

IN THE DISTRICT COURT OF MARSHALL COUNTY, KANSAS

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

Plaintiff,

v.

Gary Leroy Haynes, Todd Haynes, Eddie Jones
Quality Road Construction

Defendants

Case No. 2011-CV-40

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW ON THIS 4th DAY of October, 2011, there comes before the Court the Petition to Approve Consent Judgment filed in this matter. Plaintiff, the State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through counsel, James J. Welch, Deputy Attorney General. Defendants Gary Leroy Haynes and Quality Road Construction appear by and through their attorney, Wade Carter. There are no other appearances.

WHEREUPON, the Parties advise the Court they have stipulated and agree to the following matters:

1. Derek Schmidt is the Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from statutory and common law of Kansas, specifically, the Kansas Consumer Protection

FILED
MARSHALL COUNTY KANSAS
DISTRICT COURT
2011 OCT 5 AM 8 52
HAROLD J. KOCH
CLERK OF DISTRICT COURT
BY: mm

Act, K.S.A. 50-623, *et seq.* K.S.A. 50-632(b) authorizes the parties to resolve matters pursuant to a Consent Judgment and the parties have agreed to do so in this instance.

3. Defendants Gary Leroy Haynes and Quality Road Construction are and were, at all relevant times, suppliers within the definition of K.S.A. 50-624(l) and have engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c). The nature of Defendant's business is selling and soliciting for sale property and/or services to consumers at retail prices within this State - more specifically, the sale and installation of asphalt as driveways and parking areas.

4. Defendants each admit that this Court has personal and subject matter jurisdiction over all matters and parties hereto.

5. The Attorney General alleges that, were this matter to be litigated, the following facts could be proven:

a) The Defendants, jointly and in concert, within the State of Kansas, entered into consumer transactions for the sale and installation of asphalt with the following Kansas residents and in the following amounts:

i. Morris Merrill, 23 Dogwood Lane, Waterville, KS 66548;

Amount: \$9,500.00

ii. Ronald Schmitz, 1778 Limestone Road, Home, KS 66438;

Amount: \$9,000.00

b) The transaction with the above consumers constitutes a door-to-door sale within the definition of K.S.A. 50-640(c)(1);

c) In the transaction, Defendants failed to furnish the consumers with a fully completed receipt or copy of any contract that contained the language required by K.S.A. 50-640(b)(1), advising consumers of their right to cancel the transaction;

d) In the transaction, Defendants failed to furnish the consumers with a "NOTICE OF CANCELLATION" required by K.S.A. 50-640(b)(2);

e) In the transaction, Defendants failed to inform the consumers orally, at the time he signed the contract for the purchase of goods or services, of his right to cancel pursuant to K.S.A. 50-640(b)(5);

f) Defendants negotiated, transferred, sold or assigned each consumer's note of indebtedness to each consumer's financial institution prior to midnight of the fifth business day following the transaction, an act prohibited by K.S.A. 50-640(b)(8);

g) In the transaction, Defendants willfully failed to disclose material facts as to the services being performed and/or the charges that would be levied for the services, a deceptive act in violation of K.S.A. 50-626(b)(3);

The Attorney General alleges that the foregoing facts constitute violations of the KCPA.

6. Defendants voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law and without admitting any allegation herein.

7. Defendants agree to refrain from and to be permanently enjoined from engaging in the acts and practices described in Paragraph Five (5) hereof in any future transactions.

8. Defendants agree to be permanently enjoined from engaging in any consumer transactions within the State of Kansas. Defendants further agree that every

employee, agent or representative of the Defendants be permanently enjoined from engaging in any consumer transactions within the State of Kansas.

9. Defendants agree to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structure, where such restructuring is done for the purpose or object of avoiding compliance with the terms of this Consent Judgment.

10. 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 hereof.

11. 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.

12. 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 Attorney General from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction. Defendants further understand that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against Defendants in operating this or any other business upon belief that the business is being promoted or operated in a fashion that otherwise violates the law.

13. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendants nor shall Defendants represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information which the Attorney General now has in his possession and believes forms the basis for a violation of any law within his jurisdiction to enforce shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

14. The Agreed Order Releasing Sequestered Property is hereby incorporated by reference and made a part of this Journal Entry of Consent Judgment.

15. All funds realized in excess of the restitution amounts listed in the Agreed Order Releasing Sequestered Property shall be used to pay for fees and/or expenses of the investigation conducted by the Attorney General at the sole discretion of Derek Schmidt, Attorney General of the State of Kansas.

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and 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

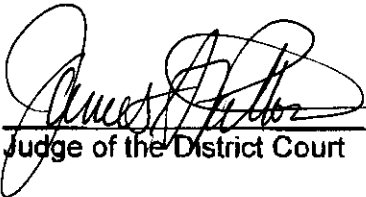
10/04/2011 13:38 7852431-0

PRINT 5

PAGE 10/10

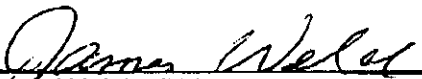
of the Court, subject to such further proceedings as may be necessary and allowed hereunder or by law.

IT IS SO ORDERED.




Judge of the District Court

PREPARED AND APPROVED BY:



James J. Welch, #09546
Deputy Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751
Attorney for Plaintiff

APPROVED BY:



Wade Carter, # 27526
Attorney for Defendants