



Court: Shawnee County District Court
Case Number: 2021-CV-000047
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Douglas L Bell III, et al.
Type: Journal Entry of Consent Judgment

SO ORDERED.

A handwritten signature in black ink, reading "M.E. Christopher". The signature is written in a cursive, flowing style.

/s/ Honorable Mary E Christopher, District Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT
DIV. 8**

STATE OF KANSAS, <i>ex rel.</i>)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
v.)	
)	
DOUGLAS L. BELL, an individual,)	2021-CV-000047
and)	
CUSTOM CONCRETE CONTRACTORS, LLC,)	
a Kansas limited liability company,)	
)	
Defendants.)	
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(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 Douglas L. Bell, and Custom Concrete Contractors, LLC, (“Defendants”) appear by counsel Richard H. Seaton, Sr.

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 Douglas L. Bell ("Defendant Bell") is an individual with a residential and business address in Manhattan, Kansas. He is the owner of Custom Concrete Contractors, LLC and controls the day to day operations of the business.

4. Custom Concrete Contractors, LLC, ("Defendant Custom Concrete") is a Kansas limited liability company owned and managed by Defendant Bell. Defendant Custom Concrete was forfeited on October 15, 2020 for failing to file an annual report.

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 Shawnee 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(l).

8. 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).

9. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law.

10. Plaintiff alleges that at all times relevant hereto, Defendants engaged in unfair and deceptive acts and practices in violation of the Kansas Consumer Protection Act, (“KCPA”) K.S.A. §50-623, *et seq.* as follows:

Pursuant K.S.A. §50-626(b)(1) making representations knowingly or with reason to know:

(A) the property or services have accessories, characteristics, ingredients, uses benefits or qualities that they do not have; and

(B) the supplier had approval, status, or affiliation that the supplier does not have.

Pursuant K.S.A. §50-627(b):

(3) The consumer was unable to receive a material benefit from the subject of the transaction.

11. 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

12. 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.*

13. 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.

14. 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.

15. 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.

16. Defendants agree that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

CIVIL PENALTIES

17. Defendants agree to pay the Office of the Kansas Attorney General twenty thousand dollars, \$20,000.00 which consists of civil penalties in the sum of ten thousand dollars, \$10,000.00 and enhanced civil penalties in the sum of ten thousand dollars, \$10,000.00 for violations of the KCPA, pursuant to K.S.A. 50-636. However, the total amount of twenty thousand dollars, \$20,000.00 in civil penalties shall be *suspended* subject to compliance with the terms and conditions of this Consent Judgment and the Right to Reopen as set forth below.

18. Defendants agree to make monthly restitution payments to the Office of the Attorney General in the total amount of thirteen thousand six hundred six dollars (\$13,606.55) paid in monthly installments of five hundred sixty-seven dollars (\$567.00) per month beginning May 1, 2021 due on the first of the month and every month thereafter until paid in full.

19. After restitution is paid in full, Defendants shall make monthly payments to the Office of the Attorney General in the total amount of five hundred sixty-seven dollars (\$567.00) per month for payment of investigation fees in the amount of \$2,062.50, until paid in full.

20. All payments are due the first of each month until paid in full. Failure to make a monthly payment by the 15th of the month shall be considered late, in violation of this Consent Judgment, and subject the Right to Reopen as set forth below.

21. If, upon motion by Plaintiff, the Court finds that Defendants have violated a material term of the Consent Judgment including the payment plan, the entire judgment amount for the balance of restitution, investigation fees and civil penalties 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-18-002444 and mailed to:

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

RIGHT TO REOPEN

23. Plaintiff's agreement to suspend a portion of the monetary judgment is expressly premised upon Defendants' material compliance with the terms of this Consent Judgment.

24. Defendants' "material compliance" with the terms of this Consent Judgment shall mean material compliance with all of the provisions included in Paragraphs 12-22.

25. If, upon motion by Plaintiff, the Court finds that Defendants have violated a material term of this Consent Judgment, the suspension of the monetary judgment will be terminated and the entire judgment amount of \$20,000.00 in civil penalties and the balance of unpaid restitution and investigation fees shall become immediately due and payable by Defendants, and interest computed at the rate prescribed under Kansas law, shall begin immediately to accrue on the unpaid balance.

OTHER PROVISIONS

26. 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.

27. 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.

28. 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.

29. 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.

30. 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. 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.

32. 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.

33. Defendants represent that Defendants have read the Consent Judgment and know and understand the contents thereof. Defendants further represent and warrant that Defendant Douglas L. Bell is signing this Consent Judgment as the result of his own free act, and that Defendant Douglas L. Bell 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.

34. By signing this Consent Judgment, Defendant Douglas L. Bell represents and warrants that he is duly and legally authorized to execute this Consent Judgment on behalf of himself and Custom Concrete Contractors, 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 twenty thousand dollars, \$20,000.00, in civil penalties and shall be *suspended* against Defendants as long as the Court makes no finding that Defendants have violated any provision of this Consent Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants to pay the total amount of thirteen thousand six hundred six dollars and fifty-five cents (\$13,606.55) in consumer restitution, paid in monthly installments of five hundred sixty-seven dollars (\$567.00) per month, beginning May 1, 2021, due on the first of the month and every month thereafter until paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants to pay the total amount of two thousand sixty-two dollars and fifty cents (\$2,062.50) in investigation fees, paid in monthly installments of five hundred sixty-seven dollars (\$567.00) per month, after restitution is paid, due on the first of the month and every month thereafter until paid in full.

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.*

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.

Attorneys for Plaintiff

Prepared and approved by:

/s/ *Derek Schmidt*


Derek Schmidt, KS #17781
Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612
(785) 296-2215


/s/ *Melanie Jack*

Melanie S. Jack, #13213
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597
Tel: 785-296-3751
Fax: 785-291-3699
melanie.jack@ag.ks.gov

For Defendants

Approved by:


Douglas L. Bell
Owner and operator of
Custom Concrete Contractors, LLC


Richard H. Seaton, Sr. #5994
Attorney for Custom Concrete Contractors, LLC