

FILED BY CLERK  
KS. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPEKA, KS.

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**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS**  
**Division 14**

**STATE OF KANSAS, *ex rel.*** )  
**CARLA J. STOVALL, Attorney General,** )  
 )  
**Plaintiff,** )  
 )  
v. )  
 )  
**GARRETT J. OGDEN,** )  
**d/b/a THE STONE COMPANY,** )  
**d/b/a OGDEN CONSTRUCTION COMPANY, and** )  
**THE STONE COMPANIES, INC.,** )  
 )  
**Defendants.** )

Case No. 00-CV-571

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

**JOURNAL ENTRY OF DEFAULT JUDGMENT**

NOW on this 22<sup>nd</sup> day of March, 2001, comes before the Court the Plaintiff's request for default judgment against Defendant The Stone Companies, Inc. Plaintiff State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through counsel, Gail E. Bright, Assistant Attorney General. There are no other appearances.

Upon review of the file and statements of counsel, the Court finds as follows:

1. Plaintiff filed an Amended Petition on June 1, 2000, requesting the following acts and practices by Defendant The Stone Companies, Inc., be adjudged deceptive and/or unconscionable under the Kansas Consumer Protection Act (KCPA), K.S.A. 50-623, *et seq.*:

- (a) failing, after accepting payment of \$20,000.00 from Mr. Gene Eby, a consumer, to deliver the products and services Defendant Garrett J. Ogden had agreed to provide, an unconscionable act and practice in that the consumer was unable to receive a material benefit from the subject of the transaction, in violation of K.S.A. 50-627(b)(3)(2000 Supp.);
- (b) failing, after accepting payment of \$24,766.50 from Ms. Lorraine Givens, a consumer, to deliver the products and services Defendant Garrett J. Ogden had agreed to provide, an unconscionable act and practice in that the consumer was unable to receive a material benefit from the subject of the transaction, in violation of K.S.A. 50-627(b)(3)(2000 Supp.);
- (c) failing, after accepting payment of \$7,137.72 from Mr. Dewey N. Dye, an elderly and/or disabled consumer, to deliver the products and services Defendant Garrett J. Ogden had agreed to provide, an unconscionable act and practice in that the consumer was unable to receive a material benefit from the subject of the transaction, in violation of K.S.A. 50-627(b)(3)(2000 Supp.);
- (d) failing, after accepting payment of \$14,640.00 from Michael O'Shea, a consumer, to deliver the products and services Defendant Garrett J. Ogden had agreed to provide, an unconscionable act and practice in that the consumer was unable to receive a material benefit from the subject of the transaction, in violation of K.S.A. 50-627(b)(3)(2000 Supp.);
- (e) failing, after accepting payment of \$9,291.14 from Dennis A. Mullin, a consumer, to deliver the products and services Defendant Garrett J. Ogden had agreed to provide, an unconscionable act and practice in that the consumer was unable to receive a material benefit from the subject of the transaction, in violation of K.S.A. 50-627(b)(3)(2000 Supp.); and
- (f) failing, after accepting payment of \$3,654.00 from Douglas E. Samsel, an elderly and/or disabled consumer, to deliver the products and services Defendant Garrett J. Ogden had agreed to provide, an unconscionable act and practice in that the consumer was unable to receive a material benefit from the subject of the transaction, in violation of K.S.A. 50-627(b)(3)(2000 Supp.).

2. The resident agent for Defendant The Stone Companies, Inc., Garrett J. Ogden, was personally served with a copy of the Summons and Amended Petition on June 2, 2000.

3. This Court has subject matter jurisdiction, pursuant to the Kansas Consumer Protection Act, specifically K.S.A. 50-638(a).

4. This Court is the proper venue for this action, pursuant to the Kansas Consumer Protection Act, specifically K.S.A. 50-638(b).

5. Defendant The Stone Companies, Inc., is a supplier and engaged in consumer transactions, pursuant to K.S.A. 50-624(i), (b) and (c). In addition, Defendant The Stone Companies, Inc., is responsible for the acts of its agents and employees under the legal theory of *respondeat superior*.

6. More than twenty (20) days have elapsed since Defendant The Stone Companies, Inc., through its resident agent, was served with a copy of the Summons and Amended Petition.

7. Defendant The Stone Companies, Inc., has not filed an answer as required by K.S.A. 60-212(a) and is, therefore, in default.

8. The Amended Petition, served upon the resident agent for Defendant The Stone Companies, Inc., contained a demand for judgment specifically stating the relief requested by the Plaintiff, including a specific monetary judgment request. Therefore, the notice requirements of K.S.A. 60-254(c) are not applicable.

9. Judgment by default should be entered in favor of Plaintiff for the relief requested in the Amended Petition.

10. Plaintiff is entitled to declaratory and injunctive relief.

11. Plaintiff is further entitled to monetary judgment in the amount of \$79,489.36 for restitution to the consumers referenced in paragraph one (1) above, pursuant to K.S.A. 50-632(a)(3).

12. Plaintiff is further entitled to monetary judgment in the amount of \$30,000.00 for civil penalties and \$10,000.00 in enhanced civil penalties for the violations of the Kansas Consumer Protection Act referenced in paragraph one (1) above, pursuant to K.S.A. 50-636 and K.S.A. 50-677 (2000 Supp.).

13. Plaintiff is further entitled to monetary judgment in the amount of \$500.00 in reasonable expenses and investigation fees, pursuant to K.S.A. 50-632(a)(4).

**IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED** that Plaintiff is granted default judgment against Defendant The Stone Companies, Inc., as set forth in this Journal Entry of Default Judgment.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the acts and practices alleged in paragraph one (1) above are hereby declared to be unconscionable and in violation of the Kansas Consumer Protection Act.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant The Stone Companies, Inc., is permanently enjoined from engaging in the acts and practices alleged in paragraph one (1) above.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the corporate charter of Defendant The Stone Companies, Inc., is permanently revoked.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is hereby entered in favor of Plaintiff and against Defendant The Stone Companies, Inc., in the amount of \$79,489.36 for consumer restitution.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is hereby entered in favor of Plaintiff and against Defendant The Stone Companies, Inc., in the amount of \$500.00 for expenses and investigative fees.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is hereby entered in favor of Plaintiff and against Defendant The Stone Companies, Inc., in the amount of \$30,000.00 in civil penalties.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is hereby entered in favor of Plaintiff and against Defendant The Stone Companies, Inc., in the amount of \$10,000.00 in enhanced civil penalties.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant The Stone Companies, Inc., is to pay all court costs.

**IT IS SO ORDERED.**

*/s/ Nancy E. Parrish*

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The Honorable Nancy E. Parrish  
Judge of the District Court

**PREPARED BY:**

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