

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

SUPERIOR COURT DIVISION

FILED

File No. 13 CVS 07088

2015 AUG 20 P 2:34

STATE OF NORTH CAROLINA,
ex rel. ROY COOPER, ATTORNEY GENERAL,
GENERAL,

Plaintiff,

v.

JAMES STEVENS, Jr., a/k/a JIMMY
STEVENS, d/b/a J&J PAVING,
JIM'S BLACK TOP PAVING,
and BIG TIME PAVING,

Defendant.

**JUDGMENT AND
PERMANENT INJUNCTION**

THIS MATTER came on to be heard and was heard by the undersigned Judge presiding over the August 17, 2015 civil session of Wake County Superior Court upon plaintiff State of North Carolina's Motion for Summary Judgment against defendant. Special Deputy Attorney General David N. Kirkman appeared on behalf of the plaintiff. No one appeared on behalf of defendant to contest plaintiff's Motion even though defendant was duly notified of this hearing. Defendant never filed an Answer or other pleading in response to plaintiff's Complaint, nor did he ever file affidavits or other responses to plaintiff's Motion.

The Court, having reviewed the record in this cause and considered the arguments of plaintiff's counsel, finds that there exist no genuine issues of material fact regarding the following.

Undisputed Facts

1. Plaintiff is the State of North Carolina, on relation of its Attorney General, Roy Cooper.

Plaintiff brought this deceptive trade practices action on May 22, 2013 pursuant to authority found in Chapters 75 and 114 of the North Carolina General Statutes.

2. Defendant James Stevens, Jr. is a resident of Orange County, North Carolina.
3. Defendant has done business throughout North Carolina under the names Jimmy Stevens, J&J Paving, Jim's Black Top Paving and Big Time Paving, among others.
4. For the past several years, including as recently as the fall of 2014, defendant has offered asphalt driveway paving services to home owners in North Carolina.
5. It has been defendant's regular practice to offer his services to North Carolina home owners by appearing at their properties unannounced and unsolicited, and then making a verbal sales pitch for asphalt driveway paving services.
6. When offering his driveway paving services to North Carolina home owners, it has been defendant's regular practice to claim or imply that he will provide the service at a substantial discount from market prices because he and his crew have equipment in the neighborhood and leftover paving material from another nearby paving job.
7. When he approaches a potential customer, defendant typically has paving equipment and a crew mustered nearby, along with supposed paving materials. If a potential customer consents to the job, defendant and his crew will begin work immediately.
8. It has been defendant's regular practice to target and approach older home owners with the aforesaid sales pitches.
9. Defendant regularly fails to provide his North Carolina customers with written contracts that contain clearly and prominently printed disclosures, positioned near the signature line, informing the customer that he or she has the unconditional legal right to cancel the transaction within three days.

10. Defendant regularly has failed to provide his North Carolina customers with written contracts bearing clearly and prominently printed disclosures, positioned near the signature line, directing the customer's attention to an attached Notice of Cancellation form.
11. Defendant regularly has failed to provide to his North Carolina customers two copies of a printed "Notice of Cancellation" form which states the contract date, advises that the customer has three days in which to reconsider and cancel the agreement, specifies the cancellation deadline date, and provides information on how and when the customer should transmit the Notice of Cancellation form to defendant should he or she elect not to proceed with the transaction.
12. Defendant regularly has failed to advise customers verbally that they have the unconditional right to cancel their transactions within three days.
13. Defendant typically does not memorialize his supposed agreements with home owners via printed contracts that are signed by the parties before work commences. He operates, instead, based upon verbal agreements with his customers.
14. On February 19, 2013, defendant was warned in an email by Investigator Linda Matthews of the North Carolina Attorney General's Office, Consumer Protection Division, that his driveway paving contracts with North Carolina home owners violated N.C. Gen. Statute § 14-401.13 (Failure to give right to cancel in off-premises sales). She noted that his contracts were not in writing and lacked the printed disclosures and notices discussed above. Defendant received a similar warning from counsel for plaintiff in an email dated March 4, 2013.
15. The court file contains uncontested affidavits executed by Bernard Holliday of Creedmoor, Olivia Worthen of Kernersville, Mark Bercegeay of Raleigh, Geraline Graham of Orange County and Donald Williams of Raleigh. Those affidavits and the documents attached to

them establish that defendant ignored the warnings set forth in the preceding paragraph. Instead, he continued with the above described practices, representations and omissions while offering and performing residential driveway paving services in North Carolina.

16. The aforementioned affidavits Mr. Holiday, Ms. Worthen, Mr. Bercegeay, Mrs. Graham and Mr. Williams also establish that it has been defendant's regular practice to lay down and roll a substance that never hardens like normal "hot asphalt" paving material. Instead, the defendant lays down a sand-like, black amalgam known as "asphalt shavings." He does not advise his customers that he will use this substance instead of fresh, heated asphalt, the substance normally employed in asphalt paving jobs.

17. Asphalt shavings are created by powerful machines that grind up the old surface of an asphalt road bed. The substance has almost no commercial value and can be procured at little or no cost.

18. Defendant regularly advises his customers not to drive their vehicles over the black amalgam covering their driveways for several days, explaining that it needs to "cure." Later, when the customers drive on their supposedly paved driveways, the driveway surfaces come apart.

19. On May 23, 2013, this Court entered a Temporary Restraining Order banning defendant from offering or performing driveway paving services in North Carolina. That Temporary Restraining order was extended for an additional 10 days on June 3, 2013 because defendant had not yet been served with process. On June 6, 2013, the Durham County Sheriff served defendant with copies of the summons, the complaint and the June 6 restraining order.

20. On June 10, 2013, this Court entered a Preliminary Injunction banning defendant from offering or performing driveway paving services in North Carolina pending the final resolution of

this case. Defendant was present and represented by counsel at that hearing.

21. As shown by the affidavits of Janice Clark of Creedmoor, James Hairston of Liberty and Brittany Sizemore of Liberty, defendant collected money from them using the same sales tactics and driveway paving practices described above. His transactions with these individuals took place between October 3, 2014 and November 3, 2014, well after the entry of the Preliminary Injunction herein.

22. Based upon the affidavits of Ms. Clark, Mr. Hairston and Ms. Sizemore, on December 1, 2014 this Court ordered defendant to appear on December 15, 2014 and show cause, if any there might be, why he should not be held in civil contempt for violating the Preliminary Injunction. On December 8, 2014, defendant received a copy of that Order via FedEx and signed a receipt for it. He failed to appear for that hearing, whereupon this Court issued an order for his arrest. To date, law enforcement has not been able to execute that order.

23. Defendant's above described acts, practices, representations and omissions have a tendency and capacity to deceive home owners as to the true nature and value of the services he is offering to provide.

24. Defendant's above described acts, practices, representations and omissions are abusive and unfair to consumers because they attempt to thwart statutory requirements that he inform his customers of their unconditional rights to cancel the transactions within three business days.

25. Defendant's above described acts, practices, representations and omissions have been in and affecting commerce in North Carolina and have had a substantial and negative impact thereon.

26. Defendant has engaged in the aforesaid acts, practices, representations and omissions willfully and with knowledge that they violated both North Carolina statutes and, after June 6,

2013, the orders of this Court.

27. Defendant's aforesaid acts, practices, representations and omissions enabled him to

extract the following payments from the North Carolina home owners listed below:

<u>Home Owner(s)</u>	<u>Amount</u>
Bernard and Shirley Holliday 1738 Lake Road Creedmoor, NC 27522	\$1,250.00
Olivia Worthen 520 Sedge Garden Road Kernersville, NC 27284	\$1,500.00
Mark Bercegay 5221 Grasshopper Road Raleigh, NC 27610	\$3,800.00
Debra Stackpole 5911 Florasaline Dr. Mebane, NC 27302	\$2,500.00
Frances Cyplik 5918 Laws Farm Road Rougemont, NC 27572	\$1,500.00
Donald Williams 2608 Old Williams Road Raleigh, NC 27610	\$7,000.00
Melody Montgomery 3766 Friendship Patterson Mill Rd. Burlington, NC 27215	\$2,000.00
Geraline Graham 5953 Flora Saline Dr. Mebane, NC 27302	\$2,000.00
Janice R. Clark 2102 East Lyon Station Road Creedmoor, NC 27522	\$1,500.00
James Hairston 1524 Sandy Ridge Drive Liberty, NC 28298	\$1,950.00
Brittany Sizemore Liberty, NC 28298	\$850.00
Elmer Gunnell 192 Stacey Lane Thomasville, NC 27360	\$2,500.00

Jimmy Hicks 53 Kirk Street Thomasville, NC 27360	\$3,000.00
Ralph Roberts 2818 Olive Branch Road Durham, NC 27703	\$1,800.00
Jerry Reaves 1711 St. Andrews Church Road Henderson, NC 27537	\$2,500.00
Michael Chelenza 6108 Florasaline Dr. Mebane, NC 27302	\$2,250.00
Sheila Washington 6021 Laws Farm Road Rougemont, NC 27572	\$1,000.00
Donald Hughes 6036 Laws Farm Road Rougemont, NC 27572	\$8,000.00
Kathleen Brink 3711 Walker Road Hillsborough, NC 27278	\$3,100.00

28. Prior to the initiation of this proceeding, Bernard and Shirley Holliday of Creedmoor were able to secure a refund from defendant through the Attorney General's Office. The other home owners listed above have not obtained refunds.
29. There is no genuine dispute as to any material fact at issue in this case.
30. Counsel for plaintiff has filed an Affidavit stating that he has devoted at least 45 hours to the investigation and prosecution of this case, that he has been prosecuting Deceptive Trade Practices cases such as this one on behalf of the Attorney General for almost twenty-eight years, and that in recent years the courts have reimbursed the State for his services in such cases at a rate of \$150.00 per hour. The Court is familiar with counsel's work and expertise in such cases and finds that the number of hours he has devoted to this case is reasonable. The Court finds, further, that compensating the State for counsel's services at the rate of \$150.00 per hour would

be reasonable and appropriate in this action and that defendant should pay plaintiff's attorney costs in the amount of \$6,750.00.

31. Entry of a Permanent Injunction against defendant pursuant to N.C. Gen. Stat. § 75-14 is necessary in order to ensure future compliance with North Carolina statutes and to protect the consuming public from further harm.

Conclusions of Law

Based on the foregoing, the Court Concludes as a matter of law that:

1. The Court possesses personal jurisdiction over defendant and subject matter jurisdiction in this cause.
2. There being no genuine issue as to any material fact at issue in this cause, plaintiff is entitled to summary judgment against defendant as a matter of law.
3. Defendant's above described acts, practices, representations and omissions involving the type of material he would use in paving customers' driveways and the savings they would derive from doing business with him violated the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*
4. Defendant's above described acts, practices, representations and omissions involving customers' statutory three-day cancellation rights also violated the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*
5. Plaintiff is entitled to all civil penalties, attorneys fees, restitution orders and permanent injunction orders prayed for in its Complaint, and as authorized in N.C. Gen. Stat. §§ 75-14, 75-15.1, 75-15.2 and 75-16.1.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that summary judgement is entered against defendant for repeatedly violating the North Carolina Unfair and

Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.* Each of defendant's transactions with the nineteen home owners listed above involved at least two violations of that Act: deceiving them into thinking he would install conventional "hot asphalt" pavement on their driveways at a discounted price and violation of the statute governing 3-day cancellation rights in door-to-door sales, N.C. Gen. Stat. § 14-401(13).

Judgment for Victim Restitution under N.C. Gen. Stat. § 75-15.1 – \$48,750.00

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff have and recover from defendant, on behalf of the home owners listed in factual finding 27, above, other than Mr. and Mrs. Holliday, \$48,750.00 in victim restitution, pursuant to N.C. Gen. Stat. § 75-15.1. Any monies recovered from defendant by plaintiff pursuant hereto shall first be applied to this victim restitution obligation and disbursed to the aforesaid home owners in the amounts indicated as soon as practicable and in *pro rata* shares, if necessary. Only after these victim restitution obligations have been satisfied fully may funds collected from defendant pursuant to this Judgment be applied towards the awards of civil penalties, costs and attorneys fees set forth below.

Judgment for Civil Penalties Under N.C. Gen. Stat. § 75-15.2 – \$190,000.00

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff have and recover from defendant Civil Penalties in the amount of \$ 190,000.00, which represents the full civil penalty allowed by N.C. Gen. Stat. § 75-15.2, multiplied by the thirty-eight violations found by the Court.

Permanent Injunction Against Driveway Paving Activities

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant and each of his partners, agents and employees, together with any other parties acting in concert with

defendant who have knowledge hereof, be and hereby are Permanently Enjoined and banned from offering, soliciting or performing driveway paving, re-paving, sealing, re-sealing, graveling, re-graveling, grading or re-grading services for North Carolina residential property owners. This ban shall apply not only to services that will be performed by defendant himself, but also to services that will be performed by other individuals or companies with defendant's assistance.

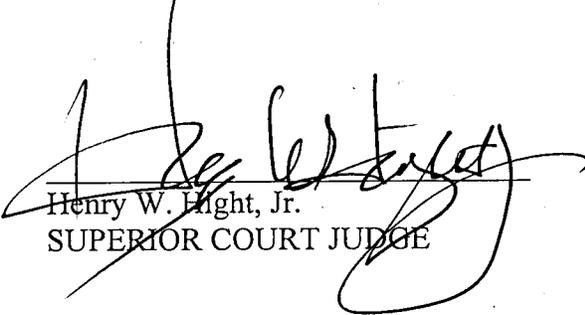
Attorneys Fees and Costs Awarded to Plaintiff

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff is awarded, and defendant shall pay, all costs that plaintiff incurred in the prosecution of this action, including attorneys fees in the amount of \$6,750.00, as allowed under N.C. Gen. Stat. § 75-16.1.

Retention of Jurisdiction

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court retains jurisdiction in this matter in order to ensure defendant's compliance with the foregoing Permanent Injunction and for further proceedings relating to its Order of December 19, 2014 finding defendant in contempt.

This the 20th day of August, 2015.


Henry W. Hight, Jr.
SUPERIOR COURT JUDGE