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CLERK OF THE LEAVENWORTH COUNTY DISTRICT COURT
CASE NUMBER: 2020-CV-000168



Court: Leavenworth County District Court
Case Number: 2020-CV-000168
Case Title: State of Kansas ex rel. Derek Schmidt Atty General
vs. Harlan Wayne Dilday, et al.
Type: JOURNAL ENTRY OF CONSENT JUDGMENT

SO ORDERED.

A handwritten signature in black ink, appearing to read "David J. King".

/s/ Honorable David J. King, District Court Judge

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**IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS
 FIRST JUDICIAL DISTRICT**

STATE OF KANSAS, <i>ex rel.</i>,)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 2020-CV-168
)	
HARLAN WAYNE DILDAY,)	
An individual,)	
And DILDAY & SONS COMPLETE)	
TREE CARE, LLC,)	
And DILDAY & SONS ASPHALT)	
& PAVING, LLC,)	
)	
Defendants.)	
)	
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(Pursuant to K.S.A. Chapter 60)		

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this day Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Kimberley Davenport, Assistant Attorney General.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

1. Derek Schmidt is the duly elected, qualified and acting Attorney General for the State of Kansas.

2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act ("KCPA"), K.S.A. 50-623, *et seq.*

3. Defendant Harlan Wayne Dilday ("Defendant Wayne Dilday") is an individual with a residential and business mailing address of [REDACTED].

4. Defendant Dilday & Sons Complete Tree Care, LLC ("Defendant Dilday Tree") is a Missouri limited liability company with a principal place of business of [REDACTED]. Defendant Dilday & Sons Complete Tree Care, LLC is not registered as a foreign covered entity with the Kansas Secretary of State. Wayne Dilday is the registered agent for Defendant and can be served at [REDACTED].

5. Defendant Dilday & Sons Asphalt & Paving, LLC ("Defendant Dilday Asphalt") is a Missouri limited liability company with a principal place of business of [REDACTED]. Defendant Dilday & Sons Asphalt & Paving, LLC is not registered as a foreign covered entity with the Kansas Secretary of State. Wayne Dilday is the registered agent for Defendant and can be served at [REDACTED].

6. All references to the Defendants herein include acts performed individually, in concert, or by or through employees, directors, officers, owners, managers, agents, assigns, and all other

persons or entities acting in concert with them or on their behalf, including their predecessors, subsidiaries, affiliates and successors.

7. Jurisdiction and venue are appropriate in District Court of Leavenworth County, Kansas, pursuant to K.S.A. 50-638(a) and (b), respectively.

ALLEGATIONS

8. Defendants have acted as “suppliers” in Kansas, as that term is defined by K.S.A. 50-624(l).

9. Defendants have engaged in “consumer transactions” in Kansas, as that term is defined by K.S.A. 50-624(c).

10. Defendant have engaged in consumer transactions with individuals who are considered “protected consumers” as they are “elder persons” as that term is defined by K.S.A. 50-676(a). These consumers include: J.M., J.D.K. and G.K.

11. Plaintiff alleges that at all times relevant hereto, the Defendants have engaged in acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, which acts and practices include, but are not limited to:

a. The Defendants conducted door-to-door sales in the state of Kansas and failed to provide consumers with fully completed receipts or copies of any contract pertaining to the sale of services containing the buyer or consumers’ notice of the three day right to cancel the transactions, in violation of K.S.A. 50-640(b)(1).

b. The Defendants conducted door-to-door sales in the State of Kansas and failed to provide consumers a completed form in duplicate of the “NOTICE OF

CANCELLATION” containing the notice of their three-day right to cancel, in violation of K.S.A. 50-640(b)(2).

c. The Defendants conducted door-to-door sales in the state of Kansas and failed to provide consumers with verbal notice of their three day right to cancel the transactions, in violation of K.S.A. 50-640(b)(5).

d. The Defendants conducted door-to-door sales in the state of Kansas and took advantage of the inability of consumers to reasonably to protect their own interests due to consumers’ physical infirmities, ignorance, illiteracy, inability to understand the language of an agreement or similar factors, in violation of K.S.A. 50-627(a) and (b)(1).

e. The Defendants conducted door-to-door sales in the state of Kansas and induced consumers to enter into transactions that were excessively one-sided in favor of the supplier, in violation of K.S.A. 50-627(a) and (b)(5).

12. Defendants voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law, solely for the purpose of settlement and without admitting any allegations contained herein.

INJUNCTIVE RELIEF

13. The Defendants agree to comply with all Kansas laws, statutes, rules and regulations relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

14. The Defendants shall not cause or encourage third parties, nor knowingly permit third parties acting on their behalf, to engage in practices from which Defendants are prohibited by this Consent Judgment.

15. The Defendants agree to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph eleven (11) herein, and Defendants agree that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

16. The Defendants agree that the above-mentioned acts and practices be declared deceptive and unconscionable in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-626, K.S.A. 50-627 and K.S.A. 50-640.

17. The Defendants agree to refrain and be permanently enjoined from engaging in any door-to-door sales or solicitations in the State of Kansas, as defined by K.S.A. 50-640(b)(8) and K.S.A. 50-632(a)(2)(c)(6).

18. The Defendants acknowledge and admit that if Defendants participate, directly or indirectly, in any door-to-door solicitations or sales in the state of Kansas in violation of this Consent Judgment, Defendants are committing a crime and subject to prosecution pursuant to K.S.A. 21-6423, a Level 9, Person Felony

19. The Defendants acknowledge and admit that if Defendants cause, direct, employ, enable or assist others in engaging in door-to-door solicitations or sales in the state of Kansas in violation of this Consent Judgment, Defendants are committing a crime and subject to prosecution pursuant to K.S.A. 21-6423, a Level 9, Person Felony.

20. The Defendants agree that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, affiliates, assignees and successors.

21. Defendants agree that engaging in such acts or similar acts, after the date of this Consent Judgment, may constitute a violation of this Order and civil penalties may be imposed for each subsequent violation.

22. Defendants agree to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

RESTITUTION AND CIVIL PENALTIES

23. Defendants agree to make restitution to consumer J.M. in the amount of \$8,000.00 at the time of executing this agreement.

24. Defendants agree to pay to the Office of the Kansas Attorney General ten thousand dollars (\$10,000.00) in civil penalties for violations of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

25. Defendants agree to pay the Office of the Kansas Attorney General seventeen hundred and five dollars and fifty cents (\$1705.50) in investigative fees and expenses, pursuant to K.S.A. 50-632(a)(4) and K.S.A. 50-636(c).

26. Payment from Defendants shall be made in the form of a cashier's check or money order made payable to the Office of the Kansas Attorney General, and mailed to:

Kimberley Davenport, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave, 2nd Floor
Topeka, Kansas 66612-1597

27. The Attorney General's Office will disburse the restitution payment to the consumer.

OTHER PROVISIONS

28. Defendants are enjoined from collecting on the contract for services against J.D.K., G.K., or their power of attorney on the consumer transaction which took place on or about January 11, 2018.

29. The provisions of this Consent Judgment will be applicable to Defendants, and every employee, agent or representative of the Defendants.

30. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

31. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

32. Compliance with this Consent Judgment does not relieve Defendants of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.

33. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the attorney general of the Defendants' business practices, nor shall the

Defendants represent the Consent Judgment as such approval. The parties further understand and agree that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to this Consent Judgment shall not be construed to be an approval of or sanction of any representations, acts, or practices of the Defendants, nor shall any inaction by the Attorney General be considered a waiver by the attorney general of any rights under this Consent Judgment or applicable law.

34. This Consent Judgment represents the entire agreement between Plaintiff and the Defendants, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Consent Judgment which are not fully expressed herein or attached hereto.

35. Defendants hereby represent and warrant that Defendants have had the opportunity to consult with and receive the advice of legal counsel regarding all matters relative to this Consent Judgment, including the rights and obligations of Defendants under this Consent Judgment and the consequences of breach hereunder. Defendants represent that Defendants have read the Consent Judgment and knows and understands the contents thereof. Defendants further represent and warrants that Defendants are signing this Consent Judgment as the result of his own free act, and that Defendants have not relied on any statement(s) or representation(s) of the Attorney General or anyone acting on his behalf, except for those contained in this Consent Judgment.

36. By signing this Consent Judgment, the representative of Defendants represents and warrants that such person is duly and legally authorized to execute this Consent Judgment on behalf of these Defendants, thus binding the Defendants to the provisions of this Consent Judgment.

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 fact and conclusions of law of the Court and any monies owed hereunder by Defendants immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants for payment of consumer restitution to Consumer J.M in the amount of \$8,000.00 due upon execution of this agreement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are enjoined from collecting on the contract for services against J.D.K., G.K. or their power of attorney, on the consumer transaction or contract which took place on or about January 11, 2018.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants and in favor of Plaintiff in the amount of ten thousand dollars (\$10,000.00) in enhanced civil penalties for violations of the Kansas Consumer Protection Act, as provided by K.S.A. 50-636, K.S.A. 50-676 and K.S.A. 50-677.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants pay investigative fees and expenses in the amount of seventeen hundred and five dollars and fifty cents (\$1705.50) to the Office of the Kansas Attorney General, pursuant to K.S.A. 50-632(a)(4) and K.S.A. 50-636(c).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are permanently enjoined from conducting door-to-door sales or solicitations in the State of Kansas.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants pay all court costs associated with this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.

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

Respectfully submitted by:



DEREK SCHMIDT, #17781
Kansas Attorney General



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Approved by:



Harlan Wayne Dilday

On his own behalf and as owner on behalf
Of Dilday & Sons Complete Tree Care LLC, and
Dilday & Sons Asphalt & Paving, LLC



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