

**IN THE COURT OF COMMON PLEAS  
OF LUZERNE COUNTY, PENNSYLVANIA**

COMMONWEALTH OF  
PENNSYLVANIA, BY ATTORNEY  
GENERAL MICHELLE A. HENRY,

Plaintiff

V.

INDEPENDENT CONSTRUCTION  
BUILDERS, LLC

And

VINCENT VINCE, individually and as  
managing member of Independent  
Construction Builders, LLC, and d/b/a  
Independent Construction,

Defendants

CIVIL ACTION

NO. 2020-10525

PROTHONOTARY LUZERNE COUNTY  
FILED DEC 31 2 44 PM '20

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**PROCEDURAL HISTORY:**

The matter before the court requires the review and assessment of business practices by Defendants Independent Construction Builders, LLC (“Independent Construction”) and Vincent Vince (“Mr. Vince”), individually and as a managing member of Independent Construction (collectively, “Defendants”), under the Pennsylvania Unfair Trade Practices and Consumer Protection law.

The Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro (the “Commonwealth”) brought a four (4) count complaint in equity, pursuant to the Pennsylvania Unfair Trade Practice and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*, (“Consumer Protection Law” or “CPL”), against Defendants Independent Construction

and Mr. Vince. See Complaint, *generally*. The Commonwealth alleges that Defendants, as registered home improvement contractor, conducted unfair trade practices violating the CPL, and the unlawful acts and practices were carried out, ratified, and at the direction of Mr. Vince as the managing member of Independent Construction. See Complaint, *generally*.

The Commonwealth alleges that Defendants accepted monies for home improvement contracts and never returned to finish the contracted-for work or issued refunds violating Section 517.9(5) of Home Improvement Consumer Protection Act ("HICPA") under the CPL; failed to satisfy contractual requirements pursuant to Section 517.7 of HICPA; failed to perform satisfactory, workmanlike home improvement work; accepted deposits for contracts over five thousand dollars (\$5,000.00) in excess of one third (1/3) of the contract price, in violation of Section 517.9(10)(1)(a) of HICPA; and that the Bureau of Consumer Protection (the "Bureau") received multiple complaints regarding Defendants' business practices. See Complaint, *generally*.

The Commonwealth seeks a permanent injunction against Defendants to restrain the unlawful business methods, acts, and practices, by way of revocation of Defendants HIC license and registration, enjoining Defendants from engaging in trade and commerce in the Commonwealth of Pennsylvania involving home improvement services, by way of definition in Section 517.2 of HICPA. The Commonwealth seeks declaration of Defendants' conduct to be a violation of HICPA and Consumer Protection Law, Defendants' to pay the Commonwealth's investigative and litigation costs, Defendants' to make full restitution pursuant to Section 201-4.1 of the Consumer Protection Law, and Defendants' to pay to the Commonwealth civil penalties, pursuant to the Consumer Protection Law.

The matter proceeded to a three (3) day bench trial, in which the instant Findings of Facts and Conclusions of Law are furnished.

**FINDINGS OF FACT:**

1. The Plaintiff is the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Michelle A. Henry (the “Commonwealth” or “Plaintiff”). (Complaint, ¶ 3)<sup>1</sup>.

2. Plaintiff’s principal place of business is 1600 Arch Street, Third Floor, Philadelphia, Pennsylvania 19103. (Complaint, ¶ 3).

3. Defendant Independent Construction Builders, LLC (“Independent Construction”) is a registered Pennsylvania limited liability company with a principal address of 19 Meadowood Drive, Tunkhannock, Pennsylvania 18657. (Complaint, ¶ 4; Answer ¶ 4)<sup>2</sup>.

4. Defendant Vincent Vince (“Mr. Vince” or “Defendant Vince”), who was joined individually and in his capacity as the managing member of Defendant Independent Construction, is the sole member and managing member of Independent Construction. (Complaint, ¶ 5; Answer ¶ 5; N.T. March 21, 2024, 86).

---

<sup>1</sup> At inception of the case, Attorney Josh Shapiro was the Pennsylvania Attorney General. On January 24, 2023, the Commonwealth filed with the Court a statement of substitution upon Attorney Josh Shapiro’s election as the Governor of Pennsylvania. (See Commonwealth’s Statement of Substitution, *generally*). By operation of law, Attorney Michelle A. Henry, then First Deputy Attorney General, assumed the role as Acting Attorney General, and thus was substituted for Attorney General Josh Shapiro in this action. (See *id.*)

<sup>2</sup> Defendant Vince testified that Independent Construction’s principal place of business was located at 52 South Memorial Highway, Dallas, Pennsylvania 18612. (N.T. March 21, 2024, 86).

5. Defendant Vince is a Pennsylvania resident who, at the time of the Complaint, had a residential address of 316 Union Street, Wilkes-Barre, Pennsylvania 18709. (Complaint, ¶15; Answer, ¶ 5)<sup>3</sup>.

6. Defendants engaged in trade or commerce in the Commonwealth of Pennsylvania, pursuant to the definition of trade or commerce laid out in Section 517.2 of the Home Improvement Consumer Protection Act, 73 P.S. § 517.1, et seq. (Complaint, ¶ 5; Answer ¶ 5; N.T. March 21, 2024, 88).

7. Defendants are registered with the Pennsylvania Bureau of Consumer Protection as a home improvement contractor, pursuant to Section 517.3(a) of HICPA, with a registration number of PA 110912. (Complaint, ¶ 7; Answer ¶ 7).

8. The Commonwealth presented testimony of multiple consumers that contracted with Defendants for home improvement construction services. (N.T., *generally*).

CONSUMER – JO ANNE OSZVART

9. The Commonwealth called as a witness, Jo Anne Oszvart (“Ms. Oszvart”), who is an individual with an address of 296 Saw Mill Road, Greentown, Pennsylvania 18426. (N.T. March 4, 2024, 20).

10. Ms. Oszvart contracted with Defendants for the construction of a “glass blown studio” located on her property, hereinafter referenced as the “Oszvart contract”. (N.T. March 4, 2024, 20, 21; Plaintiff’s Exhibit 11).

---

<sup>3</sup> Mr. Vince testified on the third day of trial, upon direct examination, that he resides in “Mountain Top, Pennsylvania” although his exact current address was not testified to. (N.T. March 21, 2024, 86).



11. The Oszvart contract was generally for installation of doors, installation, trim, gutters, flashing, drip edge, milled tongue and groove soffit, ceiling, and windows. (N.T. March 4, 2024, 24; Plaintiff's Exhibit 11).

12. The Oszvart contract total cost was listed as thirty-five thousand dollars (\$35,000.00), which included all permit fees, and the removal of all debris. (N.T. March 4, 2024, 24; Plaintiff's Exhibit 11).

13. The Oszvart contract required a fifty percent (50%) deposit, totally seventeen thousand five-hundred dollars (\$17,500.00), with the remaining fifty percent due upon completion. (Plaintiff's Exhibit 11).

14. Ms. Oszvart paid the seventeen thousand five-hundred dollar (\$17,500.00) deposit on October 5, 2021. (N.T. March 4, 2024, 24).

15. Ms. Oszvart did not receive a detachable notice of cancellation form as a part, or separate from the Oszvart contract. (N.T. March 4, 2024, 26).

16. Defendants neither included in the contract, nor made representations as to when the contracted-for work would commence or be completed. (N.T. March 4, 2024, 26).

17. Ms. Oszvart purchased custom hardware, with an approximate value of one thousand nine hundred and sixty-seven dollars (\$1,967.00) to be utilized on one of the doors that Defendants were supposed to install. (N.T. March 4, 2024, 26, 27).

18. The hardware was never installed, nor returned to Ms. Oszvart. (N.T. March 4, 2024, 27)<sup>4</sup>.

---

<sup>4</sup> Ms. Oszvart produced a written statement, to which she testified she witnessed Defendant Vince sign that assumed responsibility for the safekeeping and replacement of the custom hardware. However, Defendant Vince denies ever seeing or signing the document. (N.T. March 21, 2024, 121, *see also* Exhibit P-12).

19. Defendants only partially completed the contracted for-work, namely, the walk-through door, tongue and groove ceiling, small windows on the rear of the studio, and particle board on the front of the building. (N.T. March 4, 2024, 29).

20. The portions of the work that were completed, according to the consumer, were riddled with issues such as not being properly trimmed, insulated, improper materials were used, and sloppy workmanship. (N.T. March 4, 2024, 29, 30).

21. Ms. Oszvart thoroughly documented the work crafted by Defendants, damage caused by Defendants, and condition of the premises that upon Defendants' departure. (N.T. March 4, 2024, 31 – 52).

22. Ms. Oszvart attempted to have Defendants remediate the issues but to no avail, and then requested a refund which was denied by Mr. Vince. (N.T. March 4, 2024, 53-54).

23. Defendants failed to return to the premises and finish the contracted for work. (N.T. March 4, 2024, 63).

24. Ms. Oszvart had to incur significant costs by hiring third party contractors to complete or remedy work that was within the scope of the Oszvart contract, which included:

- a. Three thousand one-hundred and ninety-nine dollars (\$3,199.00) for roof repair, gutter repair, drip edges, and replacement of gutter system;
- b. Two thousand five-hundred dollars (\$2,500.00) for window and door installation; and
- c. One thousand six-hundred dollars (\$1,600.00) on materials for the garage door.

(N.T. March 4, 2024, 54-61).

25. As of the date of trial, not all the issues have been remedied, nor has the work been completed that would satisfy the work contracted for in the Oszvart contract, including reimbursement for the custom hardware and installation of the garage door. (N.T. March 4, 2024, 56).

26. Ms. Oszvart has a pending case in Pike County Court of Common Pleas against Defendants related to the Oszvart contract. (N.T. March 21, 2024, 92).

CONSUMER – JOSEPHINE VINCE

27. The Commonwealth, called as a witness, Josephine Vince (“Ms. Vince”), who is an individual with an address of 359 Upper Demunds Road, Dallas, Pennsylvania 18612. (N.T. March 4, 2024, 80).

28. Ms. Vince contracted with Defendants for home improvements, specifically, remodeling a house she recently purchased after moving from New York to Dallas, Pennsylvania. (N.T. March 4, 2024, 81).

29. Ms. Vince found Independent Construction and sought out its services, because the managing member, Defendant Vince, is her nephew. (N.T. March 4, 2024, 80).

30. Defendant Vince represented the requested home remodel would cost fifty thousand dollars (\$50,000.00), which did not include the materials that Ms. Vince would also be responsible for. (N.T. March 4, 2024, 82).

31. The contracted-for work included: painting all of the rooms of the house, sanding and refinishing the wood floors, installation of flooring, remodel of the bathroom, remodel of the kitchen, door replaces, shelving installation, ceiling fans replacement, and

installation of a fireplace, raising a lower-level ceiling, and light fixture replacement. (N.T. March 4, 2024, 88, 89).

32. Defendants failed to tender a written agreement, payment schedule, or detachable notice of cancellation for any of the contracted-for work to Ms. Vince. (N.T. March 4, 2024, 89, 90).

33. Ms. Vince tendered multiple checks to Defendant Vince on the following dates in corresponding amounts:

- a. December 15, 2017 – Ten thousand dollars (\$10,000.00);
- b. January 9, 2018 – Ten thousand dollars (\$10,000.00);
- c. January 9, 2018 – Seven hundred and seventy dollars (\$770.00);
- d. January 23, 2018 – Two hundred and fifty dollars (\$250.00);
- e. February 2, 2018 – Ten thousand dollars (\$10,000.00);
- f. March 5, 2018 – Ten thousand dollars (\$10,000.00);
- g. March 21, 2018 – Four hundred sixteen dollars and thirty-five cents (\$416.35)

(N.T. March 4, 2024, 83, 84, 85, 86, 87).

34. All of the aforementioned checks were tendered for work related to the home improvement contract with Defendants. (N.T. March 4, 2024, 87).

35. The work at Ms. Vince's residence commenced the day after she closed on the purchase of the home, and thereafter for a few months, with work completely halting approximately the second week of April 2018. (N.T. March 4, 2024 92, 93).

36. Defendants completed work in the bathroom, painting, closets, some shelving, and replacement doors, installation of fireplace, however Defendants did not remodel the kitchen. (N.T. March 4, 2024, 93, 94, 95).

37. Of the work that was completed, not all of the work was satisfactory. Namely, the fireplace was not vented as requested, which made it unable to be used, and the door did not latch properly. (N.T. March 4, 2024, 95, 96).

38. Ms. Vince had to pay third parties to remodel the kitchen, finish flooring and/or carpeting, finish remodeling the downstairs room, and remodel a small bathroom referred to as “the closet bathroom,” all of which work was originally understood by Ms. Vince to be contracted-for with Defendants. (N.T. March 4, 2024, 97, 98, 99, 110).

39. Defendant Vince testified, that he “never profited a nickel,” and that Ms. Vince “only paid me for labor,” for the subcontractors who performed the work, to the tune of over forty-thousand dollars (\$40,000.00) however, Mr. Vince produced no documentation to support that. (N.T. March 21, 2024, 131).

#### CONSUMER – GEORGE CHARLES HORWATT

40. The Commonwealth, called as a witness, George Charles Horwatt (“Mr. Horwatt”), who is an individual with an address of 10 Skyview Road, Dallas, Pennsylvania 18612. (N.T. March 4, 2024, 116, 117).

41. Mr. Horwatt contracted with Defendants for home improvement services, specifically the remodel of a full bath in his house. (N.T. March 4, 2024, 117).

42. Defendants were recommended to Mr. Horwatt and his wife (the “Horwatts”) for the remodel of the only bathroom in the home at 10 Skyview Drive, Dallas, PA 18612, and inquired as to the services around August of 2019. (N.T. March 4, 2024, 117).

43. Mr. Horwatt and Defendants entered into a contract for the bathroom remodel (referred herein after as the “Horwatt contract”), on or around February 26, 2020, by way of tendering a proposal from Defendants to the Horwatts at the hardware store wherein Ms. Horwatt met Defendant Vince at to pick out materials for the remodel. (N.T. March 4, 2024, 120, 121).

44. The Horwatts did sign the Horwatt contract. (N.T. March 4, 2024, 120, 121; Exhibit P-6).

45. The price for the Horwatt contract was listed as “total cost between \$12,000 and \$14,000.” (Exhibit P-6).

46. The Horwatts, upon Mr. Horwatt’s information and belief, never received detachable notice of cancellation with the contract. (N.T. March 4, 2024, 122).

47. The Horwatts tendered a six-thousand dollar (\$6,000.00) deposit to Defendants toward the project on February 6, 2020. (N.T. March 4, 2024, 123; Exhibit P-7).

48. The work described in the Horwatt contract was commenced by Defendants at the end of February of 2020. (N.T. March 4, 2024, 122).

49. The Horwatts tendered another check to Defendant Independent Construction on March 30, 2020, in the amount of seven thousand dollars (\$7,000.00). (N.T. March 4, 2024, 125; Exhibit P-8).

50. The Horwatts issued another payment of one thousand dollars (\$1,000.00) in cash to Defendants, as the final payment, upon the conclusion of the job. (N.T. March 4, 2024 126).

51. After the work was completed, a multitude of issues were revealed, such as the toilet rocking due to lack of levelness, door installation issues, puddling in the shower stall, cracked grout, and drainage issues that led to mold and eventual mushrooms growing within the shower. (N.T. March 4, 2024, 127).

52. The installation of the shower stall did not allow for water to properly flow, which resulted in “a crop of mushrooms that [Mr. Horwatt] has to pick every now and then.” (N.T. March 4, 2024, 140).

53. The Horwatts requested the issues to be remedied by Defendants, however, after despite multiple requests, Defendants attempting to resolve the issues “once or twice” and then seemingly went radio silent, the Horwatts gave up on having the Defendants, whom they paid fourteen thousand dollars (\$14,000.00) for the remodel of the bathroom. (N.T. March 4, 2024, 143).

54. The Horwatts incurred costs by hiring multiple third parties to remedy the issues within their bathroom, all of which were remedying the insufficiencies of Defendants’ work; such as:

- a. One hundred dollars (\$100.00) to Bellio Plumbing for service on the bathroom sink;

- b. One hundred and eight-five dollars (\$185.00) to Talbot Plumbing Solutions for service on the uneven toilet, baseboard radiator service, and further work on the bathroom sink.

(N.T. March 4, 2024, 145, 146).

55. The Horwatts received an estimate from another third party contractor to remedy other outstanding issues within the bathroom, namely removal and replacement of tile, new shower door and remedy of shower door fixtures, trim, moldings, wainscoting replacement; and window replacement in the amount of six thousand six hundred dollars (\$6,600.00) (N.T. March 4, 2024, 147).

56. The Horwatts were unable to pay the third-party contractor, as they did not have the funds to do so after paying Defendants fourteen thousand dollars (\$14,000.00) for the same work. (N.T. March 4, 2024, 148).

CONSUMER – KYLE BRADLEY OSTOPICK

57. The Commonwealth, called as a witness, Kyle Bradley Ostopick (“Mr. Ostopick”), who is an individual with an address of 528 Main Road, Hanover, Pennsylvania 18706. (N.T. March 4, 2024, 164).

58. Mr. Ostopick contracted with the Defendants for home improvement work, specifically outdoor siding removal, installation, and ancillary accessory installation (hereinafter referred to as the “Ostopick contract”). (N.T. March 4, 2024, 166; See also Exhibit P-57).

59. Mr. Ostopick and Defendants also discussed the demolition and construction of a back deck, however a contract for the back deck never materialized. There was never a



cost quoted for the proposed back deck, nor details as to size or design. (N.T. March 4, 2024, 176, 177).

60. The Ostopick contract for the outdoor siding work was dated June 17, 2019, with a total cost of thirteen thousand and three-hundred dollars (\$13,300). The payment schedule was fifty percent (50%) to be paid as a deposit and the remaining fifty percent (50%) due upon completion. (N.T. March 4, 2024, 166; See *also* Exhibit P-57)<sup>5</sup>.

61. In discussions with Defendants, Mr. Ostopick specifically requested “above-standard grade” siding replacement, and Mr. Ostopick ensured that the requested siding was specifically written in the contract. (N.T. March 4, 2024, 168, 169).

62. Mr. Ostopick never received a detachable notice of cancellation form relating to the Ostopick contract, and a three-day notice of cancellation was never discussed between Defendants and Mr. Ostopick. (N.T. March 4, 2024, 171).

63. There was no proposed end date for the work, however, the agreed upon start date of work was August 5, 2019, wherein neither Defendant showed at the premises to begin work. (N.T. March 4, 2024, 173, 174).

64. The following day, August 6, 2019, a crew arrived at the premises to begin work, however, Mr. Vince was not present after indicating he would be on site during the work. (N.T. March 4, 2024, 174).

65. On August 6, 2019, Mr. Ostopick inquired about the status of the permits required for the construction work to be completed, to which Defendants’ crew assured Mr.

---

<sup>5</sup> The Ostopick contract was never signed by Mr. Ostopick, however Defendants were hired for the work and a deposit of six thousand five-hundred dollars (\$6,500) was tendered by Mr. Ostopick to Defendants for the commencement of work. (N.T. March 4, 2024, 170, 172).

Ostopick that the permits had been obtained and Mr. Vince would be bringing the permits physically to the premises later that day. (N.T. March 4, 2024, 174).

66. The next day, August 7, 2019, Mr. Vince had yet to arrive to the site with the permits. The local code enforcement arrived onsite and shut down the project, due to failure to obtain the requisite permits. (N.T. March 4, 2024, 175).

67. Upon code enforcement's arrival, Mr. Ostopick learned that Defendants had lied about obtaining the requisite permits for the construction work. (N.T. March 4, 2024, 175).

68. At that point in time, approximately two of the siding backing walls were installed, along with some siding backers and insulation. (N.T. March 4, 2024, 176).

69. Additionally, Defendants completely demolished the existing back deck, despite that work not being contracted for. (N.T. March 4, 2024, 177).

70. While waiting for the permits to be obtained, Mr. Ostopick noticed what appeared to be roof damage due to Defendants' demo work on the siding and deck, and Defendants failed to properly tarp and secure the roofing area. (N.T. March 4, 2024, 179).

71. After Defendants obtained the correct permits, Defendants' crew briefly continued work, however Mr. Ostopick terminated the relationship and contract due to the mistrust that had been created between the parties. (N.T. March 4, 2024, 178, 179).

72. After terminating Defendants, Mr. Ostopick discovered that his attic area was no longer watertight, as he could visibly see sunlight through the roof. (N.T. March 4, 2024, 183).

73. After discussions regarding a refund, Mr. Ostopick inquired with the siding supplier, Building Products, that Defendants ordered materials for the project from and discovered that Defendants did not order the “above-standard” grade siding that was requested, rather ordered a lower-grade siding. (N.T. March 4, 2024, 183).

74. Mr. Ostopick demanded a refund from Defendants but was met with “bizarre responses” including one of which “Mr. Vince told [me] that he filed with the proper authorities for slander of his company’s name, which I still fully don’t understand.” (N.T. March 4, 2024, 185).

75. Mr. Ostopick filed a consumer complaint with the Attorney General’s office. (N.T. March 4, 2024, 186).

76. Mr. Ostopick hired Gilroy Construction to complete the work that was originally contracted with Defendants. (N.T. March 4, 2024, 188).

77. Mr. Ostopick paid Gilroy Construction twenty four thousand and four-hundred dollars (\$24,400.00) to complete the construction work, that was originally supposed to be completed by Defendants. (N.T. March 4, 2024, 189).

#### CONSUMER – JOHN FARRELL

78. The Commonwealth, called as a witness, John Farrell (“Mr. Farrell”), who is an individual with an address of 7025 Clark Road Sarasota, Florida, Pennsylvania, 8706. (N.T. March 5, 2024, 208).

79. Mr. Farrell owned a house with an address of 175 Main Street Forkston, Pennsylvania, 18649. (N.T. March 5, 2024, 210).

80. After a house fire, Mr. Farrell sought a contractor for various repairs in the house, generally in the fire-affected rooms, insulating, installing sheetrock, painting, installing molding, fixtures, and reconstructing the bathroom and kitchen. (N.T. March 5, 2024, 209).

81. Mr. Farrell contracted with Defendants for the repairs and construction work (hereinafter referred to as the "Farrell contract"). (N.T. March 5, 2024, 211, *See also* P-1).

82. The Farrell contract is dated March 6, 2019, with a listed total cost of ninety thousand dollars (\$90,000.00), to be paid in thirds: one third to be paid to commence work, one third to be paid upon half of the work completed, and then the last third to be paid upon completion of work. (Exhibit P-1).

83. Mr. Farrell never received a detachable notice of cancellation, and a three-day right to cancel was never explained to Mr. Farrell by Defendants. (N.T. March 5, 2024, 214).

84. The work was estimated by Defendants to take four to six weeks to complete, and work commenced the first week of April in 2019. (N.T. March 5, 2024, 215, 218).

85. Mr. Farrell paid thirty thousand dollars (\$30,000.00) to the Defendants to commence the work on his home. (N.T. March 5, 2024, 216).

86. Defendants only completed approximately two days of work, which comprised of beginning to re-stud the framework in the rooms in the home. (N.T. March 5, 2024, 219).

87. Defendants failed to return to Mr. Farrell's home to continue work, and Mr. Farrell repeatedly attempted to contact Defendants regarding the work. (N.T. March 5, 2024, 219, 220).

88. Defendants never responded to Mr. Farrell, nor returned to the property to finish the work on his home. (N.T. March 5, 2024, 220, 226).

89. Mr. Farrell sent a letter, via certified mail, titled Termination of Contract to Defendants on August 8, 2019, to represent officially terminating the contract and requesting a refund, after being unable to get in contact with Defendants and after Defendants failed to continue working on the home as contracted. (N.T. March 5, 2024, 225, *see also* Exhibit P-4).

90. Defendants never replied to Mr. Farrell's termination of contract and Defendants never issued any refund of any portion of the thirty thousand dollars (\$30,000.00) paid to them. (N.T. March 5, 2024, 226).

91. Mr. Farrell reported the incident to the Pennsylvania State Police and then ultimately contacted an attorney regarding the possibility of getting his money back for the work not performed. (N.T. March 5, 2024, 228).

92. Mr. Farrell estimated only eight percent (8%) of the contracted for work was completed by Defendants. (N.T. March 5, 2024, 229).

93. Out of the estimated eight percent (8%) of completed work, which was testified to be studding the framework, was done incorrectly, namely not leveled, centered, straight or finished. (N.T. March 5, 2024, 223).

94. Defendants testified that to continue work, they would have needed additional monies from Mr. Farrell. (N.T. March 21, 114).

CONSUMER – AUDREY BUTKIEWICZ

95. The Commonwealth, called as a witness, Audrey Butkiewicz (“Ms. Butkiewicz”), who is an individual with an address of 87 Brimsmead Marlborough, Massachusetts, Pennsylvania, 01752. (N.T. March 5, 2024, 208).

96. Ms. Butkiewicz contracted with Defendants for home improvement services at her residence at the time, located at 104 Sandwedge Drive, Mountain Top, Pennsylvania 18707, for the remodeling of a bathroom (hereinafter referred to as “Butkiewicz contract”). (N.T. March 21, 2025, 9).

97. Ms. Butkiewicz needed the bathroom remodeled to make it more accessible for her husband who was disabled. (N.T. March 21, 2024, 9).

98. Ms. Butkiewicz paid Defendants a deposit of five thousand dollars (\$5,000.00) for the bathroom remodel. (N.T. March 21, 2024, 12, see *also* Exhibits P-33 and P-34).

99. Ms. Butkiewicz never received a written contract, nor a written notice of cancellation. (N.T. March 21, 2024, 13, 18).

100. Ms. Butkiewicz expected the work to begin within two (2) weeks of tendering the five-thousand dollar(\$5,000.00) deposit to Defendants. (N.T. March 21, 2024, 19).

101. The work did not begin within two (2) weeks of the deposit, no work was ever commenced, and after consideration of Mr. Butkiewicz health conditions and circumstances regarding the then-current covid-19 pandemic, Ms. Butkiewicz decided to not move forward with the bathroom remodel as she believed they were too elaborate for their needs. Thereafter Ms. Butkiewicz requested a refund of the five-thousand dollar (\$5,000.00) deposit from Defendants. (N.T. March 21, 2024, 16, 17).

102. Ms. Butkiewicz contacted personnel at Defendants' office, and it was communicated that the Butkiewiczs' deposit would be returned. (See Exhibit P-35).

103. Ms. Butkiewicz was never provided with the refund, and after a few attempts to retrieve same, contacted law enforcement agencies. (N.T. March 21, 2024, 22-24).

104. A few months after meeting with law enforcement agencies, Defendants issued a partial refund to Ms. Butkiewicz in the amount of three thousand three hundred dollars (\$3,300.00). (N.T. March 21, 2024, 25).

105. The remaining one thousand seven hundred dollars (\$1,700.00) of the original five-thousand-dollar (\$5,000.00) deposit was never issued to Ms. Butkiewicz. Defendants did not provide any materials to the Butkiewicz for the bathroom remodel that would indicate a partial refund was warranted. (N.T. March 21, 2024, 25, 26, 122).

#### CONSUMER – SCOTT HAGEN

106. The Commonwealth, called as a witness, Scott Hagen ("Mr. Hagren"), who is an individual with an address of 353 Copperwood Loop, Conway, South Carolina, 29526. (N.T. March 21, 2024, 41).

107. Mr. Hagen contracted with Defendants for home improvement services at his residence at the time, located at 114 Foothill Drive, Mountain Top, Pennsylvania 18707, for the replacement of a roof, concrete walkway, and concrete outdoor patio (discussed as two separate contracts, the first contract being for the roof work hereinafter referred to as the "Hagen roof contract" and secondly the concrete walkway and patio hereinafter referred to as the "Hagen concrete contract"). (N.T. March 21, 2025, 42).

108. Defendant Vince orally expressed his ability to perform the work and indicated the roof replacement would have a lifetime transferable warranty and the concrete work on the patio and walkway would have a ten (10) year parts and labor warranty. (N.T. March 21, 2024, 44).

109. Defendants communicated a price of seven thousand dollars (\$7,000.00) for the roof replacement, specifically the Hagen roof contract. (N.T. March 21, 2024, 44, Exhibit P-36).

110. The price for the Hagen concrete contract, the walkway and outdoor patio, was communicated to cost five thousand six hundred and sixteen dollars (\$5,616.00). (N.T. March 21, 2024, 46, 47).

111. Defendants communicated the price of the Hagen roof contract to Mr. Hagen on May 17, 2016, by writing the price on a business card, and Defendants began and completed the Hagen roof contract the next day, May 18, 2016. (N.T. March 21, 2024, 48, 49, *see also* Exhibit P-37).

112. The written Hagen roof contract was not provided to Mr. Hagen until the work was completed on May 18, 2016. (N.T. March 21, 2024, 48, 49, *see also* P-36).

113. The Hagen roof contract was not signed by either party, but Mr. Hagen hand wrote “completed 5/18/2016” with his initials next to it. (N.T. March 21, 2024, 50, Exhibit P-36).

114. Mr. Hagen never received a written document for the Hagen concrete contract. (N.T. March 21, 2024, 52).



115. Mr. Hagen never received a detachable notice of cancellation for either contract, Hagen roof contract or the Hagen concrete contract. (N.T. March 21, 2024, 52, 53).

116. Almost immediately after the Hagen roof contract was completed, Mr. Hagen noticed issues with the workmanship, inter alia, rainwater was not draining into the gutters properly and parts were missing. (N.T. March 21, 2024, 54, 55).

117. During Defendants' work pursuant to the Hagen concrete contract, Mr. Hagen started questioning Defendants' workmanship, due to the realization that Defendant Vince was not utilizing the materials that were requested by Mr. Hagen. Specifically, Mr. Hagen explicitly requested a rebar steel reinforcement in the concrete, in which Defendants never used. Defendants also indicated that "fiber mesh concrete," seemingly a higher quality concrete was being utilized, however, Mr. Hagen later learned that was a lie and "ordinary" concrete was used. (N.T. March 21, 2024, 55, 56).

118. The concrete work was incorrectly pitched towards Mr. Hagen's house, causing water to accumulate against the wall of his house. (N.T. March 21, 2024, 60).

119. Mr. Hagen recognized multiple issues with the roof, namely failure to properly adhere sufficient gutters to the roof and properly install roof edging, and in an attempt to remedy the roof edging, Defendants broke the shingles on the roof. (N.T. March 21, 2024, 63).

120. Further, Mr. Hagen's inspection of the roof revealed that Defendants improperly "patched" the areas where old vents were removed with sheet metal, rather than utilizing plywood as required and requested by Mr. Hagen. (N.T. March 21, 2024, 65).

121. Mr. Hagen notified the Defendants of the issues and requested the job be redone, and not a refund. (N.T. March 21, 2024, 66, 67).

122. However, after an interaction with Defendant Vince wherein “[Defendant Vince] threatened me and did a tirade at my location,” Mr. Hagen requested Defendants get off his property and Mr. Hagen filed a police report. (N.T. March 21, 2024, 66).

123. Mr. Hagen hired a third-party concrete company to remove the concrete work done by Defendants and completely redo it, at the cost of seven thousand and one hundred dollars (\$7,100.00). (N.T. March 21, 2024, 68)<sup>6</sup>.

124. Mr. Hagen filed suit at the District Court in Wright Township, Luzerne County, Pennsylvania against Defendants and received a judgment on January 12, 2017 in the amount of four thousand six hundred seventy dollars and forty-four cents (\$4,670.44). (N.T. March 21, 2024, 69, *see also* Exhibit P-46).

125. The judgment was appealed by Defendants, and Mr. Hagen failed to issue a Complaint in the Common Pleas Court, and thus the judgment expired and was never collected on by Mr. Hagen. (N.T. March 21, 2024, 69, 76-78).

#### **CONCLUSIONS OF LAW:**

The Commonwealth, through the office of the Attorney General, brought the instant action pursuant to its statutory authority within the Pennsylvania Unfair Trade Practice and Consumer Protection Law (“Consumer Protection Law”), specifically for violations of the Home Improvement Consumer Protection Act (“HICPA”). 73 P.S. §§ 201-1 – 201.10; 73 P.S. §§ 517.7 – 517.19. The Consumer Protection Law must be liberally construed to effect the

---

<sup>6</sup> Mr. Hagen never paid Defendants the cost of the initial cost of the concrete work, five thousand six hundred and sixteen dollars (\$5,616.00). (N.T. March 21, 2024, 73).

law's purpose of protecting consumers from deceptive or unfair business practices. *Boehm v. Riversource Life Ins. Co.*, 117 A.3d 308, 321 (Pa. Super 2015).

The standards of proof for Commonwealth and private causes of actions are distinguishable, where a private plaintiff must prove justifiable reliance. *Gregg v. Ameriprise Fin., Inc.*, 245 A.3d 637, 646 (Pa. 2021) (citing *Schwartz v. Rockey*, 932 A.2d 885, 897 n.16 (Pa. 2007)). To meet the standard of proof when bringing a claim under the Consumer Protection Law under the catchall provision, laid out within 73 P.S. §201- xxi, the Commonwealth must prove the same burden of proof as a strict liability action. *Gregg v. Ameriprise Financial* 245 A.3d at 649. To achieve meeting their burden of proof, the Commonwealth must show that “the acts and practices are capable of being interpreted in a misleading way.” *Gregg v. Ameriprise Fin., Inc.*, 245 A.3d at 637. The Superior Court has held that the appropriate standard of proof is the preponderance of the evidence for Pennsylvania Unfair Trade Practices Consumer Protection Law Claims. *Boehm v. Riversource Life Ins. Co.*, 117 A.3d 308, 321 (Pa. Super 2015).

Section 3 of the Consumer Protection Law declares unlawful “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by [Section 2(4)(i)-(xxi)] and regulations promulgated [by the Attorney General] under section 3.1[.]” *Commonwealth v. Chesapeake Energy Corp.*, 665 Pa. 2, 6, 247 A.3d 934, 936 (2021); 73 P.S. §201-3.

Section 4 of the Consumer Protection Law authorizes the Attorney General or a District Attorney to bring an action in the name of the Commonwealth against any such person the Commonwealth may believe that is using any method, act, or practice, declared

in section 3 of the Consumer Protection Law to be unlawful, to restrain such unlawful acts by way of either temporary or permanent injunction of the use of such method, act or practice. *Id.*; 73 P.S. § 201-4.

The Commonwealth alleged Defendant violated multiple sections of the Consumer Protection Law, namely sections 201-2(4)(v), 201-2(4)(xxi), 201-7(b)(1), and 201-7-(b)(2). (See Complaint, *generally*). The Commonwealth further alleged Defendant violated Sections 517.7(a)(1),(2),(3),(6),(11), and (12) of the Home Improvement Consumer Protection Act, which are deemed per Section 517.10 to be a violation of the Consumer Protection Law. (See Complaint, *generally*) See also 73 P.S. § 517.10.

Pursuant to the Consumer Protection Law and, it is unlawful to represent goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation or connection that he does not have; engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding. 73 P.S. § 201-2(v)(xxi).

Any violation of the Home Improvement Consumer Protection Act is deemed a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law. 73 P.S. § 517.10. Pursuant to HICPA, no home improvement contract shall be enforceable against an owner unless it, *inter alia*,

- (1) is in writing, legible, and contains the home improvement contractor resignation number of the performing contractor;
- (2) is signed by the owner, his agent or other contractor party, and the contractor a sales person on behalf of the contract;

- (3) contains the entire agreement between the owner and the contractor, including attached copies of all required notices;
- (6) contains the approximate starting date and date of completion;
- (11) except as provided in section 12 [of this Act], maintain liability insurance covering personal injury in an amount not less than \$50,000 and insurance covering property damage caused by the work of a home improvement contract in an amount not less than \$50,000 and identifies the current amount of insurance coverage maintained at the time of signing the contract; and
- (12) include the toll-free telephone number under [73 P.S. § 517.3].

73 P.S. § 517.7(a)(1), (2), (3), (6), (11), and (12).

The Commonwealth presented the testimony of seven (7) witnesses, all of which were consumers, who contracted with Independent Construction for home improvements. The home improvements contracted-for fall within the purview of the Home Improvement Consumer Protection Act. 73 P.S. § 517.2.

The witnesses presented provided credible testimony and evidence of the work completed and/or not completed by Defendants. This Court finds that Defendants clearly violated Home Improvement Consumer Protection Action, and by way of doing so, also violated the Consumer Protection Law.

First and foremost, pursuant to § 517.7(a)(1), all home improvement contracts shall be, *inter alia*, in writing. It was thoroughly undisputed that Defendants undertook contracts, work, and collected monies for contracts that were not reflected in a writing, whatsoever.

Namely, the contract with Josephine Vince contract, wherein Defendants accepted over forty-thousand dollars (\$40,000.00), to which no contract or writing was ever executed or even proposed to the consumer. (N.T. March 4, 2024, 89, 90; N.T. March 21, 2024, 92). To the extent Defendant Vince argues the parties never had a contract and the work was merely a favor for his aunt, the Court finds this unavailing. Defendant Vince repeatedly testified that he had to pay subcontractors for labor at Ms. Vince's residence for the residential remodeling work. It is evident the work was contracted through Independent Construction and Defendant Vince in his role within the company. (N.T. March 21, 2024, 92, 93, 94).

Further, Defendants undertook work for Mr. Hagen for concrete work at his residence. Although Defendants provided a written contract for the roof construction, Defendants failed to reduce the agreement for the concrete work to writing, despite conducting extensive work on the property and proposing a cost of over five-thousand dollars (\$5,000.00). (N.T. March 21, 2024, 52, 110).

Defendants also undertook work at Edward Butkiewicz and Audrey Butkiewicz's residence for the remodel of a bathroom, wherein they accepted and retained a five-thousand dollar (\$5,000.00) deposit, however furnished no written contract. (N.T. March 21, 2024, 12, 13). Defendants merely furnished an invoice evidencing the payment of the deposit. (N.T. March 21, 2024, 12, 13, see *also* Exhibit P-33).

For those contracts that were reduced to writings, as required, they as well were deficient and clearly noncompliant with the requirements set forth in the Home Improvement Consumer Protection Act. 73 P.S. § 517.7. A few of the explicit requirements in home improvement contracts is the following information: signatures by both the

consumer and the contractor; attached copies of all required notices; dates of the transaction; approximate start and completion date; the cost of all downpayments and special order materials; the amount of insurance maintained at the time of signing the contract; and the toll-free telephone number listed under [§ 517.7 (3)(b)]. 73 P.S. § 517.7(a).

The following consumer contracts failed to have both parties' signatures, in violation of HICPA § 517.7 (a)(2): Joan M. Horwatt and George C. Horwatt (See Exhibit P-6), Scott Hagen (See Exhibit P-36), and Kyle Ostopick (See Exhibit P-57).

The following consumer contracts failed to have an approximate start and completion dated, in violation of HICPA § 517.7(a)(6): Joan M. Horwatt and George C. Horwatt (See Exhibit P-6), Jo Ann Oszvart (See Exhibit P-11), Scott Hagen (See Exhibit P-36), Kyle Ostopick (See Exhibit P-57), and John Farrell (See Exhibit P-1).

The following consumer contracts failed to contain the amount of liability insurance held by the Defendants at the time of signing the contract, in violation of HICPA § 517.7(a)(11): Joan M. Horwatt and George C. Horwatt (See Exhibit P-6), Jo Ann Oszvart (See Exhibit P-11), Scott Hagen (See Exhibit P-36), Kyle Ostopick (See Exhibit P-57), and John Farrell (See Exhibit P-1).

The following consumer contracts failed to contain the toll-free telephone number contained in [73 P.S. § 517.3], in violation of HICPA § 517.7(a)(12): Joan M. Horwatt and George C. Horwatt (See Exhibit P-6), Jo Ann Oszvart (See Exhibit P-11), Scott Hagen (See Exhibit P-36), Kyle Ostopick (See Exhibit P-57), and John Farrell (See Exhibit P-1).

The Consumer Protection Law requires, for all contracts at a value greater than twenty-five dollars (\$25.00), the buyer shall be provided with a notice of rescission, which

gives the buyer the right to rescind the contract within three (3) business days. 73 P.S. § 201-7(a). Further, the buyer shall be provided with a copy of the fully executed contract, which contains a notice of cancellation, and has a duplicate notice of cancellation form attached to it, or otherwise easily detachable. 73 P.S. § 201-7(b). Failure to attach all required notices also constitutes a violation of the Home Improvement Consumer Protection Act, § 517.7 (a)(3).

Not one consumer presented by the Commonwealth, written contract or not, was provided with an attached or alternatively detachable notice of cancellation form. (N.T. Mach 4, 2024, 26, 89, 90, 122, 171, 124; March 21, 2024, 13, 18, 52, 53). Defendants' failure to rebut, the tendering of any notice of cancellation form evidences a conspicuous violation of both the CPL and HICPA.

The Commonwealth alleged Defendants violated the Consumer Protection Law § 201-2(4)(xxi), which is the catchall provision, prohibiting "any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding." 73 P.S. § 201-2(4)(xxi). With each and every consumer's testimony, it became increasingly clear that Defendants repeatedly assured consumers that they would perform work fully and satisfactorily, in order to gain the business of the consumers, only to leave the consumers with typically more issues than they had prior to hiring Defendants.

On nearly every occasion the various witnesses testified to, Defendants indicated they were qualified, ready, and able to perform requisite home improvement work. However, once Defendants were issued payment and workmanship issues arose, it was objectively difficult to get a response, remedy or refund from Defendants.



Out of the instances wherein consumers requested refunds, Defendants responded that the monies were used to purchase materials, on a few instances Defendant alleged that the materials were special order materials that cannot be refunded<sup>7</sup>. Defendants further testified that the materials allegedly purchased with the monies paid by the consumers were never given to the consumers due to a common theme – no consumer wanted to speak to him. (N.T. March 21, 2024, 100, 101, 122, 127).

The Court finds that Defendants acted deceptively and fraudulently in the representations of the work they promised to perform, the materials they promised to use, and in their course of business. Defendants indicated on multiple occasions they would use high quality materials than were used, or ordered with the intent to use. For example, Defendants ordered a lower quality siding than specifically requested in the Osptopick contract, which was only discovered upon the consumer's own investigation, despite the contract confirming the higher-grade quality siding. (N.T. March 4, 2024, 182, 183, *see also* Exhibit P-57).

Pursuant to the authority vested in the Consumer Protection Law, 73 P.S. § 201-4.1, Defendants shall hereby pay \$79,189.00 in restitution, representing the amounts paid by consumers to Defendants for goods and services that were either not received or in a workmanlike manner.

---

<sup>7</sup> Should the materials ordered by Defendant for work that was not completed in fact be "special order," and non-refundable as Defendant testified to, Defendant failed to properly list the cost of the special order materials pursuant to the Home Improvement Consumer Protection Act, § 517.7(a)(9). (N.T. March 21, 2024, 100, 101, 107).

Pursuant to the authority vested in the Consumer Protection Law, 73 P.S. § 201-8(b), Defendants shall hereby pay \$12,000.00 in civil penalties, which represents a penalty of one thousand dollars (\$1,000.00) per consumer that was harmed, and three-thousand (\$3,000.00) for those consumers who were over the age of sixty (60) at the time of defendants' violations.

The Court finds and therefore holds it is in the public's best interest to permanently enjoin Defendants from their unfair and deceptive business practices, acts, and methods. Defendants are enjoined from holding a license as a Home Improvement Contractor, and enjoined from operating a home improvement. The Court finds in favor of the Commonwealth of Pennsylvania, and against Independent Construction Builders LLC and Vincent Vince.

**END OF OPINION**