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COPY

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)
)
v.) Case No. 96-C-6481
) Chapter 60
JOHN A. EARNSHAW,) Court No. 8
)
Defendant.)
_____)

JOURNAL ENTRY OF JUDGMENT

NOW on this 4th day of February, 1998, comes before the Court the Motion for Summary Judgment filed by Plaintiff. Plaintiff, State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through counsel, Gail E. Bright, Assistant Attorney General. Defendant appears not.

THEREUPON, after review of the file and statements of counsel, the Court makes the following findings:

1. Plaintiff filed a Petition on May 31, 1996, requesting the following acts and practices by Defendant in the consumer transaction with Troy D. Macon be adjudged deceptive and unconscionable under the Kansas Consumer Protection Act (K.S.A. 50-623, *et seq.*):

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- a. On or about February 10, 1995, Defendant entered into a contract with Troy D. Macon, a consumer as defined by K.S.A. 50-624(b), to move a house from Johnson County, Kansas, to Miami County, Kansas;
- b. The consumer paid \$14,900.00 to Defendant, pursuant to the contract, and Defendant failed to move the house as agreed. The consumer was required to hire, and pay, another company to move the house;
- c. At the time the contract was executed, Defendant represented that he had the appropriate authority to complete such move, a falsehood, which is a violation of K.S.A. 50-626(b)(1)(A) and (b)(2);
- d. Defendant willfully failed to state a material fact (not having appropriate Kansas Corporation Commission authority to move houses within the state of Kansas), which is a violation of K.S.A. 50-626(b)(3); and
- e. The consumer paid the Defendant for a service which was not performed and for which no material benefit was received, in violation of K.S.A. 50-627(b)(3).

2. Plaintiff requested judgment be granted against Defendant in the amount of \$15,000.00 civil penalties, investigative fees and expenses, and to impose a permanent injunction.

3. During the discovery phase, Plaintiff submitted discovery requests to Defendant and also took Defendant's deposition.

4. Plaintiff filed a Motion for Summary Judgment on June 11, 1997. Defendant did not answer in the time required by Kansas Supreme Court Rule 141. To date, Defendant has failed to respond to Plaintiff's Motion for Summary Judgment.

5. Defendant advised the Court he filed bankruptcy on July 15, 1997; however, the Court finds that Plaintiff's action is not stayed, pursuant to 11 U.S.C. 362(b)(4) and *United States v. Commonwealth Companies, Inc. (In re Commonwealth Companies, Inc.)*, 913 F.2d 518, 522 (8th

Cir. 1990). Notwithstanding, counsel for Plaintiff has notified the Court that Defendant's bankruptcy was dismissed on November 18, 1997.

6. There are no facts in dispute and the only question remaining is a question of law. Therefore, summary judgment is proper. *Fletcher v. Nelson*, 253 Kan. 389, 391, 855 P.2d 940, 942 (1993).

7. Defendant's acts during this course of conduct constitute deceptive and unconscionable acts and practices under the Kansas Consumer Protection Act, K.S.A. §§ 50-623, *et seq.* Defendant is enjoined from these and other violative practices pursuant to K.S.A. § 50-632(a)(2).

8. Based upon the uncontroverted facts and arguments, Plaintiff is entitled to summary judgment.

9. Due to Defendant's violations of the Kansas Consumer Protection Act, Plaintiff is entitled to judgment of \$15,000.00 in civil penalties. Plaintiff is also entitled to judgment for damages sustained by the consumer, Troy D. Macon, the amount of \$14,900.00.

10. Plaintiff has advised the Court the claim for investigative fees and expenses is withdrawn.

IT IS THEREFORE ORDERED, ADJUDGED DECREED that Plaintiff's Motion for Summary Judgment is granted.

IT IS ALSO ORDERED, ADJUDGED AND DECREED that Defendant's acts during this course of conduct constitute deceptive and unconscionable acts and practices under the Kansas Consumer Protection Act and that Defendant is enjoined from these and other violative practices pursuant to K.S.A. § 50-632(a)(2).

IT IS ALSO ORDERED, ADJUDGED DECREED that Plaintiff is granted judgment against Defendant in the amount of \$15,000.00 for civil penalties and \$14,900.00 for restitution of actual damages to the consumer, Troy D. Macon.

STEVE LEBEN

The Honorable Steve Leben
District Judge

PREPARED BY:

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