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2020 Jun 11 AM 11:45
CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2020-CV-000106



Court: Shawnee County District Court
Case Number: 2020-CV-000106
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. James Curry, et al.
Type: Order of Default Judgment Against Defendant Linda
Curry

SO ORDERED.

A handwritten signature in black ink, appearing to read "T. Watson", is written in a cursive style.

/s/ Honorable Teresa L Watson, District Court Judge

Sarah Dietz, #27457
Assistant Attorney General
Office of Kansas Attorney General Derek Schmidt
Consumer Protection Division
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612
(785) 296-3751 Phone
(785) 291-3699 Fax
Sarah.Dietz@ag.ks.gov

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, <i>ex rel.</i>,)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 2020-CV-000106
JAMES CURRY, an individual)	
d/b/a MIDWEST ASPHALT)	
)	
and)	
)	
LINDA CURRY, an individual)	
d/b/a MIDWEST ASPHALT)	
)	
Defendants)	
)	

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

ORDER OF DEFAULT JUDGMENT AGAINST DEFENDANT LINDA CURRY

NOW, on this date, Plaintiff’s Motion for Default Judgment as to Defendant Linda Curry and Memorandum in Support (“Motion for Default Judgment”) comes before this Court for consideration. The State of Kansas *ex rel.* Derek Schmidt, appears by and through counsel, Assistant Attorney General Sarah M. Dietz. Defendant Linda Curry appears not.

WHEREUPON, after reviewing the Court’s file and Plaintiff’s Motion for Default Judgment, the Court finds the following:

1. On February 5, 2020, Plaintiff filed a Petition against Defendant Linda Curry doing

business as Midwest Asphalt.

2. On February 6, 2020, Plaintiff filed an *Ex Parte* Motion for a Temporary Restraining Order and Sequestration of Property and Memorandum in Support.

3. Defendant Linda Curry is an individual doing business as Midwest Asphalt. Defendant Linda Curry has a residential address in Enid, Oklahoma. Defendant Linda Curry is the business partner of Defendant James Curry and is the sole owner of the asphalt and paving equipment and other equipment used in the perpetration of the misconduct. Defendant Linda Curry and Defendant James Curry are jointly and severally liable for the volitive conduct that has occurred.

4. Defendant Linda Curry was served with Plaintiff's *Ex Parte* Order for Temporary Restraining Oder and Sequestration of Property and Memorandum in Support via ordinary first class mail on February 10, 2020 at her residential address in Enid, Oklahoma pursuant to K.S.A. 50-632(d)(3).

5. The Return of Service for the *Ex Parte* Order for Temporary Restraining Oder and Sequestration of Property and Memorandum in Support was filed with the Court on February 18, 2020, establishing proper service of the order on Defendant Linda Curry, pursuant to K.S.A. 50-632(d)(3).

6. On February 14, 2020, the Office of the Kansas Attorney General sequestered two of the pieces of equipment listed in the Order for Sequestration dated February 6, 2020: 1) 2005 Ford F250 Super Duty, Oklahoma tag HBR459, VIN# 1FTSX20Y45EB40052 and 2) 2020 Recreation by Design, Monte Carlo, Model 46PMTV, VIN# 5CZ200R32L1227049. Defendant Linda Curry is the sole owner of both pieces of equipment.

7. Defendant Linda Curry was served with Plaintiff's Petition, Summons, *Ex Parte*

Motion for Temporary Restraining Order and Sequestration of Property and Assets and Memorandum in Support, and another copy of the *Ex Parte* Order for Temporary Restraining Order and Sequestration of Property and Assets and Memorandum in Support by Return Receipt Delivery on February 18, 2020, pursuant to K.S.A. 60-205 and K.S.A. 60-303.

8. The Return of Service for the Petition, Summons, *Ex Parte* Motion for Temporary Restraining Order and Sequestration of Property and Assets and Memorandum in Support, and another copy of the *Ex Parte* Order for Temporary Restraining Order and Sequestration of Property and Assets and Memorandum in Support was filed with the Court on February 28, 2020, establishing proper service on Defendant Linda Curry, pursuant to K.S.A. 60-205 and K.S.A. 60-303.

9. Defendant Linda Curry failed to file an Answer within thirty (30) days after being served with process, as required by K.S.A. 60-308(a)(3).

10. Plaintiff filed its Motion for Default Judgment on April 22, 2020.

11. Plaintiff's Motion for Default Judgment is predicated on the Defendant Linda Curry's failure to file an Answer to the Plaintiff's Petition.

12. Defendant Linda Curry is not a minor or incapacitated person.

13. Defendant Linda Curry is in default pursuant to K.S.A. 60-255.

FACTUAL FINDINGS

14. All of the foregoing paragraphs are hereby incorporated by reference.

15. At all times relevant hereto, and in the ordinary course of business, Defendant Linda Curry acted as a "supplier," as that term is defined by K.S.A. § 50-624(l).

16. At all times relevant hereto, and in the ordinary course of business, Defendant

Linda Curry made or caused to be made “consumer transactions,” as that term is defined by K.S.A. § 50- 624(c).

17. Defendant Linda Curry made or caused to be made “door-to-door sales” as defined by K.S.A. 50-640(c)(1).

18. Defendant Linda Curry made or caused to be made door-to-door “sales” with a consumer as defined by K.S.A. 50-624(b).

19. Defendant Linda Curry made or caused to be made door-to-door sales with an “elder consumer” as that term is defined in K.S.A. 50-676.

20. Around December of 2019, Defendant Linda Curry engaged in the business of and acted in the capacity of a supplier within this state.

21. Defendant Linda Curry and/or Defendant James Curry contracted with at least one (1) Kansas consumer for asphalt and paving services in the following amounts:

A. L.A. - \$4,000.

22. On or about December 4, 2019, L.A. of Axtell, Kansas purchased paving and asphalt services from Defendant Linda Curry and/or Defendant James Curry.

A. Defendant Linda Curry and/or Defendant James Curry refused to tell the consumer of the price before beginning the job.

B. Defendant Linda Curry and/or Defendant James Curry represented to L.A. that they would lay the asphalt for her entire driveway. The consumer only received $\frac{3}{4}$ of her driveway paved and Defendant Linda Curry and/or Defendant James Curry demanded \$4,000 in payment.

C. Defendant Linda Curry and/or Defendant James Curry told L.A. that they would return to finish the job, but did not come back.

- D. The consumer wrote a check for \$2,000 on December 5, 2019. The check was misdated as November 5, 2019. The check was cashed on December 5, 2019.
- E. The consumer wrote a second check for \$2,000 on December 6, 2019. The check was misdated as November 6, 2019. The check was cashed on December 6, 2019.
- F. The consumer is a protected consumer as an “elder person” as defined in K.S.A. 50-676(a).
- G. The amount of loss is \$4,000.00.

23. Defendant Linda Curry failed to provide the consumer with a written notice of the three day right to cancel the transaction in violation of K.S.A. 50-640(b)(1).

24. Defendant Linda Curry failed to provide the consumer with a completed form in duplicate containing notice of the three day right to cancel in violation of K.S.A. 50-640(b)(2).

25. Defendant Linda Curry willfully used in an oral representation of an exaggeration, falsehood, innuendo or ambiguity as to a material fact in violation of K.S.A. 50-626(b)(2).

26. Defendant Linda Curry entered into a transaction in which 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).

27. The transaction Defendant Linda Curry induced the consumer to enter into was excessively one-sided in favor of the Defendant in violation of K.S.A. 50-627(b)(5).

28. Defendant Linda Curry was provided notice on February 28, 2020 that failure to answer the petition involving door-to-door consumer transactions under the Kansas Consumer Protection Act, 50-623 *et seq.*, could result in Defendant Linda Curry being prohibited from making and conducting door-to-door sales should a judgment be issued. Violation of a judgment

or temporary or permanent restraining order issued pursuant to the Kansas Consumer Protection Act could constitute a crime and subject Defendant Linda Curry to prosecution pursuant to K.S.A. 21-6423, a Level 9, Person Felony.

29. An order for sequestration under the KCPA “operates as a lien on the sequestered property and may contain other provisions as the court deems appropriate” as set forth in K.S.A. 50-632(d)(2). Therefore, because Defendant Linda Curry failed to defend or otherwise appear in this action, Plaintiff reserves the right to keep and maintain control over the sequestered equipment until such time as Plaintiff is able to execute on the lien to satisfy any monetary judgment.

IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED that Plaintiff’s Motion for Default Judgment is granted.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Judgment is hereby entered against Defendant Linda Curry and in favor of Plaintiff on all Counts of the Petition.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that the actions and practices alleged in Plaintiff’s Petition are declared to be deceptive and unconscionable and in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(a)(1).

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Linda Curry be permanently enjoined from engaging in acts and practices alleged in the Plaintiff’s Petition to be violations of the Kansas Consumer Protection Act, as provided by K.S.A. 50-632(a)(2).

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Linda Curry be permanently enjoined from conducting business in the State of Kansas, as provided by K.S.A. 50-632(c).

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Linda Curry be permanently enjoined from conducting door-to-door sales in the State of Kansas, as provided by K.S.A. 50-632(c) and K.S.A. 50-632(a)(2).

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Linda Curry pay \$4,000.00 to be distributed as restitution by Plaintiff for the consumer transaction alleged in Plaintiff's Petition, pursuant to K.S.A. 50-632(c)(2).

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Linda Curry pay reasonable investigative fees and expenses of the Office of the Kansas Attorney General, pursuant to K.S.A. 50-632(c)(7), in this case amounting to \$2,500.00.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Linda Curry pay \$10,000.00 in civil penalties for each violation of the Kansas Consumer Protection Act alleged in the Plaintiff's Petition, pursuant to K.S.A. 50-636(a), in this case amounting to \$50,000.00.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Linda Curry pay \$10,000.00 in enhanced civil penalties for each violation of the Kansas Consumer Protection Act alleged in the Plaintiff's Petition, pursuant to K.S.A. 50-636(a), in this case amounting to \$50,000.00.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Plaintiff shall keep and maintain control over the sequestered equipment until such time as Plaintiff is able to execute on the lien to satisfy the monetary judgment.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Linda Curry pay all Court Costs and all costs associated with distributing and executing this judgment.

IT IS SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME OF THE ELECTRONIC FILE STAMP.

Respectfully submitted,

/s/ Sarah M. Dietz

Sarah M. Dietz KS#27457
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
Tel: (785) 368-6204
Fax: (785) 291-3699
sarah.dietz@ag.ks.gov