STATE OF INDIANA

COUNTY OF LAKE

SS:

IN THE LAKE CIRCUIT COURT

CAUSE NO. 45D11020 2PLC0028

1 4 09

STATE OF INDIANA,)

Plaintiff,)

v.

JONATHAN P. FLEMING, individually and doing business as CONTINENTAL CONSTRUCTION COMPANY)

Defendant.)

COMPLAINT FOR INJUNCTION, RESTITUTION, AND COSTS

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code 24-5-11-14.

2. The Defendant, Jonathan P. Fleming, individually and doing business as Continental Construction Company, at all times relevant to this complaint was a resident of Lake County, Indiana and transacted business with Indiana consumers.

FACTS

3. Since at least May 12, 2001, Defendant has engaged in home improvement work under the assumed business name of Continental Construction Company, with a principal place of business at P.O. Box 2847, East Chicago, Indiana.

4. On May 12, 2001, Defendant entered into a contract with Claudia Valdivia, wherein Defendant agreed to perform exterior remodeling work on the Valdivia home for a total price of Eleven Thousand Seven Hundred and Fifty Dollars ($11,750.00). Attached, as Exhibit "A", is a true and accurate copy of the Valdivia contract.

5. Although Defendant obtained a permit, Defendant failed to obtain the necessary license prior to entering into a contract with Valdivia.

6. Defendant failed to include one or more of the requirements under Ind. Code §24-5-11-10(a)(1), *et seq*. in the home improvement contract entered into with Valdivia.

7. Defendant failed to include the following information in the home improvement contract entered into with Valdivia:

a. specifications, or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

b. the approximate starting and completion dates of the home improvements;

c. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

8. On March 7, 2001, Valdivia paid Two Thousand Four Hundred Dollars ($2,400.00) to the Defendant for the purchase of materials represented by the Defendant as necessary for remodeling the Valdivia home.

9. Defendant has neither provided said materials, nor refunded this initial down payment to Valdivia.

10. On May 21, 2001, Valdivia paid Two Thousand Six Hundred Dollars ($2,600.00) to the Defendant as a down payment for labor.

11. On July 12, 2001, Valdivia paid Four Thousand Five Hundred Dollars ($4,500.00) as an additional down payment for labor.

12 At the time the home improvement contract was entered into, Defendant represented by implication that all work would be completed within a reasonable period of time.

13. Defendant began, but did not complete the contracted work under Valdivia's home improvement contract.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

14. The transaction referred to in paragraph 4 above is a "home improvement contract" as defined by Ind. Code §24-5-11-4.

15. Defendant is a "home improvement supplier" as defined by Ind. Code §24-5-11-6.

16. By failing to provide completed home improvement contract to Valdivia before the contract was signed by the consumer, Defendant violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-1 *et seq.*

17. By failing to include the information referred to in paragraph 7 above in the home improvement contract entered into with Valdivia, Defendant violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5- -1 *et seq.*

COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

8 The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 17 above.

19. The transaction referred to in paragraph 4 above is a "consumer transaction" as defined by Ind. Code §24-5-0.5-2(a)(1).

20. Defendant is a "supplier" as defined by Ind. Code §24-5-0.5-2(a)(3).

21 The violations of the Indiana Home Improvement Contracts Act referred to in paragraphs 16 and 17 constitute deceptive acts.

22. By representing to Valdivia that money was required for the purchase of materials for use in remodeling the Valdivia home, as referenced in paragraphs 8 and 9, when he knew or should reasonably have known that no such characteristics, uses, or benefits would be conferred upon or received by Valdivia, is a violation of Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-05-3(a)(1).

23. By representing to Valdivia that the home improvement work would be completed within a specified or a reasonable period of time as set forth in paragraph 12 above, when Defendant knew or should have known the work would not be completed, Defendant violated Ind. Code §24-5-0.5-3(a)(10).

24 By engaging in a consumer transaction without a license as required by law, Defendant violated Ind. Code §24-5-0.5-10(1)(c).

25. The misrepresentations and deceptive acts set forth above will continue and will cause irreparable injury unless Defendant is enjoined from engaging in further conduct that violates Ind. Code §24-5-11-1 et seq. and Ind. Code §24-5-0.5-1 et seq.

COUNT III - KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

26. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 24 above.

27. The misrepresentations and deceptive acts set forth in paragraphs 5, 8, 12, 16, and 17 were committed by Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, enjoining the Defendant from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract that includes at a minimum the following:

(1) The name of the consumer and the address of the residential property that is the subject of the home improvement;

The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

A reasonably detailed description of the proposed home improvements;

(5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(6) The approximate starting and completion date of the home improvements;

(7) A statement of any contingencies that would materially change the approximate completion date;

(8) The home improvement contract price; and

(9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;

c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;

d. in the course of entering into home improvement transactions, misrepresenting that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have;

e. in the course of entering into home improvement transactions, failing to obtain the necessary license and permits, as required by law;

f. in the course of entering into home improvement transactions, representing that the Defendant is able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when the Defendant knew or should reasonably have known that he cannot; and

g. in the course of entering into home improvement transactions, representing that the Defendant will perform home improvements for consumers, when the Defendant knew or should reasonably have known that he could not perform the improvements.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendant for the following relief:

a. cancellation of contracts pursuant to Ind. Code §24-5-0.5-4(d);

b. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), in an amount to be determined at trial;

c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

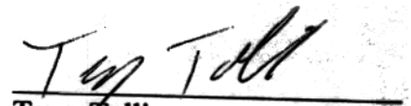
d. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars ($500.00) per violation, payable to the State of Indiana;

e. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars ($500.00) per violation, payable to the State of Indiana;

f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By: 
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INENTAL CONSTRUCTION COMPANY

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Fax (205) 988-4359

PROPOSAL

PROPOSAL NO.	
SHEET NO.	
DATE	5-12-01

PROPOSAL SUBMITTED TO:		WORK TO BE PERFORMED AT:
NAME	Claudia Valdivia	ADDRESS
ADDRESS	1121 Decatur St.	CITY, STATE
CITY, STATE	Hobart IN. 46342	DATE OF PLANS
PHONE NO.	219-947-5656	ARCHITECT

We hereby propose to furnish the materials and perform the labor necessary for the completion of

EXterior Remodeling

Remove sliding Patio Door + Replace w/ Pella Designer Series Slider w/ selfclosing Screen; Raise + Lower Blinds in Goldline Type "E" Finish: Removable grilles. Brass Hardware. Remove Front Entrance + Replace w/ steel raised panel w/ circle Top Light + Sidelight w/ mini Blinds. Install Fullview Stormdoor. R + R Overhead Garage door w/ 5 star Brown steel insulated Raised panel Garage door x no parts included + Install D4 Dutchlap vinyl Siding in Sand color. Wrap all windows w/ Royal Brown Aluminum. cover all Soffit + Fascia w/ same Royal Brown Aluminum. Install Seamless Aluminum Gutters + Downspouts. Replace or install Gutter Flashing as needed. Repair Garage Service Door.

Haul Away All Trash

option * if shingles are allowed to overhang enough to add O.D.E. To Gable Ends cost would be $150.00 *

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a subsantial workmanlike manner for the sum of:

Eleven Thousand Seven Hundred Fifty 00/100 Dollars ($ 11,750.00)

with payments to be as follows $5000 upon acceptance $3750 upon arrival of Doors

Remainder upon completion

Any alterations or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contigent upon strikes, accidents, or delays beyond our control.

Respectfully submitted Pat Flory

Per

Note - This proposal may be withdrawn by us if not accepted within 7 days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

SIGNATURE

Date

SIGNATURE

EXHIBIT

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