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CLERK OF THE ALLEN COUNTY
CASE NUMBER: AL-2021-CV-000028
PII COMPLIANT



Court: Allen County
Case Number: AL-2021-CV-000028
Case Title: Office of the Kansas Attorney General
vs.
Don Diebolt, et al
Type: Order for Default Judgment Against Defendants Don
Diebolt and Diebolt LLC

SO ORDERED.

A handwritten signature in cursive script, reading "Daniel D. Creitz".

/s/ Honorable Daniel D. Creitz, Chief District Court
Judge

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IN THE DISTRICT COURT OF ALLEN COUNTY, KANSAS

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
DON DIEBOLT, an individual)
and)
DIEBOLT LLC)
)
Defendants.)

CASE NO. AL-2021-CV-000028

(Pursuant to K.S.A. Chapter 60)

**ORDER FOR DEFAULT JUDGMENT AGAINST
DEFENDANTS DON DIEBOLT AND DIEBOLT LLC**

NOW, on this date, Plaintiff’s Motion for Default Judgment against the Defendants Don Diebolt and Diebolt LLC (“Motion for Default Judgment”) comes before this Court for consideration. Plaintiff, State of Kansas ex rel. Derek Schmidt, Attorney General, appears by and through Assistant Attorney General Sarah M. Dietz. Defendants Don Diebolt and Diebolt LLC appear not and are in default.

WHEREUPON, after reviewing the Court’s file and Plaintiff’s Motion for Default Judgment, the Court finds the following:

1. Derek Schmidt is the duly elected, qualified 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, K.S.A. § 50-623, et seq.

3. This Court has personal and subject matter jurisdiction over this controversy by the Kansas Consumer Protection Act, K.S.A. § 50-623, et seq., specifically K.S.A. § 50-638(a).

4. Venue is proper in the Thirty-First Judicial District (Allen County), pursuant to K.S.A. § 50-638(b).

5. On July 14, 2021, Plaintiff filed a Petition against Defendants Don Diebolt and Defendant Diebolt LLC ("Defendants").

6. Defendant Don Diebolt is the sole owner and operator and exercises exclusive control over Defendant Diebolt LLC.

7. Defendant Don Diebolt has a last known residential address in Iola, Kansas.

8. Defendant Diebolt LLC is a Kansas Limited Liability Company with a forfeiture date of October 15, 2020 for failing to renew. Defendant Don Diebolt is the resident agent for Defendant Diebolt LLC with a registered office in La Harpe, Kansas 66751. Defendant Diebolt LLC may be served at its address or through Defendant Don Diebolt.

9. K.S.A. 17-6807 provides, "All corporations, whether they expire by their own limitation or are otherwise dissolved, including revocation or forfeiture of articles of incorporation...shall be continued, nevertheless, for the term of three years from such expiration or dissolution or for such longer period as the district court in its discretion shall direct, bodies corporate for the purpose of prosecuting and defending suits..."

10. On July 15, 2021, Defendants Don Diebolt and Diebolt LLC were served with the Petition and Summons by Personal Service, pursuant to K.S.A. 60-205 and K.S.A. 60-303.

11. Defendants Don Diebolt and Diebolt LLC failed to file an Answer within twenty-one (21) days after being served with process, as required by K.S.A. 60-308(a)(3). Therefore, Defendants Don Diebolt and Diebolt LLC are in default as set forth in K.S.A. 60-255.

12. Defendants Don Diebolt and Diebolt LLC have not appeared in this action. Therefore, no notice of a hearing on Plaintiff's Motion for Judgment by Default need be served on the Defendants, pursuant to K.S.A. 60-255(a) and K.S.A. 60-205(a)(2).

13. Defendants Don Diebolt and Diebolt LLC are not minors or incapacitated persons.

14. Plaintiff filed its Motion for Default Judgment on August 6, 2021.

15. Plaintiff's Motion for Default Judgment is predicated on the failure of Defendants Don Diebolt and Diebolt LLC to file an Answer to the Plaintiff's Petition within twenty-one (21) days after being served with process, as required by K.S.A. 60-308(a)(3).

16. The factual allegations set forth in the Plaintiff's Motion for Default Judgment are adopted by the Court as its findings of fact and conclusions of law and are as follows:

a. All references to the Defendants Don Diebolt and Diebolt LLC herein include acts performed individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

b. At all times relevant hereto, and in the ordinary course of business, the Defendants Don Diebolt and Diebolt LLC acted as "suppliers," as that term is defined by K.S.A. § 50-624(l).

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

d. Since at least 2017, Defendants contracted with consumer, M.H., for construction of a building. M.H. Paid \$40,000. Defendants abandoned the project prior to completion. M.H. did not receive all the services and/or materials purchased and is due a refund of \$2,899.27.

e. On October 18, 2017, Defendants contracted with consumer, L.F., for the construction of a pole barn. Consumer paid \$15,484.84 and did not receive any of the services or materials.

f. To date, neither of the consumers have received the remainder of the services, products, or a refund.

g. Plaintiff has made at least twenty (20) communication attempts to resolve this matter with Defendants.

h. The 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 pursuant to K.S.A. 50-627(b)(3).

i. The Defendants made, or caused to be made, consumer transactions in which the transaction was excessively one-sided in favor of the Defendants pursuant to K.S.A. 50-627(b)(5).

IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED that Plaintiff’s Motion for Default Judgment is granted.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Judgment is hereby entered against Defendants Don Diebolt and Diebolt LLC in favor of Plaintiff on all Counts of the Petition.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that the actions and practices alleged in Plaintiff's Petition are declared violations of the Kansas Consumer Protection Act.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants Don Diebolt and Diebolt LLC, and any employees, agents, representatives, affiliates, assignees and successors, permanently enjoined from doing business in the State of Kansas, pursuant to K.S.A. § 50-632(c)(6).

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants Don Diebolt and Diebolt LLC pay reasonable investigative fees and expenses to Plaintiff, in this case amounting to \$2,568.75.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants Don Diebolt and Diebolt LLC pay a civil penalty in the amount of \$10,000.00 for each violation of the Kansas Consumer Protection Act alleged in the Plaintiff's Petition, pursuant to K.S.A. 50-636(a), in this case in the aggregate of \$40,000.00.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants Don Diebolt and Diebolt LLC pay restitution totaling \$18,384.11 to the following consumers:

- a. M.H. – \$2,899.27
- b. L.F. – \$15,484.84

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants Don Diebolt and Diebolt LLC pay all Court Costs and all costs associated with distributing and executing this judgment.

IT IS SO ORDERED.

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

Respectfully submitted,

/s/ Sarah M. Dietz
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