

STATE OF NORTH CAROLINA
WAKE COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 19 CVS 741

2019 MAR - 8 | A 9 43

STATE OF NORTH CAROLINA *ex re* WAKE COUNTY, *et al.*
JOSHUA H. STEIN, Attorney General,)

Plaintiff,)

v.)

CONSENT JUDGMENT

VERNON KYLE ROWE, Individually,)
STUART E. CAMPBELL, JR, a/k/a)
STUART CAMPBELL, Individually, and)
GEORGIA TREE COMPANY LLC,)

Defendants.)

THIS CAUSE came on to be heard and was heard before the undersigned Wake County Superior Court Judge for entry of a Consent Judgment between Plaintiff, State of North Carolina, by and through its Attorney General (“the State”), and Defendants VERNON KYLE ROWE, individually, STUART E. CAMPBELL, JR, a/k/a STUART CAMPBELL, individually, and GEORGIA TREE COMPANY LLC (together “Defendants”). All parties are represented by counsel. The Court finds that the parties have resolved the matters in controversy between them and have agreed to the entry of this Consent Judgment by the Court without trial or adjudication of any issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

I. FINDINGS OF FACT

1.1 Plaintiff State of North Carolina is acting through its Attorney General, Joshua H. Stein, pursuant to authority granted in Chapters 75 and 114 of the North Carolina General Statutes to protect the public from unlawful business practices.

1.2 Defendant Vernon Kyle Rowe is a resident of the State of Georgia, and at all times relevant to this Complaint was a managing agent of defendant Georgia Tree Company LLC.

1.3 Defendant Stuart E. Campbell is a resident of the State of Georgia, and at all times relevant to this Complaint was a managing agent of defendant Georgia Tree Company LLC.

1.4 Defendant Georgia Tree Company LLC is a Georgia limited liability company that has its principal place of business at 2370 Justin Trail, Alpharetta, Georgia.

1.5 The State alleges that Defendants engaged in trade and commerce affecting consumers in North Carolina within the meaning of N.C. Gen. Stat. § 75-1.1, which included: charging and/or agreeing to charge for tree removal services a price that was unreasonably excessive under the circumstances during a state of emergency declared by the Governor of North Carolina, in violation of North Carolina's price gouging law, N.C. Gen. Stat. §§ 75-38; engaging in unfair and deceptive practices, in violation of N.C. Gen. Stat. § 75-1.1; and engaging in prohibited acts by debt collectors, in violation of N.C. Gen. Stat. § 75-50. Defendants have cooperated with the State's investigation and provided records for the State to review. Based on the State's investigation of Defendants' provision of tree removal services in North Carolina occurring after September 7, 2018, the State has reason to believe that Defendant Georgia Tree Company engaged in a pattern and practice of price gouging and unfair and deceptive conduct with respect to those North Carolina consumers, whose names are set forth in **Exhibit 1**.

1.6 Defendants deny the State's allegations in the Amended Complaint filed in this matter and the assertions contained in paragraph 1.5. In the interest of compliance and resolution of this matter, however, Defendants wish to resolve this controversy without further proceedings and are therefore willing to agree to the entry of this Consent Judgment.

1.7 Allowance of Sale. On January 28, 2019, the Court entered, by consent of the parties, a Temporary Restraining Order set to run until March 18, 2019, at which date a Preliminary Injunction hearing is scheduled. The Temporary Restraining Order prohibits Georgia Tree Company LLC from “transferring, withdrawing, concealing, disposing, or encumbering any of [its] assets without permission of the Court or written permission of the Attorney General.” Contingent upon entry of this Consent Judgment, the State grants permission for the sale of Georgia Tree Company LLC’s assets. Defendants acknowledge that they are bound by the full injunctive and financial terms of this Consent Judgment whether or not the sale is executed.

1.8 Disclosure to Purchaser. Defendants represent that they have provided a copy of this Consent Judgment to the purchasers of Georgia Tree Company LLC’s assets prior to the sale closing.

II. CONCLUSIONS OF LAW

2.1 This Court has jurisdiction over the parties and the subject matter of this action.

2.2 Venue is proper in Wake County.

2.3 North Carolina’s laws against price gouging, N.C. Gen. Stat. § 75-38; unfair and deceptive trade practices, N.C. Gen. Stat. § 75-1.1; and prohibited debt collection acts, N.C. Gen. Stat. § 75-50 *et seq.*, govern the alleged business practices of Defendants that gave rise to this controversy.

2.4 The North Carolina Attorney General is the proper party to commence these proceedings under the authority of N.C. Gen. Stat. §§ 75-14 and -15, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of North Carolina.

2.5 This Consent Judgment shall be governed by the laws of the State of North Carolina.

2.6 Entry of this Consent Judgment is just and proper and in the public interest.

2.7 The State's Amended Complaint states a cause of action against Defendants upon which relief may be granted, and the Court finds good and sufficient cause to adopt this agreement of the parties and these findings of fact and conclusions of law as its determination of their respective rights and obligations and for entry of this Consent Judgment.

2.8 The parties have agreed to resolve their differences, and the agreement of the parties is just and reasonable with respect to all parties.

2.9 The Court approves the terms of the parties' agreement and adopts them as its own determination of the parties' respective rights and obligations.

III. GENERAL PROVISIONS

3.1 Other State Governmental Entities. This Consent Judgment shall not bind any other offices, boards, commissions, or agencies of the State of North Carolina and nothing in this Consent Judgment shall in any way preclude any investigation or enforcement under any legal authority granted to the State for transactions not subject to this action.

3.2 Retention of Jurisdiction. The Court retains jurisdiction over this action to take any further action deemed necessary to enforce this Consent Judgment, including imposition of penalties, and to award the State judgments for any costs, including attorney's fees, it incurs in the event of noncompliance by any of the Defendants.

3.3 No Sanction of Business Practices. Defendants shall not represent directly or indirectly or in any way whatsoever that the Court or the North Carolina Attorney General has sanctioned, condoned, or approved any part or aspect of Defendants' business operations.

3.4 Release of Claims. This Consent Judgment fully resolves all legal claims and issues raised in the State's Amended Complaint against Defendants, including claims the State may have against Sarah Guaracino, Georgia Tree Company LLC's managing member, for their activities up to the date of this Consent Judgment.

3.5 Joint and Several Liability. Defendants are jointly and severally liable for all amounts that are due and owed under this Consent Judgment.

3.6 No Admission of Violation of Law. This Consent Judgment shall not be construed as, or be evidence of, admissions by Defendants, nor shall it be construed as a finding by this Court of any violation of North Carolina law, or any other law.

3.7 Private Right of Action. Nothing in this Consent Judgment shall be construed to affect any private right of action that a consumer, person, entity, or by any local, state, federal or other governmental entity, may hold against the Defendants.

3.8 Regulation of Other Conduct. Nothing in this Consent Judgment is intended to relieve Defendants of their responsibility to comply with all applicable North Carolina laws.

IV. PERMANENT INJUNCTIVE RELIEF

Based on the foregoing findings of fact and conclusions of law, **IT IS ORDERED, ADJUDGED, AND DECREED** that:

4.1 Defendants and their businesses, officers, agents, servants, employees, successors, assigns, attorneys, and any others acting in concert or under the actual direction or control of Defendants, are hereby permanently restrained and enjoined from engaging in acts and practices prohibited by North Carolina's Unfair and Deceptive Trade Practices Act, found at N.C. Gen. Stat. §§ 75-1.1 *et seq.*

4.2 Defendants and their businesses, officers, agents, servants, employees, successors, assigns, attorneys, and any others acting in concert or under the actual direction or control of Defendants, are hereby permanently restrained and enjoined, pursuant to N.C. Gen. Stat. § 75-14, specifically from:

4.2.1 charging or agreeing to charge for tree removal services a price that is unreasonably excessive under the circumstances during a state of emergency or abnormal market disruption declared by the Governor of North Carolina, in violation of North Carolina's price gouging law, N.C. Gen. Stat. § 75-38;

4.2.2 engaging in tree or debris removal work in the State of North Carolina;

4.2.3 seeking, obtaining, or receiving payment from a consumer or the consumer's insurer for any tree removal or debris cleanup work done after September 7, 2018 in North Carolina;

4.2.4 engaging in any unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1, including (1) making a false representation that a homeowner will be responsible only to pay an insurance deductible, (2) representing that a document containing a price is an "agreement" when the consumer never agreed to the price, (3) failing to provide a price quote to a consumer or the consumer's insurer before being hired to do the work; (4) failing to honor a price quote; and (5) failing to promptly refund any overpayment by a consumer or insurer; and

4.2.5 engaging in any prohibited debt collection practices in violation of N.C. Gen. Stat. §§ 75-50 *et seq.*, including (1) falsely representing the character or amount of a debt, and (2) communicating any threat to file a mechanic's lien, to garnish wages, to seize a bank account, or to bring criminal charges, in connection with an effort to collect an amount that is not owed.

4.3 Defendants acknowledge that a material part of the consideration for the Attorney General to enter into this Consent Judgment is Defendants' representation that they have produced all of the records ordered to be produced by paragraph 2(i) of the Order Extending Temporary Restraining Order (By Consent) entered January 28, 2019, including but not limited to a verified list of customers in North Carolina that they provided services for after September 7, 2018, along with an individualized accounting of all payments received from each such consumer and/or insurer. Defendants further represent that they have fully supplemented and made current these productions as of the date that they enter into this Consent Judgment. If, upon motion by the State, the Court finds that any of these representations are false, the State will be entitled to seek appropriate relief from the Court, including but not limited to restitution, disgorgement, civil penalties, attorneys' fees, and any other relief allowed by law.

4.4 The Temporary Restraining Order entered in this case on January 28, 2019, is dissolved.

V. MONETARY RELIEF

IT IS FURTHER ORDERED that:

5.1 Restitution. Defendants shall pay to the Attorney General the sum of \$234,006.16 as consumer restitution to be paid by the Attorney General to each consumer identified in **Exhibit 1** in the respective amounts reflected therein.

5.2 Other Monetary Relief. Defendants shall pay the sum of \$40,000.00 to the Attorney General to be used for attorney fees, investigative costs, consumer protection enforcement, other consumer protection or restitution purposes, and other purposes allowed by law, at the discretion of the Attorney General.

5.3 Payment Schedule. Defendants shall pay an installment sum of \$100,000.00 of the total \$274,006.16 judgment to the Attorney General on or before entry of this Consent Judgment by cashier's check, wire transfer, or other certified funds made payable to the "North Carolina Department of Justice."

Defendants shall pay the remaining sum of \$174,006.16 to the Attorney General on or before March 11, 2019 from the proceeds disbursed in connection with the closing of the sale of Georgia Tree Company LLC's assets, by cashier's check, wire transfer, or other certified funds made payable to the "North Carolina Department of Justice." Defendants acknowledge that a material part of the consideration for the Attorney General to enter into this Consent Judgment—including allowing the sale of Georgia Tree Company LLC's assets as set forth in paragraph 1.7 above—is that the direct payment to the Attorney General of this \$174,006.16 from the sale proceeds will be an express condition of the sale closing.

5.4 Personal Guarantee. In conjunction with entry of this Consent Judgment, the owner of Georgia Tree Company LLC, Sarah Guaracino, has tendered an executed personal guarantee guaranteeing payment of the \$274,006.16 judgment in full, including the \$174,006.16 due on or before March 11, 2019. In connection therewith, Sarah Guaracino submits herself to the jurisdiction of this Court. Her personal guarantee is at **Exhibit 2**. In the event that Defendants pay the full sum of \$274,006.16 to the Attorney General as provided in Paragraphs 5.1-5.3, the personal guarantee described in this paragraph is voided and Sarah Guaracino shall be released from further personal financial responsibility in connection with this Consent Judgment.

SO ORDERED.

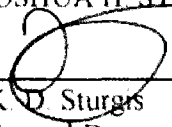
This the 8 day of March, 2019.

Hon. 
SUPERIOR COURT JUDGE

THE UNDERSIGNED PARTIES HEREBY CONSENT TO THE TERMS AND CONDITIONS OF THIS CONSENT JUDGMENT AS SET FORTH ABOVE, AND HEREBY CONSENT TO ENTRY THEREOF:

PLAINTIFF:

STATE OF NORTH CAROLINA,
ex rel. JOSHUA H. STEIN, Attorney General

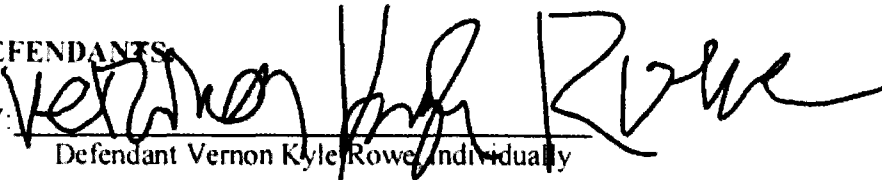
BY: 
K. D. Sturgis
Special Deputy Attorney General

Date: 3/7/2019

BY: 
Daniel T. Wilkes
Assistant Attorney General

Date: 3/7/2019


DEFENDANTS:

BY: 
Defendant Vernon Kyle Rowe, individually

Date: 3/7/2019

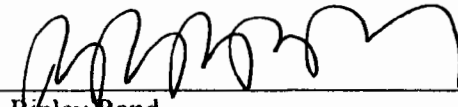
BY: 
Defendant Stuart E. Campbell, Jr., individually

Date: 3/7/2019

BY: 
Sarah Guaracino
Managing Member
Defendant Georgia Tree Company LLC

Date: 3/7/19

COUNSEL FOR DEFENDANTS:

BY: 
Ripley Rand
Womble Bond Dickinson (US) LLP

Date: 3-7-2019