STATE OF INDIANA)
) SS: IN THE TIPPECANOE CIRCUIT COURT
COUNTY OF TIPPECANOE) 2005 TERM

STATE OF INDIANA 79C01-0206-PL-00061

vs.

JAMES M TREECE JR et al

Come now the State of Indiana Terry Tolliver, Deputy Attorney General. The defendant fails to appear. Proposed Summary Judgment is submitted, examined, approved, and entered. See Judgment.

Copy to all parties. al

DATED: May 8, 2006

Donald L. Daniel, Judge
Tippecanoe Circuit Court

STATE OF INDIANA	)	IN THE TIPPECANOE CIRCUIT COURT
	) SS:	
COUNTY OF TIPPECANOE	)	CAUSE NO. 79C01-0206-PL-000061

STATE OF INDIANA,

Plaintiff,

v.

JAMES M. TREECE, JR., DBA
B & J WATER FLOW, and
JAMES M. TREECE, SR.

Defendants.

SUMMARY JUDGMENT

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, having filed its Motion for Summary Judgment and its Memorandum and Designation of Evidence in Support of Plaintiff's motion, and the Court having conducted a hearing on the same, now **GRANTS** the Plaintiff's motion and makes the following findings of undisputed facts and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At least since July 26, 2001, the Defendant, James M. Treece, Jr. ("the Defendant"), has acted as a home improvement supplier by engaging in or soliciting home improvement transactions.

2. The Defendant's drilling and installation of a well system for Rod Berning for a total price of Two Thousand Six Hundred Dollars ($2,600.00) constitutes a home improvement, as defined by Ind. Code § 24-5-11-3.

3. The Defendant failed to provide Berning with a home improvement contract containing the name of any agent to whom consumer problems and inquiries can be directed, in violation of Ind. Code § 24-5-11-10(a)(2).

4. The Defendant failed to provide Berning with a home improvement contract containing a reasonably detailed description of the home improvements to be performed, in violation of Ind. Code § 24-5-11-10(a)(4).

5. The Defendant failed to provide Berning with a home improvement contract containing the approximate start and completion dates of the home improvements to be performed, in violation of Ind. Code § 24-5-11-10(a)(6).

6. The Defendant failed to provide Berning with a home improvement contract including a legible or a typed version of the Defendant's name directly after or below the signature, in violation of Ind. Code § 24-5-11-10(a)(9).

7. The Defendant did not provide a completed home improvement contract to Consumer Berning, as required by Ind. Code § 24-5-11-10.

8. The Defendant failed to obtain Berning's signature on his home improvement contract with Berning, as required by Ind. Code § 24-5-11-12.

9. The Defendant' failure to comply with the Home Improvement Contracts Act, by failing to provide a completed home improvement contract to Berning, as required by Ind. Code § 24-5-11-10, constitutes a deceptive act and subjects the Defendant to the remedies and penalties of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1, *et seq.*

10. The Defendant is a supplier, pursuant to Ind. Code 24-5-0.5-2(a)(3).

11. The transaction entered into by the Defendant and Berning constitutes a consumer transaction, as defined by Ind. Code § 24-5-0.5-2(a)(1).

12. At the time the water well drilling contract was entered into, the Defendant represented by implication that all work would be performed by a licensed water well driller and completed within a reasonable period of time.

13. The Defendant misrepresented the benefits or characteristics of a consumer transaction when he represented to Berning the well drilling would be performed by a licensed well driller, and this constitutes a violation of Ind. Code § 24-5-0.5-3(a)(1).

14. Ind. Code § 25-39-3-3 establishes a minimum level of competency to obtain a license to drill wells. By failing to have licensed well drillers present during the drilling of the well for Berning, the Defendant misrepresented the water well drilling would be of a particular standard or quality, in violation of Ind. Code § 24-5-0.5-3(a)(2).

15. By misrepresenting the Defendant would be able to complete the work on Berning's property within a reasonable period of time, the Defendant violated Ind. Code § 24-5-0.5-3(a)(10).

16. Berning paid the Defendant the amount of One Thousand Dollars ($1,000.00), as a partial payment toward the balance of his contract.

17. On or about August 30, 2001, the Co-Defendant, James M. Treece, Sr., began drilling the well for Berning.

18. The Co-Defendant, James M. Treece, Sr., is not licensed to drill water wells by the State of Indiana.

19. Upon completion of the drilling process, Berning paid the Co-Defendant, James M. Treece, Sr., an additional Three Hundred Dollars ($300.00).

20. On or about September 4, 2001, Berning paid the Defendant an additional Four Hundred Dollars ($400.00) for a well pump.

21. The Defendant began the work at Berning's residence, but failed to complete the work.

22. In addition to the violations of the Home Improvement Contracts Act, the Defendant committed three (3) violations of the Indiana Deceptive Consumer Sales Act.

23. The Defendant's violations of the law were committed by the Defendant with the knowledge and intent to deceive.

24. Consumer Rod Berning is entitled to consumer restitution in the amount of One Thousand Seven Hundred Dollars ($1,700.00).

25. The Office of the Attorney General has spent Six and Three-Tenths (6.30) Hours in the investigation and prosecution of this case and has incurred costs in the amount of Nine Hundred and Forty-Five Dollars ($945.00).

26. There is no genuine issue as to any material fact and the Plaintiff is entitled to Summary Judgment as a matter of law.

JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED the Plaintiff's Motion for Summary Judgment is **GRANTED** in favor of the Plaintiff, State of Indiana, and against the Defendant, James M. Treece, Jr.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, pursuant to Ind. Code § 24-5-0.5-4(c)(1), the Defendant, James M. Treece, Jr., individually and doing business as B & J Water Flow, his agents, representatives, employees, successors and assigns are permanently enjoined from engaging in the following conduct in violation of Ind. Code § 24-5-11-1, *et seq.* and Ind. Code § 24-5-0.5-1, *et seq.*:

1) entering into a home improvement contract, as defined by Ind. Code § 24-5-11-4, that is not in writing and does not contain the following:

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

(b) The name and address of the Defendant and each of the telephone numbers and names of any agent to whom consumer problems and inquires can be directed;

(c) 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;

(d) A reasonably detailed description of the proposed home improvements, and if the description 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;

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

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

(g) The home improvement contract price; and

(h) Signature lines for the Defendant or the Defendant 's agent and for each consumer who is to be a party to the home improvement contract with a

legible printed or a typed version of that person's name placed directly after or below the signature;

2) obtaining a consumer's signature on a home improvement contract or requiring the consumer to make a down payment toward the price of the home improvement prior to the Defendant agreeing unequivocally by written signature to all the terms of the home improvement contract;

3) failing to provide the consumer with a fully executed copy of the home improvement contract, including the dates the Defendant and the consumer signed it, immediately after the consumer signs it.

4) soliciting or engaging in a home improvement transaction, including but not limited to well drilling, without a license or permit required by law.

5) soliciting and entering into any home improvement contract that does not comply with the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.*

6) representing expressly or by implication the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or should reasonably know it does not have;

7) representing expressly or by implication the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the Defendant knows or should reasonably know that it is not;

8) representing expressly or by implication the Defendant is able to deliver or complete the subject of the consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of the Plaintiff, State of Indiana, and against the Defendant, James M. Treece, Jr., as follows:

1) The contract entered into by the Defendant, James M. Treece, Jr., and Rod Berning, is cancelled pursuant to Ind. Code § 24-5-0.5-4(d).

2) The Defendant shall pay consumer restitution, pursuant to Ind. Code 24-5-0.5-4(c)(2), in the amount of One Thousand Seven Hundred Dollars ($1,700.00), to the Office of the Attorney General on behalf of consumer, Rod Berning.

3) The Defendant shall pay costs, pursuant to Ind. Code 24-5-0.5-4(c)(3), in the amount of Nine Hundred and Forty-Five Dollars ($945.00), to reimburse the State of Indiana for its costs in investigating and prosecuting this matter.

4) The Defendant shall pay civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), in the amount of One Thousand Five Hundred Dollars ($1,500.00), for the Defendant's knowing violations of Ind. Code § 24-5-11-1, *et seq.*

5) The Defendant shall pay civil penalties, pursuant to Ind. Code 24-5-0.5-8, in the amount of One Thousand Five Hundred Dollars ($1,500.00), for the Defendant's, intentional violations of Ind. Code § 24-5-11-1, *et seq.*

A total monetary judgment in the amount of Five Thousand Six Hundred and Forty-Five Dollars ($5,645.00) shall therefore be entered in favor of the Plaintiff, State of Indiana, and against the Defendant, James M. Treece, Jr.

All of which is **ORDERED, ADJUDGED** and **DECREED,** this 8th day of May, 2006.

Donald L. Daniel

Judge, Tippecanoe Circuit Court

DISTRIBUTION:

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