

95-00

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT
COURT NO. 8

RECEIVED
KANSAS ATTORNEY GENERAL
1996 DEC 10 P 1:02

STATE OF KANSAS, ex rel,)
CARLA J. STOVALL, ATTORNEY GENERAL,)
)
Plaintiff,)
)
v.)
)
MICHAEL A. EVERHART and)
JANETTE W. EVERHART d/b/a EVERHART)
HOMES,)
)
Defendants.)

Case No. 95C-5419
Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this ____ day of October, 1996, the parties' joint motion for approval of consent judgment comes before the Court for consideration under K.S.A. 50-632(b). The State of Kansas *ex rel.*, Carla J. Stovall, Attorney General, appears by and through C. Steven Rarrick, Deputy Attorney General, and Gail E. Bright, Assistant Attorney General. Defendants Michael A. Everhart and Janette W. Everhart d/b/a Everhart Homes appear by and through their counsel, Frederick K. Starrett and Mark A. Ferguson of Lathrop & Gage L.C.

Whereupon, the parties advise the Court that they have stipulated and agreed to the following terms and conditions of the Journal Entry of Consent Judgment:

1. Plaintiff, Carla J. Stovall, is the Attorney General of the State of Kansas.
2. Plaintiff alleges that Defendants are individuals and partners of Everhart Homes.

Defendants are residents of the State of Kansas with an address located at 7620 Slater, Overland Park, Johnson County, Kansas 66204. Defendants deny that they are partners in Everhart Homes.

3. The Defendants admit the Court has jurisdiction over the parties and the subject matter and agree to the terms of the Journal Entry of Consent Judgment.

CLERK OF DISTRICT COURT
JOHNSON COUNTY, KS.

96 DEC -9 AM 11:11

4. The Attorney General alleges in its Second Amended Petition that Defendants engaged in the following acts and practices which the Attorney General claims are violations of the Kansas Consumer Protection Act:

- (a) Defendants, Michael A. Everhart and Janette Everhart d/b/a Everhart Homes, willfully failed to inform and/or omitted to state that the cost plus fee contract would and could result in increased materials and labor costs to the consumers in that any increase in the cost of labor or materials would increase the total price of the home constituting a violation of K.S.A. 50-626(b)(3). Further, the Defendants represented the cost plus contract as a cost savings device.
- (b) Defendants, Michael A. and Janette Everhart d/b/a Everhart Homes, in the relevant construction contracts, represented that the homes were covered by the Certified Master Builder Warranty Program when, in fact, the limited warranty of the Defendants did not, meet or equal the terms thereof, a violation of K.S.A. 50-626(b)(1)(A) and K.S.A. 50-626(b)(2).

5. Defendants have answered these claims and asserted numerous affirmative defenses, specifically denying all of the Attorney General's allegations contained in the Second Amended Petition. Defendants continue to deny liability for any allegations made by the Attorney General in this lawsuit.

6. Without admitting any liability, the parties desire to avoid additional unnecessary expense and delay regarding this lawsuit by settling and resolving these claims.

7. The parties voluntarily agree to this Journal Entry of Consent Judgment without trial or adjudication of any issue of fact or law. The parties stipulate that they have authority to enter into such a Journal Entry of Consent Judgment.

8. The provisions of this Journal Entry of Consent Judgment will be applicable to the parties, together with their employee(s), agent(s) or representative(s).

9. The Defendants agree to refrain from and to be enjoined from engaging in any future acts or practices which are deceptive and/or unconscionable under the Kansas Consumer Protection Act.

10. The Defendants shall not enter into, form, organize or reorganize into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Journal Entry of Consent Judgment.

11. The Defendants agree to pay to the Office of the Attorney General of the State of Kansas the sum of \$2,000.00. Said monies will be applied at the Attorney General's discretion. Payment is to be made by certified check.

12. The consideration paid by defendants will completely and finally resolve all claims made by the Attorney General of the State of Kansas against these defendants arising out of the facts alleged in the Second Amended Petition. The Attorney General agrees not to pursue or refile any claims based upon the Kansas Consumer Protection Act related to the homeowners named in the Second Amended Petition or based upon homeowners who filed complaints with the Attorney General prior to the execution of the Journal Entry of Consent Judgment. The Journal Entry of Consent Judgment does not restrict the Attorney General's ability to pursue new complaints by consumers made in the future.

13. The parties agree to pay their own remaining costs and expenses, including all court costs, attorneys' fees and filing fees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of the Court.

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 Journal Entry of Consent Judgment and adopts the same as the Order of this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that neither party has admitted liability herein and each party will pay their own expenses incurred herein, including attorneys' fees, court costs and filing fees.

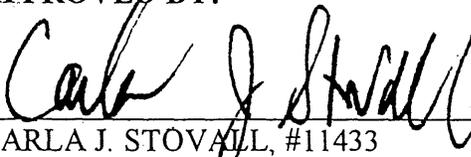
IT IS SO ORDERED.

STEVE LEBEN

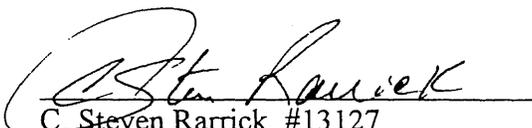
HONORABLE STEVE LEBEN
DISTRICT COURT JUDGE

Dated: _____

APPROVED BY:



CARLA J. STOVALL, #11433
Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597



C. Steven Rarrick, #13127
Deputy Attorney General
Gail E. Bright, #14572
Assistant Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597
(913) 296-3751

Attorneys for Plaintiff

APPROVED BY:

Mark A. Ferguson

Frederick K. Starrett, KS #9425

Mark A. Ferguson, KS #14843

Lathrop & Gage L.C.

1050/40 Corporate Woods

9401 Indian Creek Parkway

Overland Park, Kansas 66210

(816) 292-2000

Attorneys for Defendants