-door sales in the state of Kansas in violation of this Order Settling Defendants are committing a crime and may be subject to prosecution pursuant to K.S.A. 21-6423, a Level 9, Person Felony.

34. Settling Defendants are hereby notified that the criminal liability imposed by K.S.A. 21-6423 does not relieve Settling Defendants of any civil liability for violating the terms of this Order or any other judgments and civil sanctions and liability may be imposed in addition to any authorized criminal penalties.

OTHER PROVISIONS

35. The Defendants agree that any violation of this Consent Judgment shall subject Defendants' equipment to sequestration. If sequestration occurs, the Attorney General will liquidate the equipment for satisfaction of any monetary amount owed to the State or to any consumer.

36. 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.

37. 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.

38. Compliance with this Consent Judgment does not relieve Settling 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.

39. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the attorney general of the Settling Defendants' business practices, nor shall the Settling 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 the

Settling 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.

40. This Consent Judgment represents the entire agreement between Plaintiff and the Settling 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.

41. Settling Defendants hereby represent and warrant that Settling Defendants have 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 Settling Defendants under this Consent Judgment and the consequences of breach hereunder. Settling Defendants represent that each Settling Defendant has read the Consent Judgment and knows and understands the contents thereof. Settling Defendants further represent and warrant that Settling Defendants are signing this Consent Judgment as the result of his own free act, and that Settling Defendants have 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.

42. Plaintiff will return all the sequestered equipment per attached list (Exhibit L) and any personal property on or in the equipment to Settling Defendants upon proof of ownership by them or to the lien holder, if the lien holder requests return of its equipment. The equipment will be released to Settling Defendants or an authorized representative without cost, fees, towing or storage charges, and without any State or local holds.

43. By signing this Consent Judgment, the representative of Settling Defendants represent

and warrant that such person is duly and legally authorized to execute this Consent Judgment on behalf of this Settling Defendants, thus binding the Settling 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 the Settling Defendants immediately becomes a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Settling Defendants be permanently enjoined from engaging in consumer transactions in the State of Kansas.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Settling Defendants be permanently enjoined from engaging in door-to-door sales in the State of Kansas.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Settling Defendants are hereby notified that they are permanently enjoined and expressly prohibited from conducting and making door-to-door sales, as defined in K.S.A. 50-640, in Kansas pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, K.S.A. 21-6423, and pursuant to this Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against the Settling Defendants in favor of Plaintiff in the amount of \$33,652.00 for consumer restitution.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against the Settling Defendants in favor of Plaintiff in the amount of \$10,000.00 for civil penalties.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is

entered against the Settling Defendants in favor of Plaintiff in the amount of \$10,000.00 for investigative fees.

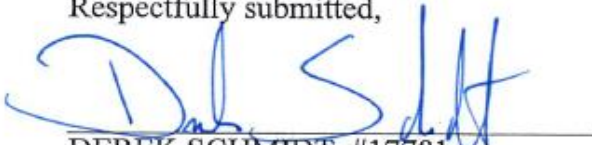
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment in the amount of \$240,000.00 of the judgment amount against the Settling Defendants is suspended pursuant to the terms of this Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, the provisions of K.S.A. § 50-632(b), 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,



DEREK SCHMIDT, #17781
Kansas Attorney GENERAL
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
Tel: (785) 296-3751
Fax: (785) 291-3699



Robert Reynolds, #27703
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
Tel: (785) 296-3751
Fax: (785) 291-3699
robert.reynolds@ag.ks.gov

Approved by:

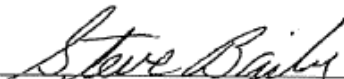
Respectfully Submitted,

OCHS & KLEIN, ATTORNEYS, P.C.

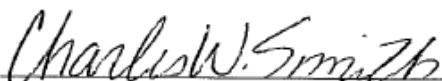


JAMES C. OCHS
149 N. Meramec, 2nd Floor
Clayton, MO 63105
Telephone: (314) 727-2111
Facsimile: (314) 727-2110
jochs@ochsklein.com

ATTORNEY FOR DEFENDANTS



Steven Bailey, an individual
d/b/a Asphalt, Paving a/k/a Lone Star Paving, a/k/a Lone Star, Asphalt, a/k/a Bailey, Paving,
a/k/a Carl Bailey Construction



Charles W. Smith, an individual
d/b/a Asphalt, Paving a/k/a Lone Star Paving, a/k/a Lone Star, Asphalt, a/k/a Bailey, Paving,
a/k/a Carl Bailey Construction

1. 2005 Brown/White International Harvester dump truck, model 8000
2. 2002 Trailer
3. Wacker Roller
4. New Holland Skidsteer
5. Maudlin Asphalt Paver
6. 2006 International Harvester dump truck
7. 2007 International Harvester truck
8. Trailer, New Mexico tag
9. New Holland Skidsteer
10. LeeBoy paver
11. Wacker Neuson Roller

