

52,066

FILED IN CHAMBERS  
11/17/97  
Luther D. Thomas, Clerk  
D. Wilford  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

RALPH AMEY and JOAN AMEY;  
Plaintiffs,

v.

SOUTHERNLAND HOME  
IMPROVEMENT, CO.,

Defendant.

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CIVIL ACTION

FILE NO. 1:96-CV-3241-JOF

ORDER AND JUDGMENT

The Court entered a default judgment in this case as to liability in its Order of September 3, 1997. The case came on for a hearing on damages on November 5, 1997. After considering the briefs, affidavits, and testimony submitted by the Plaintiffs the Court enters judgment as follows:

I. MONETARY DAMAGES

(1) Plaintiffs are awarded \$2000.00 statutory damages pursuant to 15 U.S.C. §1640(a)(2)(A)(iii) for Defendant's initial violations of the Truth in Lending Act, 15 U.S.C. §1601 et. seq. (TILA). The three specific TILA provisions violated were set forth by the Court in its Order of September 3, 1997: 15 U.S.C. §1638(a)(6) and 12 C.F.R. §226.18(g); 15 U.S.C. §1635(a) and 12 C.F.R. §226.23(a)(1) and (b); and 12 C.F.R. §226.23(c).

(2) Plaintiffs are awarded \$2000.00 statutory damages pursuant to 15 U.S.C. §1640(a)(2)(A)(iii) for Defendant's subsequent TILA violation when it failed to terminate its security interest in Plaintiffs' home within 20 days of Plaintiffs' giving it notice of rescission. See 15 U.S.C. §1635(b) and 12 C.F.R. §226.23(d)(2).

(3) Plaintiffs are awarded \$14,888.80 pursuant to O.C.G.A. §10-1-15(c), for Defendant's wilful violation of O.C.G.A. §10-1-3(b), a provision of the Georgia Retail Installment and Home Solicitation Sales Act. This sum is twice the finance charge stated in the contract in this case.

(4) Plaintiffs are awarded actual damages under TILA, pursuant to 15 U.S.C. §1640(a)(1), of \$3140.00. This is the cost of repairs to the house necessitated by the work of Defendant. Such damages are appropriate due to the Defendant's "spiking," that is, failing to delay performance until the rescission period expired, in violation of 12 C.F.R. §226.23(c). Because of the spiking, Plaintiffs never had an opportunity to cancel the contract. The amount of actual damages has been established by Plaintiffs' expert witness as follows based upon the cost of correction to Defendant's work: (a) Replacement of bad wood in bathroom and front room: \$810.00; (b) install new flooring in bathroom and new vinyl floor: \$120.00; (c ) install new commode: \$120.00; (d) install new storm doors and replace damage in back door: \$170.00; (e) paint all rooms inside house \$1920.00.

(5) Plaintiffs are awarded attorneys fees of \$8335.00 pursuant to 15 U.S.C. §1640(a)(3). Fees have been calculated at the rate of \$150.00 an hour for Mr. Leshaw, and \$100.00 an hour for Ms. Garcia, amounts the Court finds reasonable.

## II. EQUITABLE RELIEF


The Defendant has failed to terminate its security interest on Plaintiffs' home although Plaintiffs' have rescinded their loan transaction with Defendant. Pursuant to Fed. R. Civ. P. 70, the Court hereby **cancels the Deed to Secure Debt held by Defendant on Plaintiffs' property at 2414 Perry Blvd., Atlanta, Fulton County, Georgia 30318. The Deed to Secure Debt, recorded in the Fulton County records at Deed Book 21157, Page 67, is hereby Ordered**

**and Declared canceled.** This Order shall be filed by the Clerk of the Fulton County Superior Court, or other responsible official, in the Fulton County Deed records, and the cancellation of the security interest shall be cross-referenced on the Deed to Secure Debt found at Deed Book 21157, Page 67.

III. JUDGMENT

The Clerk shall enter Judgment for the Plaintiffs in this case in the amount of \$30,363.80. Plaintiffs shall also have Judgment in the nature of Cancellation of the Security Deed recorded on their home, recorded at Deed Book 21157, Page 67, in the Fulton County, Georgia Deed records. The Clerk shall issue a Writ of Execution in favor of the Plaintiffs in the amount of \$30,363.80. The Clerk shall issue such other documents as may be necessary, including a certified copy of this order, to effectuate the equitable relief granted herein.

This 17<sup>th</sup> day of November, 1997.

  
J. OWEN FORRESTER  
UNITED STATES DISTRICT JUDGE

**ENTERED ON DOCKET**

**NOV 18 1997**

**BY**  
**L.D.F. CLERK**  
**DEPUTY CLERK**