

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
FILED SUPERIOR COURT DIVISION
NO. 18 CVS 11871

2019 APR 22 A 10:35

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

COURT #
CM

Plaintiff,

v.

JUDGMENT BY DEFAULT

ALVA WILSON LEWIS, a/k/a AL LEWIS,
Individually, and d/b/a A1 TREE & STORM
RELIEF, and A1 TREE AND STORM
DAMAGE RELIEF, and BIG AL & SONS
TREE SERVICE,

Defendant.

PURSUANT TO RULE 55 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE, the undersigned Judge presiding over the April 22, 2019, civil session of Wake County Superior Court grants the Motion for Judgment by Default filed by Plaintiff State of North Carolina, *ex rel.* Joshua H. Stein, Attorney General. From the record herein, the Court finds as follows:

I. PARTIES

1. The Plaintiff in this case is the State of North Carolina, 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 consuming public from unlawful business practices.

2. Defendant Alva Wilson Lewis (Defendant) resides at 257 Briggstown Road in Lexington, North Carolina. He engages in the tree cutting and removal business as "Al Tree & Storm Relief," "Al Tree and Storm Damage Relief," and "Big Al & Sons Tree Service."

II. FINDINGS OF FACT

3. The State filed its Complaint, Motion for Temporary Restraining Order, and Motion for Preliminary Injunction, with supporting affidavits, on September 28, 2018.

4. The Court entered a Temporary Restraining Order in the action on September 28, 2018.

5. On October 8, 2018, the State filed its Affidavit of Service of Process, which established that service of the Summons, Complaint, and Notice of Hearing on the Preliminary Injunction had been made upon Defendant.

6. The Court entered a Preliminary Injunction against Defendant on October 8, 2018. Defendant made a general appearance, pro se, at the October 8, 2018 hearing on the preliminary injunction.

7. The State's Complaint alleges that Defendant, through his tree business:

a. Engaged in price gouging in violation of N.C. Gen. Stat. § 75-38 by demanding payment from a Wilmington, North Carolina, homeowner in the amount of \$12,000.00 (\$6,000.00 of which the consumer paid) for tree removal services with the knowledge and intent to charge for necessary services at an unreasonably excessive price under the circumstances, while the price gouging statute was in effect;

b. Engaged in unfair and deceptive conduct in violation of N.C. Gen. Stat. § 75-1.1. by

i. engaging in a "bait-and-switch" plan or scheme by which the homeowner was lured with a \$4,000.00 quote for tree removal services, but then the quote was switched to \$7,000.00;

ii. engaging in a further “bait-and-switch” plan or scheme by which the homeowner was lured with the \$7,000.00 price for the services, but then at the completion of work presented with an invoice for \$12,000.00;

iii. falsely representing that his company was fully insured, bonded, and a certified arborist, representations the homeowner reasonably relied upon when agreeing to procure the tree removal services.

8. The Complaint requests various forms of relief, which are set forth in detail in the decretal portion of this Judgment.

9. On March 12, 2019, the State filed a Motion for Entry of Default with this Court, moving for an Entry of Default against Defendant pursuant to Rule 55(a) of the North Carolina Rules of Civil Procedure. On March 12, 2019, the Wake County Clerk of Court entered an Entry of Default against Defendant upon the State’s motion.

10. On March 18, 2019, the State filed a Motion for Judgment by Default with this Court, moving that this Judgment by Default against Defendant be granted pursuant to Rule 55(b)(2) of the North Carolina Rules of Civil Procedure.

11. On March 18, 2019, the State served a Notice of Hearing to Defendant to provide notice of this hearing.

III. CONCLUSIONS OF LAW

12. This Court has jurisdiction over Defendant and the subject matter of this action.

13. Defendant was properly served.

14. Defendant has failed to file a responsive pleading, and thus all of the allegations made by the State are deemed admitted.

15. From the record in this case, the State has made a sufficient showing that Defendant violated North Carolina's prohibition on price gouging during a state of emergency, under N.C. Gen. Stat. § 75-38, and North Carolina's Unfair and Deceptive Trade Practices Act, under N.C. Gen. Stat. § 75-1.1.

16. The Complaint states a claim upon which relief may be granted against Defendant. The conduct alleged in the Complaint is in or affecting commerce.

17. Defendant is not an infant, incompetent person, or otherwise under a disability.

18. Defendant is liable to the State for the relief requested by reason of the facts shown in the Complaint filed in this action.

19. This Court concludes that good and sufficient cause exists for entry of this Judgment by Default against Defendant pursuant to N.C. Gen. Stat. §§ 75-1, *et seq.* and Rule 55(b) of the North Carolina Rules of Civil Procedure.

IV. RELIEF

IT IS THEREFORE ORDERED:

20. That Defendant Alva Wilson Lewis, together with his agents, employees, representatives, successors and assigns, and any persons acting in concert with him, is hereby permanently restrained and enjoined from:

- i. engaging in unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1, including but not limited to the acts and practices listed in Paragraph 7 of this Judgment;
- ii. engaging in price gouging in violation of N.C. Gen. Stat. § 75-38;

- iii. advertising, offering, soliciting, or entering into contracts, or receiving payment for any tree or bush trimming or removal services, debris removal, or storm damage recovery or restoration services in North Carolina; and
- iv. performing or providing any tree or bush trimming or removal services, debris removal, or storm damage recovery or restoration services in North Carolina;


IT IS FURTHER ORDERED:

21. That pursuant to N.C. Gen. Stat. § 75-15.1 Plaintiff State of North Carolina, pursuant to N.C. Gen. Stat. § 75-15.1, et seq., shall have and recover from Defendant Alva Wilson Lewis the amount of six thousand dollars (\$6,000.00) as restitution to the consumer named in the Complaint.

22. That pursuant to N.C. Gen. Stat. § 75-15.1, all express, implied, or constructive contracts, between the homeowner and Defendant, his agents, employees, or anyone acting at his direction in relation to the transaction at issue this case are cancelled, and all *quantum meruit* rights related thereto are extinguished.

23. Plaintiff State of North Carolina, pursuant to N.C. Gen. Stat. § 75-15.2, shall have and recover from Defendant Alva Wilson Lewis a civil penalty of five thousand dollars (\$5,000.00) for the price gouging violation, under N.C. Gen. Stat. § 75-38, and for each of the three violations of N.C. Gen. Stat. § 75-1.1 enumerated in Paragraph 7 and in the Complaint, for a total civil penalty amount of twenty thousand dollars (\$20,000.00).

SO ORDERED, this the 22nd day of April, 2019.


Hon. A. S. Robinson


SUPERIOR COURT JUDGE

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the foregoing **JUDGMENT BY DEFAULT** on defendant by U.S. Mail, addressed to:

Alva Wilson Lewis
257 Briggstown Road
Lexington, NC 27292

This the 22 day of April, 2019.



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