

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

ENDORSED COPY

RODDIE CHAVARRIA AND
NORMA CASTANEDA,

Plaintiffs,

vs.

FLEETWOOD RETAIL CORPORATION
OF NEW MEXICO,

Defendant.

FILED

'02 AUG 29 P2:43

NO. CV-00-1049
DISTRICT COURT
DONA ANA COUNTY, NM
NA JUDGE ROBLES

**COURT'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

THIS MATTER having come on for trial and the Court having heard evidence, examined exhibits, heard argument of counsel and being otherwise fully advised, finds and concludes as follows:

FINDINGS OF FACT

1. Fleetwood is a seller of mobile homes with a sales office in Las Cruces, New Mexico, at all times relevant to this cause of action.
2. Roddie Chavarria and Norma Castaneda are residents of Las Cruces, New Mexico.
3. Mr. Chavarria has worked as a custodian at New Mexico State University for 14 years.
4. Ms. Castaneda has worked as a presser at Alameda Dry Cleaning for approximately 6 years.
5. On October 6, 1999 the lender, GreenPoint, approved the Plaintiffs to purchase a four bedroom, 1568 square-foot mobile home, 2000 model year Fleetwood model 4564B, costing \$46,000.00 for the home and \$31,000.00 for the land.

6. Through a series of misrepresentations, Fleetwood obtained the Plaintiffs' signatures on a contract to purchase a three bedroom, 1120 square-foot mobile home, Fleetwood model 4403V, costing virtually the same amount for the home and land as did the four bedroom home.

7. In order to convince GreenPoint Credit to loan the same amount of money for the small three bedroom home as for the large, four bedroom, Fleetwood misrepresented to GreenPoint that it also was building a garage, at a cost of \$7,500.00, and decks, at a cost of \$2,000.00, as part of the total price .

8. Fleetwood then falsely certified to GreenPoint that the construction of all improvements, including the garage and decks, had been completed on the Castaneda/Chavarria property.

9. GreenPoint relied on that certification and would not have disbursed the \$7,500.00 for the garage and \$2,000.00 for the decks, if they had known those items were not constructed.

10. If Fleetwood had not deceived GreenPoint into disbursing \$9,500.00 for the non-existent garage and decks, GreenPoint could easily have rewritten the Plaintiffs' loan, reducing the principal by \$9,500.00, reducing monthly payments from \$635.00 to \$556.00, and reducing total finance charges by about \$28,000.00.

11. By misleading Plaintiffs about the lender's approval of the four bedroom home, Fleetwood jammed Plaintiffs and their four teenage children into a tiny residence, solely to enhance Fleetwood's profits on the transaction.

12. In September and October, 1999, Fleetwood advertised mobile home sales with "90 days no payment."

13. Mr. Chavarria and Ms. Castaneda relied on Fleetwood's representations.

14. Ms. Castaneda met with Devin Pike, the salesman, and completed a special order for the home, in which she gave up four standard features costing \$1,700.00 (deleting a refrigerator,

dishwasher, second sink in the master bathroom and downgrading from a garden tub to a standard tub) in exchange for adding three features (window in master bedroom, commercial grade carpeting and larger closets in two bedrooms).

15. In discussions during the extended sales transaction, Fleetwood made numerous statements to Ms. Castaneda and Mr. Chavarria which were not true:

- a. The buyers would not have to make any payments for 90 days.
- b. The buyers were getting a custom or special order home.
- c. The bank (GreenPoint) had turned down the buyers' credit application to purchase a four bedroom, 1568 square-foot mobile home.
- d. The buyers were not going to be charged for a garage.
- e. That it was giving the Plaintiffs \$8,409.20 net for the mobile home they would trade to Fleetwood.
- f. The buyers were receiving actual value for trading in Mr. Chavarria's mobile home.

16. These statements were material to the transaction between the parties.

17. These statements may, tended to or did deceive the Plaintiffs.

18. Fleetwood made these misrepresentations willfully.

19. Fleetwood knew these representations were false or made them with reckless disregard for the truth.

20. Fleetwood made the representations to Ms. Castaneda and Mr. Chavarria with the intent to deceive them and to induce them to rely on the representations.

21. Ms. Castaneda and Mr. Chavarria did rely on Fleetwood's representations.

22. Fleetwood also failed to disclose material information to the Plaintiffs, that it was

intending to obtain and then did obtain \$9,500.00 in loan proceeds that otherwise would not be disbursed, by misrepresenting to GreenPoint that it was constructing a garage and two decks.

23. A person must examine a used mobile home in order to establish a value for it.

24. The only persons in the mobile home industry who examined the home Plaintiffs were trading to Fleetwood were Bob Lancaster and Devin Pike.

25. Devin Pike certified that Mr. Chavarria's mobile home was worth \$11,299.20.

26. Devin Pike and Bob Lancaster represented to GreenPoint that the net value of Mr. Chavarria's mobile home was worth between \$8,322.00 and \$9,216.00.

27. Fleetwood was a willing buyer which contracted to pay the price of \$11,299.20 for the Plaintiffs' trade-in mobile home.

28. The N.A.D.A. worksheet value for Mr. Chavarria's trade-in was \$11,349.

29. The net value of the trade-in appears on various documents as both "net allowance" and "cash," which is a distinction without a difference.

30. On November 17, 1999, the lender, GreenPoint, again approved the buyers for a four bedroom, 1568 square-foot mobile home, 2000 model year Fleetwood model 4564B, costing \$39,100.00 for the home and \$38,500.00 for the land and improvements, virtually the same total price as the October 6 approval.

31. GreenPoint never turned down Plaintiffs for a loan on a four bedroom mobile home.

32. The evidence concerning the falsity of Fleetwood's representations and its intent to deceive Plaintiffs is clear and convincing.

33. The N.A.D.A. book value of Mr. Chavarria's mobile home in October and November, 1999, was \$8,400.00.

34. Mr. Chavarria would not have traded his mobile home to Fleetwood for a new home, if he had known they were only giving him about \$900.00 instead of the \$8,409.20 promised.

35. Fleetwood later sold Mr. Chavarria's mobile home to a wholesaler and kept the money as part of its profits.

36. At the time Mr. Chavarria traded his mobile home to Fleetwood, Fleetwood intended to deprive him of \$7,500.00 of the value of his mobile home.

37. Plaintiffs were damaged in the amount of \$7,500.00 by Fleetwood's actions with respect to the trade-in.

38. Plaintiffs moved into the home on or about December 18, 1999.

39. Plaintiffs were billed for interest on the unpaid balance of the note, which was first due December 23, 1999, and they received billing statements in January and February, 2000.

40. Plaintiff Chavarria gave the first two billing statements to Bob Lancaster, who said he would take care of them.

41. Fleetwood took advantage of Plaintiffs' lack of knowledge, ability and/or experience to a grossly unfair degree.

42. The transaction involved a great disparity in value between the price paid and value received.

43. Fleetwood failed to provide Plaintiffs with a dealer's warranty.

44. Jo Guiney was the senior loan processor at GreenPoint Credit and handled the Chavarria loan.

45. Ms. Guiney dealt only with Fleetwood's Las Cruces office – not the Portland centralized financing office or the Albuquerque office.

46. GreenPoint told Bob Lancaster the markup for the mobile home was too high, so Fleetwood agreed to lower the cash price of the home and to build a full garage.

47. The loan from GreenPoint to Ms. Castaneda and Mr. Chavarria was an interim construction loan.

48. Ms. Castaneda and Mr. Chavarria were charged ten (10) points for the loan from GreenPoint to them.

49. Fleetwood spoke with GreenPoint regarding the terms and conditions of the loan prior to the closing of the loan.

50. Fleetwood prepared and provided documentation to obtain GreenPoint's approval of a loan to Ms. Castaneda and Mr. Chavarria.

51. Ms. Guiney and GreenPoint relied on the documents faxed by Fleetwood, verifying the customers' income.

52. Fleetwood provided false information to GreenPoint about Ms. Castaneda's income, claiming she worked for Flores Dry Cleaning.

53. Fleetwood created and supplied to GreenPoint a fake document showing additional income for Ms. Castaneda for Flores Dry Cleaning.

54. GreenPoint relied on the false information provided by Fleetwood regarding Ms. Castaneda's earnings, in approving the loan.

55. Fleetwood provided to GreenPoint information about a person who supposedly was qualified to verify Ms. Castaneda's additional employment.

56. That person pretended to be Ms. Castaneda's employer and verified to GreenPoint non-existent employment for Ms. Castaneda.

57. GreenPoint relied on the false information supplied by that person.

58. Neither Ms. Castaneda or Mr. Chavarria spoke with anyone at GreenPoint until after the loan had closed.

59. Fleetwood provided false information regarding the transaction by stating to GreenPoint that the construction would include a garage.

60. Fleetwood provided false information regarding the transaction by stating to GreenPoint that the construction would include decks at the front and back of their mobile home.

61. Fleetwood never intended to construct a garage on the Castaneda/Chavarria property.

62. Fleetwood never intended to construct decks on the Castaneda/Chavarria property.

63. GreenPoint relied on Fleetwood's representation that decks were included in the land/home package that Ms. Castaneda and Mr. Chavarria were purchasing.

64. The Note for the construction loan was executed directly between GreenPoint Credit and the Plaintiffs.

65. At the same time that Plaintiffs and GreenPoint entered into the construction loan agreement, Plaintiffs entered into a Construction Loan Agreement with GreenPoint.

66. The Construction Loan Agreement made GreenPoint Plaintiffs' agent for disbursement of proceeds.

67. All the funds which GreenPoint disbursed to Fleetwood were monies which belonged to Plaintiffs, who had borrowed the entire sum from GreenPoint.

68. The construction loan agreement required that the contractor request an advance of loan proceeds after certifying that all improvements had been duly completed.

69. On or about January 10, 2000, Fleetwood forged the signature of Plaintiffs on two documents, a revised credit application and a request to convert the construction loan to permanent status.

70. Ms. Guiney made disbursements to Fleetwood based on forms sent by Fleetwood, certifying that the work has been completed.

71. GreenPoint relied on these forms and would not have made the disbursements to Fleetwood unless Fleetwood certified that the work had been performed.

72. After final disbursement, Mr. Chavarria called Ms. Guiney complaining that there was no garage. Ms. Guiney called Mr. Lancaster, who told her the garage was being completed.

73. There was an invoice for the garage in the file from a Las Cruces contractor.

74. Ms. Guiney called the number for the contractor, which did not exist, and she also called information and there was no listing for the supposed contractor.

75. GreenPoint would not have disbursed the \$7,500.00 for the garage if they knew the garage wasn't there.

76. Fleetwood falsely certified to GreenPoint that a garage had been constructed on the Castaneda/Chavarria property.

77. Fleetwood falsely certified to GreenPoint that decks had been placed on the Castanea/Chavarria property.

78. Fleetwood obtained money from GreenPoint as an advancement of the loan to Ms. Castaneda/Ms. Chavarria by falsely certifying the construction of a garage.

79. Fleetwood obtained money from GreenPoint as an advancement of the loan to Ms. Castaneda/Mr. Chavarria by falsely certifying the installing of decks.

80. GreenPoint relied on Fleetwood's false representations of having constructed a garage.

81. GreenPoint relied on Fleetwood's false representations of the value of a garage.

82. GreenPoint relied on Fleetwood's false representations of having installed decks.

83. Without Fleetwood's false representations regarding a garage, GreenPoint would not have loaned Ms. Castaneda and Mr. Chavarria the money to purchase the three bedroom mobile home.

84. If Fleetwood had not deceived GreenPoint into disbursing \$9,500.00 for the non-existent garage and decks, GreenPoint could easily have rewritten the loan, reducing the principal by \$9,500.00 and reducing the monthly payments from \$635.00 to \$556.00.

85. Fleetwood misrepresented the value that they were allocating in the transaction to Mr. Chavarria's 1980 Melody trailer to Ms. Castaneda and Mr. Chavarria.

86. Fleetwood used the value and money from a non-existent, falsely-certified-as-completed garage to make up the difference between the value they allocated to Mr. Chavarria's 1980 Melody trailer and the value they reported to Mr. Chavarria and GreenPoint.

87. Fleetwood did not provide Ms. Castaneda and Mr. Chavarria with decks.

88. Neither Fleetwood, nor Bob Lancaster, nor any Fleetwood employee associated with the transaction, possessed a contractor's license from the New Mexico Construction Industries Division.

89. Fleetwood billed and collected from GreenPoint \$4,500.00 for construction done in association with the placement of the Plaintiffs' home.

90. No contractor licensed by the New Mexico Construction Industries Division performed the construction work for which Fleetwood billed and collected.

91. Under the Note signed by Plaintiffs, their first payment was due December 23, 1999.

92. Fleetwood was concerned about the possibility that a salesperson would falsify a customer's income or employment, but Fleetwood did not verify Plaintiffs' income.

93. Fleetwood convened a national meeting in the fall, 1999, as A Call to Integrity, to address problems of falsification of information.

94. As a result of the Call to Integrity meeting, Fleetwood adopted a standard of zero tolerance, resulting in immediate termination of any employee, if it discovered the employee had falsified any information submitted in support of a loan.

95. James Gifford, the Albuquerque Zone Vice President and Evangeline Bustamante , Albuquerque Zone Office Manager, warned Fleetwood's home office about the risks and problems of allowing local offices to submit financing applications without the review of the Albuquerque office.

96. Fleetwood told Mr. Gifford and Ms. Bustamante that it did not want the zone office to police the files and transactions of the local offices like the Las Cruces office.

97. The Las Cruces local office engaged in the practice of falsifying income and down payment to lenders, as predicted by Mr. Gifford and Ms. Bustamante .

98. The Houston home office of Fleetwood received a "tool belt sheet" before delivery of the home, which showed the improper \$11,299.00 "over-allowance" on the trade-in and the \$7,500.00 "construction income" from the garage, but it did not reject or investigate the transaction.

99. The Albuquerque zone office of Fleetwood received a "commission sheet" from its Las Cruces office, which showed the improper \$7,500.00 "construction income" from the garage, and it then paid Devin Pike full commission based on these terms, without rejecting the deal or investigating the impropriety.

100. Despite the discovery of the fraud pertaining to the Plaintiffs' transaction, William Kasprzyk, Fleetwood's district zone manager did not terminate or even discipline Bob Lancaster or Devin Pike immediately pursuant to Fleetwood's "Call to Integrity" zero tolerance policy.

101. Mr. Kasprzyk instructed Lancaster to try to substitute a fence for the garage, and Fleetwood built a fence around half the property, without the permission of the Plaintiffs.

102. The fence had a value of less than \$1,000.00.

103. Only after verifying a complaint from a second customer, that Lancaster and Pike had attempted to falsify income in another transaction, did Fleetwood fire the pair.

104. Despite the discovery of the fraud in the Plaintiffs' transaction, there were no changes in the operation of Fleetwood's Albuquerque office.

105. Despite the discovery of the fraud in the Plaintiffs' transaction, there was no criticism from Fleetwood's corporate offices of its operations.

106. Fleetwood's deals involved discount points 80% to 85% of the time.

107. These discount points were part of the amount financed, of which Fleetwood received 1.5%.

108. Fleetwood profited in the sale by receiving:

	<u>ITEM</u>	<u>PRICE</u>	<u>COST</u>	<u>PROFIT</u>
A.	130% of the adjusted invoice	\$24,064.00	\$18,511.00	\$5,553.00
B.	Air conditioning unit	\$ 1,500.00	\$ 750.00	\$ 750.00
C.	Skirting		\$ 750.00	\$ 250.00
D.	Set-up of mobile home	\$ 4,000.00	\$ 3,200.00	\$ 800.00
E.	1.5% of amount financed as finance income			\$ 1,125.00
F.	33% share of insurance premium			\$ 567.60
G.	Return of wheels and axles			\$ 432.00

H. Manufacturer's volume incentive program			\$ 1,480.00
I. "Decks"	\$ 2,000.00	\$ 150.00 (Stairs)	\$ 1,850.00

TOTAL	\$31,564.00	\$23,361.00	\$12,807.60

109. Fleetwood received a letter from a customer April 3, 2000, stating that Mr. Pike told this customer that Mr. Pike could arrange to falsify the customer's income to qualify him for buying a mobile home. The letter also said that Mr. Lancaster verbally assailed this customer for declining to buy a mobile home under these circumstances.

110. On April 4, 2000, Fleetwood fired Devin Pike for falsification of down payments after Mr. Pike admitted the allegations in the customer's letter.

111. On April 3, 2000, Fleetwood fired Bob Lancaster for "continuous complaints from loan processors, home consultants [sales people] and most of all customers."

112. Fleetwood delivered a home without the three custom features (window in master bathroom, commercial grade carpeting and larger closets in two bedrooms) upon which the buyers and Fleetwood had agreed, valued at \$1,700.00.

113. Despite the buyers' purchase of the land and the conversion to permanent 30 year financing, Fleetwood built a temporary rather than permanent foundation, without telling the buyers.

114. It would have cost Fleetwood another \$1,000.00 to construct a permanent foundation.

115. Fleetwood charged the Plaintiffs \$4,500.00 for construction including the foundation.

116. Plaintiff's home was appraised on the basis of having a permanent foundation.

117. The home as delivered and set up had the following defects:

- a. There is a 3 to 3 ½ inch gap on the east side top of the mobile home and a 3/4 inch gap on the west side top of the mobile home.
- b. Light actually shined into the home from the outside from openings other than windows, and dust and butts entered as well.
- c. The mobile home sides are not joined together properly, leaving in at least one place, a 3/4 inch gap.
- d. In numerous places, the Sheetrock on the ceiling had its grain and texture going in opposite directions.
- e. Some of the Sheetrock in the ceiling areas was coming loose.
- f. Trim around some of the doors on the walls and other openings was coming loose.
- g. The exterior door jam was off plumb.
- h. The roof grommet where electrical service enters the home was torn, leaving an opening for water to run inside.
- i. The marriage knot line is not closed at the top edge.
- j. An interior wall is bowed by approximately 1 inch.
- k. In order to cover up some irregularities, moldings have been put off at different angles.
- l. The floors are out of level.
- m. The evaporative cooler opening was covered by a cap that was held in place with duct tape.

118. Plaintiffs reported these deficiencies to Fleetwood numerous times in the first two months after moving into the mobile home.

119. Plaintiffs' bathtub was cracked and was replaced with another bathtub that was cracked.

120. Plaintiffs had a water leak in the wall which Fleetwood repaired by cutting an opening in the wall, but the wall has never been repaired.

121. Fleetwood's district zone manager said he could not understand why the mobile home ever left the dealer's lot in the condition it was.

122. Plaintiffs also reported these deficiencies to Fleetwood in great detail in paragraph 68, sections i-xi, of the Complaint filed in Federal District Court, District of New Mexico No. CIV-00-769 BB/LCS, on May 26, 2000.

123. Plaintiffs also reported these deficiencies to Fleetwood in great detail in the Complaint filed in this case on September 21, 2000, paragraph 35, sections a-k.

124. The amount necessary to correct the warranty deficiencies is impossible to calculate without a sub-surface inspection.

125. Fleetwood through its attorney stated it was willing to remedy the deficiencies.

126. Fleetwood still has not shown remorse for its wrongful conduct, by virtue of the following conduct.

- a. Failing and refusing to correct the many deficiencies in the home for more than two years.
- b. Asserting Plaintiffs received a "good deal" paying the same price for a small three bedroom mobile home as they were approved to pay for a large four bedroom mobile home;
- c. Asserting that Plaintiffs did not pay for the non-existent garage or decks despite the disbursement of \$9,500.00 by GreenPoint solely for those items;
- d. Asserting that Plaintiffs received everything that was promised;

- e. Asserting that the construction of an unwanted fence around half the property relieved it from claims concerning the failure to build a garage and decks;
- f. Accusing the customers of "complicity" for failing to take a lawyer to closing, to catch Fleetwood's false statements;
- g. Accusing the customers of failing to complain often enough about the condition of the home;
- h. Accusing GreenPoint of encouraging Fleetwood's fraudulent conduct by failing to send a staff employee to conduct a site visit instead of relying on Fleetwood's written representations.

127. Fleetwood Retail Corporation is a newly formed subsidiary of Fleetwood Enterprises, Inc., a Fortune 500 company listed on the New York Stock Exchange and the leading producer of manufactured housing and recreational vehicles.

128. In fiscal year 2001, Fleetwood's annual sales were \$2,531,463.000.00.

129. In fiscal year 2000, the year in which Plaintiffs' transaction took place, Fleetwood's annual sales were \$3,769,534.000.00.

130. Fleetwood's shareholder equity at the end of fiscal year 2001 was \$286,148,000.00.

131. Plaintiffs sustained actual damages in the amount of \$7,500.00 as a result of Fleetwood's falsely certifying that it had constructed a garage.

132. Plaintiffs sustained actual damages in the amount of \$2,000.00 as a result of Fleetwood's falsely certifying that it had constructed decks.

133. Plaintiffs sustained actual damages in the amount of \$1,700.00 as a result of Fleetwood's failure to provide the custom features specially ordered.

134. Plaintiffs sustained actual damages in the amount of \$1,000.00 as a result of Fleetwood's failure to construct a permanent foundation for the home.

135. Plaintiffs sustained actual damages in the amount of \$1,720.00 as a result of Fleetwood's unlicensed sale of insurance.

136. Plaintiffs sustained actual damages in the amount of \$300.00 in higher utility costs as a result of Fleetwood's failure to set-up the mobile home properly.

137. Plaintiffs sustained actual damages in the amount of \$2,500.00 for their inconvenience and aggravation, including but not limited to infiltration of dust, wind and insects as a result of Fleetwood's failure to set-up the mobile home properly.

138. Defendant introduced no evidence pertaining to possession of the note.

139. Defendant's counsel represented to the Court that Defendant did not know who had possession of the original note at the time of trial.

140. The Defendant Fleetwood Retail Corporation of New Mexico is a New Mexico (hereinafter "FLEETWOOD") is a New Mexico corporation authorized to do business and doing business in the State of New Mexico.

141. That at all material times hereto, Fleetwood, was in the business of selling manufactured homes and related accessories to the general public.

142. That at all material times hereto, Robert Lancaster was employed by Fleetwood as the Sales Manager at the Fleetwood facility located in Las Cruces, New Mexico until approximately March 31, 2000.

143. That at all material times hereto, Devin Pike was employed as a home consultant/sales representative at the Fleetwood facility located in Las Cruces, New Mexico until approximately April 4, 2000.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. Bob Lancaster was acting within the course and scope with his employment with Fleetwood in his dealings with Ms. Castaneda and Mr. Chavarria.
3. Devin Pike was acting within the course and scope of this employment with Fleetwood in his dealings with Ms. Castaneda and Mr. Chavarria.
4. William Kasprzyk, Evangeline Bustamante, James Gifford and Phil Signor were acting within the course and scope of their employment with Fleetwood in their dealings with Ms. Castaneda and Mr. Chavarria.
5. The actions of Fleetwood's employees are viewed cumulatively to determine the Defendant's mental state (intent to commit tortuous acts of fraud and conversion) to warrant imposition of punitive damages. Clay v. Ferrellgas, Inc., 118 N.M. 266, 270 (1994).
6. Under New Mexico Manufactured Housing Division Regulations, (14 NMAC 12.2), section 21.1, a licensed mobile home dealer shall adequately supervise and control employees, which Fleetwood failed to do.
7. Fleetwood ratified the actions of Mr. Lancaster and Mr. Pike by paying Mr. Pike's full commission on the sale.
8. Once Fleetwood discovered the fraud as to the garage and the decks, it ratified the actions of Mr. Lancaster by deciding not to terminate Mr. Lancaster and asking him to have a fence installed on the property, without permission of the Plaintiffs, in an attempt to make the loan palatable to the bank.
9. Fleetwood ratified the conduct of Mr. Lancaster and Mr. Pike by the position it has taken in this lawsuit.

10. Fraud exists where a false representation is made to a third party, resulting in injury to the Plaintiff. Buxton Manufacturing Company, Inc. v. Valiant Moving & Storage, Inc., 657 N.Y.S.2d 450, 451; 239 A.D.2d 452, 454 (Supreme Court of N.Y. Appellate Division 1997).

11. Plaintiffs proved by clear and convincing evidence Fleetwood's misrepresentation of material fact.

12. Plaintiffs proved by clear and convincing evidence Fleetwood's knowledge of the falsity of its misrepresentations.

13. Plaintiffs proved by clear and convincing evidence that Fleetwood's misrepresentation were made with the intent to deceive Plaintiffs.

14. Plaintiffs proved by clear and convincing evidence that Fleetwood induced Plaintiffs and their agent, GreenPoint, to rely on Fleetwood misrepresentations, and Plaintiffs and GreenPoint did in fact rely.

15. Ms. Castaneda and Mr. Chavarria are entitled to punitive damages for the fraud committed, in order to deter Fleetwood and other mobile home dealers from committing fraud of this nature.

16. Fleetwood fraudulently obtained \$9,500.00 from Plaintiffs' loan proceeds by falsely certifying construction of a garage and decks.

17. Fleetwood fraudulently induced Plaintiffs to sign over to them Plaintiffs' 1980 Melody mobile home worth \$8,400.00, for which Plaintiffs received no value.

18. Ms. Castaneda and Mr. Chavarria are entitled to punitive damages for the fraud in the amount of \$250,000.00.

19. Fleetwood unlawfully converted \$9,500.00 in loan proceeds to pay for the non-existent garage and decks.

20. Fleetwood converted \$7,500.00 in value from Mr. Chavarria's trade-in mobile home.
21. Ms. Castaneda and Mr. Chavarria are entitled to punitive damages for the conversion in the amount of \$250,000.00 in order to deter Fleetwood and other mobile home dealers from converting customer funds.
22. Fleetwood violated the New Mexico Unfair Trade Practices Act, § 57-21-1 et seq. by its false or misleading representations pertaining to the garage and decks, in connection with the sale and financing of the mobile home to Ms. Castaneda and Mr. Chavarria.
23. Fleetwood violated the New Mexico Unfair Trade Practices Act, § 57-21-1 et seq. by its false or misleading representations for matters other than those pertaining to the garage and decks, in connection with the sale and financing of the mobile home to Ms. Castanea and Mr. Chavarria.
24. Fleetwood's violations of the Unfair Practices Act, pertaining to the garage and decks, were done willfully.
25. Fleetwood's violations of the Unfair Practices Act, for matters other than those pertaining to the garage and decks, were done willfully.
26. Plaintiffs are entitled to actual damages under the Unfair Practices Act, pertaining to the garage and decks in the amount of \$9,500.00.
27. Plaintiffs are entitled to actual damages under the Unfair Practices Act, for matters other than those pertaining to the garage and decks and insurance, in the amount of \$1,700.00 for the failure to deliver a custom home, plus \$300.00 for additional utility charges, plus \$2,500.00 for other (Paragraph 137) damages.
28. Plaintiffs are entitled to actual damages under the Unfair Practices Act, pertaining to the misrepresentation in the sale of insurance, in the amount of \$1,720.00.

29. Ms. Castaneda and Mr. Chavarria are entitled to have their actual damages trebled under the Unfair Practices Act.

30. Ms. Castaneda and Mr. Chavarria are entitled to their costs and attorneys' fees under the New Mexico Unfair Practices Act, § 57-12-10 NMSA.

31. Ms. Castaneda and Mr. Chavarria are entitled to treble the actual damages under the Unfair Trade Practices Act, as to the garage and decks, in the amount of \$28,500.00.

32. Ms. Castanea and Mr. Chavarria are entitled to treble the actual damages under the Unfair Trade Practices Act, as to matters other than the garage and decks, in the amount of \$13,500.00.

33. Ms. Castaneda and Mr. Chavarria are entitled to treble the actual damages under the Unfair Trade Practices Act, as to matters regarding insurance, in the amount of \$5,160.00.

34. After passage of time for appeal, Plaintiffs must elect a remedy and choose whether to accept damages for violation of the Unfair Trade Practices Act (pertaining to the garage and decks) or to accept damages for fraud or damages for conversion.

35. Fleetwood breached the duty of good faith and fair dealings.

36. Due to Fleetwood's lack of good faith, by failing to repair either the problems with the home or the problems associated with improper installation, the Court should grant equitable relief ordering Fleetwood to pay the costs for a third party to perform the work detailed in the Campbell report and to install a permanent foundation for the home.

37. Fleetwood breached the warranty for merchantability.

38. Plaintiffs are entitled to cure of the deficiencies in the home and foundation.

39. New Mexico law, § 56-8-9, NMSA, 1978, prohibits charging more than three points on an interim construction loan.

40. Federal Law and Regulation, § 12 USCA 1735 (f) and 12 CFR 590.4 preempt state usury laws regarding mobile home sales only if the creditor complies with the consumer protection regulations of 12 CFR 590.4.

41. Fleetwood did not comply with the regulations in 12 CFR 590.4 due to its violations of the New Mexico Unfair Practices Act and New Mexico Insurance Code (matters not covered by Federal preemption of state usury law statute), and by failing to comply with Subsection (f) of 12 CFR 590.4.

42. Pursuant to § 56-8-13, NMSA, 1978, Fleetwood forfeits the entire amount of interest on the loan.

43. New Mexico Insurance Code, § 59A-12-6, NMSA, 1978, requires persons selling or soliciting insurance to be licensed.

44. New Mexico Insurance Code, § 59A-12-24, bars the sharing of commissions on the sale of insurance.

45. New Mexico Insurance Code, §§ 59A-12-2, 6 and 15, and § 59A-11-3, NMSA, 1978, requires that all actual sellers of insurance be licensed, even if the company is licensed to sell insurance.

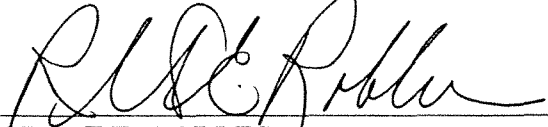
46. Fleetwood violated the New Mexico Insurance Code through the sale of insurance by non-agents and other unlicensed personnel.

47. Fleetwood's violations of the New Mexico Insurance Code were knowingly done.

48. Plaintiffs are entitled to attorneys' fees under the New Mexico Insurance Code.

49. Plaintiffs are entitled to costs as prevailing party on their claims.

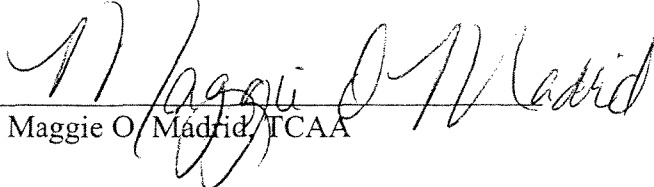
50. Defendant is not entitled to costs or attorney's fees, because its time was spent on defense rather than on enforcement of the note, and it was not successful in enforcing the note.


ROBERT E. ROBLES
DISTRICT JUDGE, DIV. I

CERTIFICATE OF MAILING

I hereby certify that a copy of the above foregoing pleading was mailed on the 29th day of August, 2002 to the following:

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Calvin Hyer, Jr., Esq., P.O. Box 1307, Albuquerque, NM 87103

By: 
Maggie O. Madrid, TCAA