

E-03-000010

FILED
DOUGLAS COUNTY
DISTRICT COURT

James R. McCabria, #16563
Assistant Attorney General
Office of the Attorney General
120 West 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

2004 DEC 14 A 10:15

BY 

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
Division 1

STATE OF KANSAS, *ex rel.*,
PHILL KLINE, Attorney General, and

Plaintiffs,

v.

Mark Tilford, individually, and d/b/a
Mr. Stitch Upholstery & Tops, Inc., d/b/a
MS Interiors, d/b/a Mr. Stitch, Inc.

Defendant.

Case No. 03 C - 133

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

Journal Entry of Judgment

NOW on this 23rd Day of August, 2004, the above matter comes on for Trial to the Court. Plaintiff, the State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through counsel, James R. McCabria, Assistant Attorney General. Defendant appears *pro se* and in person.

WHEREUPON, the Plaintiff began presentation of it's case in chief. Evidence was offered and a recess was called and the matter was continued to November 18, 2004. On that date, Plaintiff appeared by and through counsel James R. McCabria. Defendant failed to appear in person or through legal counsel but did send a fax letter to Plaintiff's office that morning indicating he would not be appearing.

WHEREUPON, the Court requested the Plaintiff to continue with presentation of its evidence and, at the conclusion thereof, and Defendant not appearing, invited Plaintiff to submit proposed findings of fact and conclusions of law.

WHEREUPON, the Plaintiff submitted the following:

Findings of Fact

1. Defendant Mark Tilford d/b/a Mr. Stitch Upholstery & Tops, Inc., d/b/a MS Interiors, d/b/a Mr. Stitch, Inc. ("Defendant Tilford") operated a business within the State of Kansas that offered to perform a variety of home remodeling services to consumers.

2. On or about January 22, 2001, Defendant Tilford entered into a contract with consumers Jackie Counts and Bruce Eggers ("Counts/Eggers"). The parties to the contract agreed that Defendant would, *inter alia*, install custom cabinets, custom granite countertops and windows into the Counts/Eggers home. The Contract did not specify the costs for the custom cabinets, countertops or windows as Defendant Tilford had promised the Counts/Eggers that he would be obtaining bids for that work at a later date. The contract was admitted as Plaintiff's Exhibit 2.

3. On or about March 11, 2001, Defendant Tilford presented a document titled "Materials Expense Receipts" and admitted at trial as Plaintiff's Exhibit 7 which demanded payment from Counts/Eggers for the following items:

A) Custom cabinets - \$10,049.74

B) Custom countertop in granite - \$5,821.45

C) Windows - \$1,350.00

4. Jackie Counts testified that at the time of presenting Exhibit 7 to Counts/Eggers, Defendant Tilford had already performed certain other services and received payments in the amount of \$9,560.00. Counts further testified that at the time

Exhibit 7 was presented, she was concerned about the quality and suitability of the work Defendant Tilford had performed and had previously expressed those concerns to Defendant Tilford. Defendant Tilford assured Jackie Counts at the time that he presented Exhibit 7 that the money he was requesting be paid was for the purpose of paying for the custom cabinets, countertops and windows that he had ordered for the work he was performing and that the money would be paid to those vendors. Relying on that representation, Jackie Counts authorized two checks made payable to Defendant Tilford - Check #27048, dated March 20, 2001, in the amount of \$1,350.80, payable to MS Interiors (admitted as Exhibit 8) and Check #27039, dated March 19, 2001, in the amount of \$18,081.19, payable to Mr. Stitch Upholstery & Tops, Inc. (admitted as Exhibit 9).

4. Jackie Counts further testified that Defendant Tilford had shown her invoices from certain vendors purporting to be the ones to whom he would be paying the monies reflected on Exhibit 7. Those invoices were as follows:

- A) Custom cabinets - Kaw Valley Hardwoods - \$10,049.74
(Admitted as Plaintiff's Exhibit 15)
- B) Custom countertop - SPD Solid Surfaces - \$5,831.65
(Proffered Exhibit)
- C) Windows - World Wide Windows - \$1,286.26
(Proffered Exhibit)

5. Within a day or two of being paid the amounts described above, Defendant Tilford presented a demand for payment (admitted as Plaintiff's Exhibit 10) and an attached itemized statement titled "Eggers & Counts Job Expense Summary" (admitted as Plaintiff's Exhibit 11). The Expense Summary included demand for payment for items such as toll booth expenses, cell phone charges, gasoline for his vehicle and other expenses that Jackie Counts testified caused her to be alarmed that

Defendant Tilford was trying to scam her. The total demand was \$15,764.59. Upon declining to pay that demand, Defendant Tilford indicated he would do no further work on the project.

6. The direct and cross-examination testimony of Robert Russell, owner of Kaw Valley Hardwood Floors, was taken. Mr. Russell testified as to the bid he presented to Defendant Tilford and the fact that Defendant made a down-payment of \$3,014.00 but never took delivery of the custom cabinets Russell's business built for the Counts/Eggers transaction. Russell also testified that Defendant Tilford paid no further money towards the cost of the cabinets. Russell further testified that Counts/Eggers directly paid Russell an additional \$4,452.75 to take possession of the cabinets.

7. By proffer on the second day of trial, Plaintiff showed that Defendant Tilford had not paid any of the money he received from Counts/Eggers pursuant to the amounts shown on Exhibit 7 to either SPD Solid Surfaces (the countertop vendor) or World Wide Window (the window vendor).

8. Counts/Eggers ended up directly paying SPD Solid Surfaces in full for the countertops they ultimately had installed. Counts/Eggers received no material benefit at all from the \$5,821.45 they had paid to Defendant Tilford for the cabinets.

9. Counts/Eggers ended up directly paying another vendor to build windows for the home remodeling job. Counts/Eggers received no material benefit at all from the \$1,350.80 they had paid to Defendant Tilford for the windows.

10. Defendant Tilford knew at the time he presented the "Materials Expense Receipt" (Exhibit 7) that it was unlikely Counts/Eggers would pay his demand for the "Job Expense Summary". Defendant Tilford made willful use of falsehood by presenting the "Materials Expense Receipt" in order to obtain the monies for that

portion of the contract and apply it for other purposes.

11. Defendant Tilford knew at the time of receiving the \$17,221.19 from Counts/Eggers that if they did not pay his demand for the additional "Job Expense Summary" that he planned to present, that he would apply the \$17,221.19 for other purposes and that Counts/Eggers would be unable to receive any material benefit from that payment. When they did, in fact, decline his demand, he chose to not apply the money as he had represented and Counts/Eggers in fact received no material benefit therefrom.

Conclusions of Law

1. Defendant Tilford's willful use of falsehood to obtain \$17,221.19 from Counts/Eggers constitutes a deceptive practice in violation of K.S.A. 50-626(b)(2).

2. Defendant Tilford's knowledge that Counts/Eggers would receive no material benefit from the \$17,221.19 is the type of conduct described in K.S.A. 50-627(c) as consideration for a finding of unconscionability and in the circumstances of this case does constitute an unconscionable act pursuant to K.S.A. 50-627(a).

3. Defendant Tilford's willful violations of the Kansas Consumer Protection Act require the imposition of civil penalties to the Plaintiff pursuant to K.S.A. 50-626(a) and the payment of damages to the consumers Jackie Counts and Bruce Eggers pursuant to K.S.A. 50-632(a)(3).

WHEREUPON, the Court, after considering the evidence offered, finds that Plaintiff's Findings of Fact and Conclusions of Law are supported by the record and adopts the same as the Findings of this Court.

WHEREUPON, the Court orders the following:

A. The Findings of Fact and Conclusions of Law set forth herein are made


the Order of this Court;

B. Defendant Tilford and his employees and agents, if any, are hereby permanently enjoined from these and other violative practices, pursuant to K.S.A. 50-632(a)(2);

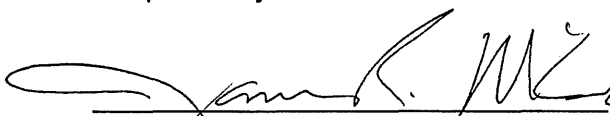
C. Defendant Tilford shall pay restitution to the consumers Jackie Counts and Bruce Eggers in the total amount of \$17,221.19;

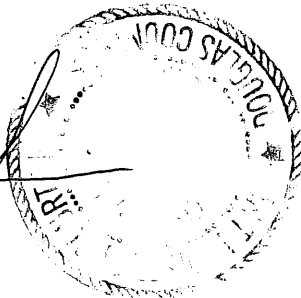
D. Defendant shall pay reasonable civil penalties for each violation of the Kansas Consumer Protection Act pursuant to K.S.A. 50-636(a), such amount in the aggregate to be \$20,000.00.

IT IS SO ORDERED.

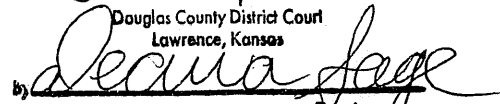

District Court Judge

Prepared by:


James R. McCabria, #16563
Attorney for Plaintiff
Submitted Pursuant to Rule 170




HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE
Dated January 20, 2005

Douglas County District Court
Lawrence, Kansas
by 
Deputy

Certificate of Service

I hereby certify that the above Journal Entry of Judgment was served upon Defendant Tilford by depositing the same, postage prepaid, in the U.S. Mail on the 20th day of November, 2004, addressed as follows:

Mark Tilford
P.O. Box 442566
Lawrence, KS 66044


James R. McCabria