

COPY
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THOMAS R. FALLQUIST
SPOKANE COUNTY

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

NEIL'S CONSTRUCTION AND
REMODELING, LLC; CNJ
ENTERPRISES, LLC; AR
CONCRETE; EVERYTHING IN
THE DIRT, INC., d/b/a Decorative
Concrete Concepts; TOM POWELL,
an individual; NEIL POWELL,
individually and on behalf of his marital
community; and JAYMES POWELL,
individually and on behalf of his marital
community,

Defendants.

NO. **09200485-9**
COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF UNDER
THE CONSUMER PROTECTION
ACT

COMES NOW plaintiff State of Washington, by and through its attorneys Robert M. McKenna, Attorney General, and Jacquelyn R. Findley, Senior Counsel, and brings this action against Defendants named herein, alleging as follows:

I. JURISDICTION AND VENUE

1.1 This complaint is filed and these proceedings are instituted under the provisions of the Unfair Business Practices – Consumer Protection Act, Chapter 19.86 RCW.

1.2 The violations alleged in this Complaint have been and are being committed in whole or in part in Spokane County, state of Washington, and other counties in the state of Washington, by Defendants named herein.

1.3 Authority of the Attorney General to commence this action is conferred by RCW 19.186.080 and RCW 19.186.140.

II. DEFENDANTS

2.1 Defendant Neil's Construction and Remodeling, LLC (Neil's), is a Washington limited liability company, holding a construction contractor license. Its principal place of business is located at 8917 N. Country Homes Blvd., Spokane, Washington 99218. At all times relevant to this action, Neil's was engaged in the home remodeling and construction business. Neil's is controlled by Neil Powell. From July 2004 to October 2006, Tom Powell represented Neil's as an estimator. From June 2002 to September 2006, Jaymes Powell was employed by Neil's as a part-time machine operator and driver.

2.2 Defendant CNJ Enterprises, LLC (CNJ), is a Washington limited liability company, holding a construction contractor license. Its principal place of business is located at 8917 N. Country Homes Blvd., Spokane, Washington 99218. At all times relevant to this action, CNJ was engaged in the home remodeling and construction business. At all times relevant to this action, CNJ was controlled by Tom Powell. During the time period from June 1998 to April 2002, Neil Powell was Vice President for CNJ and employed as a supervisor.

2.3 Defendant Everything in the Dirt, Inc., d/b/a Decorative Concrete Concepts (DCC), is a Washington corporation, holding a construction contractor license. Its principal place of business is located at 1609 E. Center Road, Spokane, Washington 99208-8517. At all times relevant to this action, DCC was engaged in the home remodeling and construction business. At all times relevant to this action, DCC was controlled by Jaymes Powell. At all times relevant to this action, Tom Powell represented DCC as an estimator. At all times relevant to this action, Neil Powell was employed by DCC as production supervisor.

1 2.4 Defendant AR Concrete is a sole proprietorship owned by Jaymes Powell. At
2 all times relevant to this action AR Concrete was a retail business. During the time relevant to
3 this action, Tom Powell answered telephone calls and represented AR Concrete in transactions.

4 2.5 Defendants Neil Powell and Jane Doe Powell are residents of Washington State
5 residing at 8917 N. County Homes Blvd. Spokane, WA, 99218, and are believed to be husband
6 and wife at times relevant to this action. All acts performed by Neil Powell on behalf of
7 Neil's, AR Concrete, DCC, and CNJ were done for the benefit of the marital community.

8 2.6 Defendant Tom Powell is a resident of Washington State residing at 8917 N.
9 County Homes Blvd., Spokane WA, 99218 and is believed to be single.

10 2.7 Defendant Jaymes Powell and Jane Doe Powell are residents of Washington
11 State residing at 7919 N. Colton, Spokane, WA, 99208, and are believed to be husband and
12 wife at times relevant to this action. All acts performed by Defendant Jaymes Powell on behalf
13 of AR Concrete and DCC were done for the benefit of the marital community.

14 2.8 For the purposes of this complaint and unless otherwise specified, the term
15 "Defendants" shall refer to all Defendants named herein and when used in conjunction with
16 allegations of wrongful conduct shall mean that each Defendant committed such act or is
17 legally accountable for such act or both. At all times referenced herein, Defendants and each
18 of them acted in active concert or participation with each other for their mutual benefit.

19 2.9 For the purposes of this complaint and unless otherwise specified, the term
20 "Defendants NCR" shall refer and be limited to Neil's Construction and Remodeling, LLC; CNJ
21 Enterprises, LLC; Tom Powell; and Neil Powell and his marital community. When "Defendants
22 NCR" is used in conjunction with allegations of wrongful conduct it shall mean that only the
23 defendants named in paragraph 2.9 committed such act or is legally accountable for such act or
24 both; and each of them named in paragraph 2.9 acted in active concert or participation with each
25 other for their mutual benefit.

III. NATURE OF TRADE OR COMMERCE

3.1 At all times relevant to this action, Defendants are and have been engaged in trade or commerce within the meaning of RCW 19.86.020. Defendants offer general contracting services, primarily in but not limited to painting, concrete floor construction, concrete sealing and finishing, and driveway and pool construction. Defendants are in competition with others engaged in the sale, marketing, and performance of these services in the State of Washington.

3.2 In the course of their business, Defendants gain information about consumers' construction projects and provide verbal cost bids to consumers which represent, among other things, the construction project Defendants agree to perform, the price Defendants agree to charge to complete the project, and a start date and completion date for the project.

3.3 In the course of conducting their business, Defendants have a pattern and practice of making misrepresentations to consumers.

3.4 For example, Defendants misrepresent start and completion dates of projects. Projects are often not started when promised and often not completed until several months beyond the promised completion date. In other situations, projects are never completed and in other instances projects are never started.

3.5 Defendants accept payment from consumers and then fail to perform the work as promised by the cost bid. For example, Defendants accept payment in full and complete only a portion of the work and never return. When a project is completed, the work done is shoddy, unsatisfactory, or does not meet building code requirements and in other instances, after receiving payment, Defendants do no work at all, thus forcing the consumer to hire other contractors to complete the project.

3.6 Defendants also misrepresent the price they will charge to complete a project. For example, Defendants often underbid a project. After being hired based upon the low bid, Defendants require consumers to pay additional funds to complete the project as originally

1 bid. Defendants further misrepresent the cause for the additional funds to be a "cost overrun"
2 caused by unexpected conditions or rise in costs of materials.

3 3.7 Defendants also misrepresent to consumers they have specialized skills and
4 knowledge necessary to do a project that requires special expertise. For example, Defendants
5 represented they had the knowledge and experience to apply a specialty floor sealant when in
6 fact Defendants had no such knowledge and experience.

7 3.8 Defendants also misrepresent to consumers that they will submit building
8 plans, acquire necessary building permits, and obtain necessary easements as part of their
9 services. In fact, Defendants fail to obtain necessary permits or easements, or provide
10 building plans. In addition, Defendants misrepresent that specific building permits and
11 construction measures were not necessary for a project when in fact they were.

12 3.9 Defendants, as contractors, must comply with the provisions of RCW 18.27,
13 including RCW 18.27.114 that requires Defendants to provide consumers with written
14 notification of their rights prior to starting work on construction projects. Defendants
15 regularly fail to provide consumers with notification as required by RCW 18.27.114.
16 Pursuant to RCW 18.27.350, the failure to provide this required written notice is a *per se*
17 violation of the Consumer Protection Act, RCW 19.86.

18 3.10 In addition, Defendants are consistently unresponsive to consumer complaints.
19 For example, when consumers seek to contact Defendants to complain about a job,
20 Defendants do not answer their calls and do not return phone messages. When consumers
21 finally contact Defendants, the Defendants make false promises to temporarily appease
22 consumers. For example, Defendants will promise a complaining consumer that they will
23 complete a job or repair shoddy work, but repeatedly fail to do so.

24 3.11 In addition, Defendants fail to refund monies owed to consumers. For
25 example, when consumers terminate their agreement with Defendants before a project is
26 completed to their satisfaction and demand a refund, Defendants refuse to refund consumers

1 or agree to provide a refund but later fail to pay it. Also, in some instances Defendants
2 temporarily appeased consumers, who threatened to sue, by executing a security agreement
3 with a promise to pay a dollar amount in exchange for a release of any claims the consumers
4 may have against Defendants. Defendants have failed to pay on the agreements, even after
5 Defendants received the signed releases and the payment due dates have passed.

6 7 **IV. FIRST CAUSE OF ACTION – DECEPTIVE ACTS AND PRACTICES**

8 **4.1** Plaintiff realleges paragraphs 1.1 through 3.11 above and incorporates them as
9 though fully set forth herein.

10 **4.2** In the context of conducting their business, Defendants engaged in numerous
11 deceptive acts and practices. Such conduct constitutes unfair or deceptive acts or practices in
12 trade or commerce, and unfair methods of competition in violation of RCW 19.86.020.

13 14 **V. SECOND CAUSE OF ACTION – UNFAIR ACTS AND PRACTICES**

15 **5.1** Plaintiff realleges paragraphs 1.1 through 4.2 above and incorporates them as
16 though fully set forth herein.

17 **5.2** In the context of conducting their business, Defendants engaged in numerous
18 unfair acts and practices in trade or commerce, and unfair methods of competition in violation
19 of RCW 19.86.020.

20 21 **VI. THIRD CAUSE OF ACTION-- MISREPRESENTATIONS**

22 **6.1** Plaintiff realleges paragraphs 1.1 through 5.2 above and incorporates them as
23 though fully set forth herein.

24 **6.2** In the context of conducting their business, Defendants made numerous
25 misrepresentations. Such conduct constitutes unfair or deceptive acts or practices in trade or
26 commerce, and unfair methods of competition in violation of RCW 19.86.020.

1 **VII. FOURTH CAUSE OF ACTION – FAILURE TO PROVIDE MANDATORY**
2 **STATUTORY DISCLOSURE—*PER SE* CONSUMER PROTECTION VIOLATION**

3 7.1 Plaintiff realleges paragraphs 1.1 through 6.2 and incorporates them as though
4 fully set forth herein.

5 7.2 In the context of conducting their business, Defendants violated RCW
6 18.27.114 by failing to provide the statutorily required disclosure statement. This failure
7 constitutes an infraction under Chapter 18.27.RCW.

8 7.3 Defendants' infraction under chapter 18.27 RCW is deemed by the legislature
9 under RCW 18.27.350 to affect the public interest and to constitute a *per se* violation of
10 chapter 19.86 RCW.

11
12 **VIII. FIFTH CAUSE OF ACTION – UNFAIR COMPETITION**

13 8.1 Plaintiff realleges paragraphs 1.1 through 7.3 and incorporates them as though
14 fully set forth herein.

15 8.2 In the context of conducting their business, Defendants engaged in unfair and
16 deceptive acts and practices. Such conduct constitutes unfair methods of competition in
17 violation of RCW 19.86.020.

18
19 **IX. PRAYER FOR RELIEF**

20 WHEREFORE, plaintiff State of Washington, prays for relief as follows:

21 9.1 That the Court adjudge and decree that Defendants have engaged in the
22 conduct complained of herein.

23 9.2 That the Court adjudge and decree that the conduct complained of herein
24 constitutes unfair or deceptive acts and practices and unfair methods of competition in
25 violation of the Consumer Protection Act, Chapter 19.86 RCW.

1 9.3 That the Court adjudge and decree that Defendants violated RCW 18.27.114 by
2 not providing the statutory notice of rights to consumers as required and that such conduct,
3 pursuant to RCW 18.27.350, constitutes unfair or deceptive acts and practices and unfair
4 methods of competition in violation of the Consumer Protection Act, Chapter 19.86 RCW.

5 9.4 That the Court issue a permanent injunction enjoining and restraining
6 Defendants, and their representatives, successors, assigns, officers, agents, servants,
7 employees, and all other persons acting or claiming to act for, or on behalf of, or in active
8 concert or participation with Defendants, from continuing or engaging in unlawful conduct
9 complained of herein.

10 9.5 That the Court assess a civil penalty, pursuant to RCW 19.86.140, of up to
11 \$2,000.00 per violation against each Defendant for each violation of RCW 19.86.020 caused
12 by the conduct complained of herein.

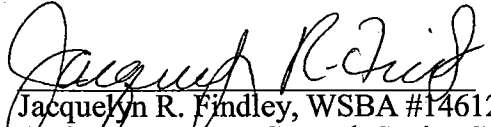
13 9.6 That the Court make such orders pursuant to RCW 19.86.080 as it deems
14 appropriate to provide for restitution to consumers for money or property acquired by
15 Defendants as a result of the conduct complained of herein.

16 9.7 That the Court make such orders pursuant to RCW 19.86.080 to provide that
17 plaintiff State of Washington have and recover from Defendants the costs of this action,
18 including a reasonable attorney's fee.

19 9.8 That the Court order such other relief as it may deem just and proper to fully
20 and effectively dissipate the effects of the conduct complained of herein, or which may
21 otherwise seem proper to the Court.

22 DATED this 4th day of February, 2009.

23 ROB MCKENNA
24 Attorney General

25 
26 Jacquelyn R. Findley, WSBA #14612
 Assistant Attorney General, Senior Counsel
 Attorneys for Plaintiff State of Washington