

11-0681

Lindal Cedar Homes

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JEFFERSON COUNTY
CIRCUIT CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

JAMES FILLINGER, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 08-C-393
(Judge David H. Sanders)

LINDAL CEDAR HOMES, et al.,

Defendants.

FINAL JUDGMENT ORDER

By Order dated October 16, 2009, this Court granted default judgment in favor of Plaintiffs and against all Defendants, jointly and severally. Thereafter, on January 5, 2010, a hearing was held to determine Plaintiffs' damages, if any. Thereafter, Defendant Victoria Drumheller filed a Motion to Vacate Default Judgment or in the Alternative Reduce Damages Sought. Based upon said motion and the response and replies thereto, all pleadings to date and the evidence adduced at the damages hearing, this Court makes the following findings of fact and conclusions of law:

1. All four (4) Defendants were properly served with the Complaint and Summons individually or presumably through an authorized agent, Victoria Drumheller as confirmed by the Returns of Service.
2. Victoria Drumheller, *pro se*, filed an Answer on behalf of all four (4) Defendants.
3. A corporation generally may not appear in court *pro se*, but must be represented by counsel. 19 C.J.S. Corporations § 796 (2010).
4. On October 19, 2009, upon the failure of any Defendant to participate in discovery and the failure of any Defendant to appear at the pre-trial conference, this Court granted default judgment against all Defendants, jointly and severally.

5. The motion to vacate the default judgment against the corporate Defendants was filed only by Defendant Drumheller. Michael E. Snyder, Esq., has only appeared in this matter on behalf of Defendant Drumheller. Accordingly, as the corporate Defendants remain unrepresented at this time and *pro se*, the default judgment must be confirmed. Mr. Snyder and Defendant Drumheller do not have the representative capacity to vacate the default judgment for the corporate Defendants.
6. Nevertheless, default judgment is proper against all Defendants as Victoria Drumheller is an authorized agent for all three (3) corporate Defendants.
7. Pursuant to Rule 4 of the West Virginia Rules of Civil Procedure, service on a domestic private corporation is proper by “delivering a copy of the summons and complaint to an officer, director, trustee thereof; or, if no such officer, director, or trustee be found, by delivering a copy thereof to any agent of the corporation...” W. Va. R. C. P. 4 (2010).
8. Victoria Drumheller is an agent of all three (3) corporate Defendants. Regarding Defendant Lindal Cedar Homes, Victoria Drumheller is an authorized distributor. Regarding Defendant Engineering Construction Support, Inc., Victoria Drumheller’s personal address (P.O. Box 40, Harpers Ferry, WV, 25425) is listed as the local business address for the company. Additionally, Victoria Drumheller signed checks, as an agent for Defendant Engineering Construction Support, Inc., for work performed by Plaintiffs. Victoria Drumheller also signed checks as an agent for Defendant D. F. Briarpatch, LLC.
9. Accordingly, as an authorized agent for all three (3) corporate Defendants, service on said Defendants was proper. The corporate Defendants did not properly respond to the

Complaint or discovery requests; therefore, default judgment was proper against these Defendants.

10. Plaintiffs propounded written discovery requests upon Defendant Drumheller on or around April 6, 2009. Defendant Drumheller did not respond. Plaintiffs further requested the deposition of Defendant Drumheller by letter dated August 25, 2009. Defendant Drumheller did not respond. On September 16, 2009, Defendant Drumheller failed to appear for the pre-trial conference in this matter.
11. The proper address for Defendant Drumheller was and remains P.O. Box 40, Harpers Ferry, WV, 25425. Defendant Drumheller has not alleged that she did not receive copies of the discovery requests and letters from counsel. Further, her reasons for not attending the pre-trial conference are not excusable. Accordingly, the default judgment against Defendant Drumheller should be and hereby is confirmed.
12. Based upon the evidence adduced at the damages hearing, Plaintiffs have been damaged in the total principle amount of at least \$60,871.60, plus a ten percent (10%) late fee according to the contract, for total damages of \$66,958.76.
13. As clearly identified with Exhibits A, B and C admitted into evidence at the damages hearing, and confirmed by witness testimony, Plaintiffs performed work for the Defendants that they were not properly compensated for. Plaintiffs concede that some of the charges for work performed did not comply with the applicable contract, and therefore recalculated their principal damages. During cross-examination, it became clear that the record-keeping of Plaintiffs was poor and that some of the work had been unsatisfactorily performed. This Court was not persuaded to award damages in the full amount. The Court believes Plaintiffs are entitled to damages in the amount of

\$45,000.00. This amount, plus a ten percent (10%) late fee according to the contract, or \$4,500.00, confirms a total damages amount of \$49,400.00.

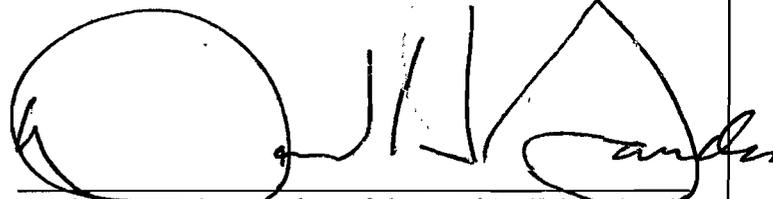
It is accordingly **ADJUDGED** and **ORDERED** that judgment is granted in favor of Plaintiffs and against all Defendants, jointly and severally, for the sum certain amount of \$49,400.00, plus the costs of this action. Interest shall accrue at the statutory rate as of the date of the entry of this order.

The Court notes any objections of the parties for the record.

This matter shall be stricken from the Court's docket and placed among causes ended.

The Clerk is directed to enter this Order and transmit copies of this Order to all *pro se* parties and counsel of record.

Entered: 3/22/11


David H. Sanders, Judge of the 23rd Judicial Circuit

C. Straech
M. Snyder
Lindel Cedar Homes
c/o V. Drumbhellen
D.F. Brianpatch, LLC.
Engineering Construction

3-23-11
BC

A TRUE COPY
ATTEST:

LAURA E. RATTENNI
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, W.VA.

BY B. Chalk
DEPUTY CLERK