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CLERK OF THE SALINE COUNTY DISTRICT COURT
CASE NUMBER: 2022-CV-000129
PII COMPLIANT



Court: Saline County District Court
Case Number: 2022-CV-000129
Case Title: State of Kansas, et al. vs. Shaun Costello, et al.
Type: Order for Default Judgment Against Defendant

SO ORDERED.

A handwritten signature in black ink, appearing to read "Paul J. Hickman".

/s/ Paul J. Hickman, Honorable District Court Judge

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**IN THE DISTRICT COURT OF SALINE COUNTY, KANSAS
TWENTY-EIGHTH JUDICIAL DISTRICT**

STATE OF KANSAS, <i>ex rel.</i>)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
)	
v.)	
)	CASE NO. 2022-CV-129
SHAUN COSTELLO, an individual)	
dba)	
LOW OVERHEAD EXTERIOR LLC)	
)	
Defendants.)	
)	

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

ORDER FOR DEFAULT JUDGMENT AGAINST DEFENDANT

NOW, on this date, Plaintiff’s Motion for Default Judgment against the Defendant Shaun Costello and Defendant Low Overhead Exterior LLC (“Motion for Default Judgment”) comes before this Court for consideration. Plaintiff, State of Kansas ex rel. Derek Schmidt, Attorney General, appears by and through Assistant Attorney General Sarah M. Dietz. Defendant Shaun Costello and Defendant Low Overhead Exterior LLC appears not and is in default.

WHEREUPON, after reviewing the Court’s file and Plaintiff’s Motion for Default Judgment, the Court finds 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, K.S.A. 50-623, *et seq.*

3. This Court has personal and subject matter jurisdiction over this controversy by the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, specifically K.S.A. 50-638(a).

4. Venue is proper in the Twenty-Eighth Judicial District (Saline County), pursuant to K.S.A. 50-638(b).

5. On June 21, 2022, Plaintiff filed a Petition against Defendant Shaun Costello d/b/a Defendant Low Overhead Exterior LLC ("Defendants").

6. Defendant Shaun Costello ("Defendant Costello") is the owner and operator and exercises exclusive control over Defendant Low Overhead Exterior LLC.

7. Defendant Low Overhead Exterior LLC ("Defendant Low Overhead Exterior") is a former Kansas limited liability company registered to do business with the Kansas Secretary of State. Defendant Low Overhead Exterior was organized by Defendant Costello. Defendant Low Overhead Exterior's registration with the Kansas Secretary of State was forfeited in July 2021 for failing to file the annual report. The registered agent for Defendant Low Overhead Exterior is Defendant Costello. Defendant Low Overhead Exterior can be served with process at the last known principal place of business in Salina, KS, which is the residential address of Defendant Costello, or wherever he may be found.

8. K.S.A. 17-6807 provides, “All corporations, whether they expire by their own limitation or are otherwise dissolved, including revocation or forfeiture of articles of incorporation...shall be continued, nevertheless, for the term of three years from such expiration or dissolution or for such longer period as the district court in its discretion shall direct, bodies corporate for the purpose of prosecuting and defending suits...”

9. A copy of Plaintiff’s Petition, with attached Affidavit and Exhibits, and Summons were served by Personal Service on July 1, 2022 at another residential address found by Saline County Sheriff’s Office for Defendants located in Salina, Kansas, pursuant to K.S.A. 60-205 and K.S.A. 60-303.

10. The Returns of Service for the Petition, with attached Affidavit and Exhibits, and Summons were filed with the Court on July 13, 2022, establishing proper service on Defendants, pursuant to K.S.A. 60-205 and K.S.A. 60-303.

11. Defendants have failed to file an Answer within twenty-one (21) days after being served with process, as required by K.S.A. 60-212(a)(1).

12. Plaintiff filed its Motion for Default Judgment on July 26, 2022.

13. Plaintiff’s Motion for Default Judgment is predicated on Defendants’ failure to file an Answer to the Plaintiff’s Petition, which was filed on June 21st, 2022.

14. Defendants are not a minor or an incapacitated person.

15. Defendants are in default pursuant to K.S.A. 60-255.

16. The factual allegations set forth in the Plaintiff’s Motion for Default Judgment are adopted by the Court as its findings of fact and conclusions of law and are as follows:

a. Defendant Shaun Costello is the owner and operator and exercises exclusive control over Defendant Low Overhead Exterior LLC.

b. At all times relevant hereto, and in the ordinary course of business, the Defendants acted as a “supplier,” as that term is defined by K.S.A. 50-624(l).

c. At all times relevant hereto, and in the ordinary course of business, the Defendants made or caused to be made “consumer transactions,” as that term is defined by K.S.A. 50-624(c).

d. At all times relevant hereto, and in the ordinary course of business, Defendants acted as “roofing contractors,” as that term is defined by K.S.A. 50-6,122(a)(1).

e. Defendants, as part of their regular business practices, contracted with at least one (1) Kansas consumer to perform roofing related services.

f. Defendants, as part of their regular business practices, accepted payments for jobs for which they contracted.

g. Since at least 2020, Defendants have engaged in the business of and acted in the capacity of a roofing contractor within the state of Kansas.

h. At no time, have Defendants applied for or held a roofing registration certificate issued by the Office of the Kansas Attorney General.

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 Defendants 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.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants and any employees, agents, representatives, affiliates, assignees and successors are temporarily enjoined soliciting and operating as a roofing contractor in the State of Kansas unless and until Defendants obtain a valid registration with the OAG, pursuant to K.S.A. 50-632(c)(6)

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants pay civil penalties, jointly and severally, in the amount of Ten Thousand Dollars (\$10,000) for each violation of the Kansas Roofing Registration Act, alleged herein, in the total amount of Twenty Thousand Dollars (\$20,000);

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants pay an enhanced civil penalties of Twenty Thousand Dollars (\$20,000) for violations of the Kansas Consumer Protection Act, or such other amount as the Court deems just and equitable, committed against a protected consumer, in addition to the civil penalty, pursuant to K.S.A. 50-677;

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants cease any and all attempts to collect any money from consumer J.R. for the consumer transaction/work performed, specifically including, but not limited to, filing mechanics' liens;

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants pay investigative fees in the amount of \$656.25 and be found to be jointly and severally liable therefor.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants pay all court costs and all other costs associated with distributing and executing on any restitution or judgment made by this Court.

IT IS SO ORDERED.

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

Respectfully submitted,

/s/ Sarah M. Dietz
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