

James A. James
200 *Monticello*
Wayne St

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)
755085

IN THE PORTER SUPERIOR COURT

FILED
VALPARAISO, INDIANA
IN OPEN COURT

ELIZABETH LOHSE,

APR 19 1984

Plaintiff,

V.

Bruce Specht

Cause No. 81PSC-1455

U.S. MECHANICAL CORPORATION,

JUDGE PORTER SUPERIOR COURT

Defendant.

STATE OF INDIANA
LAKE COUNTY
FILED FOR
MAY 2 12 31 PM '84
WILLIAM E. JOHNSON, JR.
RECORDER

ORDER AND JUDGMENT

This cause came to be heard on the motion of Plaintiff, Elizabeth Lohse, for a summary judgment pursuant to Trial Rule 56, and the Court having before it, and considering, the following:

1. The pleading of the parties;
2. The request for admission of fact, propounded upon the defendant by plaintiff (which the Court now finds are deemed admitted by defendant's failure to answer to reply to same);
3. The affidavit of plaintiff, Elizabeth Lohse;
4. The affidavit of one Pearl Harper;
5. The deposition of one Bruce Specht; and
6. The verified affidavit and statement of attorneys fees, submitted by Plaintiff's counsel, Kenneth A. Manning.

And the Court, having heard the oral statements and arguments of Plaintiff's counsel, Kenneth A. Manning, and being fully advised in the premises now finds that there is no genuine issue of fact regarding Counts I, II, III, IV, and V of Plaintiff's Complaint to be determined by the Court; and the Court now finds:

1. The contract and sale by and between plaintiff and defendant, dated March 31, 1980, is a consumer credit sale; that the total debt and obligation of plaintiff under said consumer credit sale is less than \$1,000.00;

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James A. James
LAKE COUNTY

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2. Defendant, U.S. Mechanical Corporation, obtained and procured through deception a mortgage and lien upon the plaintiff's home and residence to secure the payment of the purchase price of the contract dated March 31, 1980; that said mortgage was recorded by defendant in the office of the Recorder of Lake County, Indiana, on April 10, 1980, as Document No. 580471; that said mortgage covers the following described real estate owned by Plaintiff, to-wit:

37-174-4

A tract of land known as the North 84.0 feet of Lot "A" Van Til's Addition to the City of Hammond, Indiana as the same appears of record in Plat Book 19, page 23 in the Office of the Recorder of Lake County, Indiana. Also that part of the South East Quarter of the South East Quarter of Section 9, Township 36 North, Range 9 West of the 2nd Principal Meridian in Lake County, Indiana; More particularly described as being the North 114.0 feet of the following described tract of land: Beginning at a point on the North line of the South East Quarter of the South East Quarter Section 9, Township 36 North, Range 9 West of the 2nd Principal Meridian, said point being 342.42 feet East of the North West corner of the South East Quarter of the South East Quarter Section 9; thence South a distance of 264.0 feet along a line which is parallel to the East line of the said Section 9; thence West 165.0 feet; thence North 264.0 feet to the North line of the South East Quarter of the South East Quarter Section 9, Township 36 North, Range 9 West and thence East a distance of 165.0 feet to the point of beginning, excepting therefrom that part dedicated for a public highway, known as Colorado Avenue, along the East side of the afore-described tract of land, also that part dedicated for a public highway, known as 171st Street, along the North side of the afore-described tract of land. Also known as 7106 Colorado, Hammond, Indiana.

3. The contract and sales by and between plaintiff and defendant dated January 6, 1981, is a "home solicitation" sale for consumer goods.

4. The plaintiff did not receive from defendant any notices of her right to cancel and rescind the sales and contracts dated March 31, 1980, and January 6, 1981.

5. The sales representative and agent of defendant made false, fraudulent and misleading statements and representations to plaintiff, causing and/or inducing her to sign, execute and deliver to defendant the contract dated January 6, 1981.

6. Agents of defendant removed from plaintiff's home her furnace the same day the contract was signed; leaving a partially installed replacement furnace, which furnace was inoperable when defendant's agents left January 6, 1981.

7. Plaintiff delivered, and cause to be delivered, to defendant a Notice of Cancellation/Rescission on January 7, 1981; that said Notice of Cancellation/Rescission cancelled and rescinded the contracts and sales agreements dated March 31, 1980, and January 6, 1981.

8. Defendant has not returned to plaintiff any monies, payments and/or goods, received under said contracts and sales agreements.

9. Plaintiff made a total of \$753.89 in payments to defendant under the sales contract dated March 31, 1980; that plaintiff is entitled to the return of said sum, together with the sum of \$437.44, as and for civil penalty for the truth in lending and U.C.C.C. disclosure violations.

10. That the value of the furnace removed by defendants from plaintiff's home was \$500.00, that plaintiff was forced to buy a new furnace from Meyers Heating and Cooling of Munster, Indiana, for the sum of \$785.00. That plaintiff's actual damages, caused by defendant, under the contract dated January 6, 1981, is \$1,285.00.

11. Plaintiff is entitled to punitive damages in an amount equal to three times her actual damages as a result of the fraudulent, oppressive and unlawful conduct of the defendant, to-wit: \$3,855.00.

12. That plaintiff is entitled to reasonable attorneys fees in the amount and sum of \$2,640.70.

And the Court now concludes that Plaintiff is entitled to judgment against the defendant U.S. Mechanical Corporation as a matter of law; and it is hereby ORDERED, ADJUDGED AND DECREED that Plaintiff's motion for summary judgment is in all respects granted; and it is further

ORDERED, ADJUDGED AND DECREED that the mortgage and lien in favor of U.S. Mechanical Corporation, dated March 31, 1980, and

recorded April 10, 1980, as Document No. 580471 in the Office of the Recorder of Lake County, Indiana; which mortgage covers the following described real estate:

A tract of land known as the North 84.0 feet of Lot "A" Van Til's Addition to the City of Hammond, Indiana as the same appears of record in Plat Book 19, page 23 in the Office of the Recorder of Lake County, Indiana. Also that part of the South East Quarter of the South East Quarter of Section 9, Township 36 North, Range 9 West of the 2nd Principal Meridian in Lake County, Indiana; More particularly described as being the North 114.0 feet of the following described tract of land: Beginning at a point on the North line of the South East Quarter of the South East Quarter Section 9, Township 36 North, Range 9 West of the 2nd Principal Meridian, said point being 342.42 feet East of the North West corner of the South East Quarter of the South East Quarter Section 9; thence South a distance of 264.0 feet along a line which is parallel to the East line of the said Section 9; thence West 165.0 feet; thence North 264.0 feet to the North line of the South East Quarter of the South East Quarter Section 9, Township 36 North, Range 9 West and thence East a distance of 165.0 feet to the point of beginning, excepting therefrom that part dedicated for a public highway, known as Colorado Avenue, along the East side of the afore-described tract of land, also that part dedicated for a public highway, known as 171st Street, along the North side of the afore-described tract of land. Also known as 7106 Colorado Hammond, Indiana;

is hereby held, determined and declared void, and of no legal effect; and it is further

ORDERED, ADJUDGED AND DECREED that Plaintiff shall have judgment against the defendant in the sum of \$8,972.03, together with interest on the sum of \$2,038.39 from January 7, 1981; and it is further

ORDERED that Judgment be entered accordingly. Costs of this action assessed against the defendant.

DATED: 4-19-84

Bruce W. Douglas *llw*
JUDGE, PORTER SUPERIOR COURT

STATE OF INDIANA, COUNTY OF PORTER, ss

I, JOANNE WISEMAN, Clerk of the Superior Court of the County of

Porter in the State of Indiana, do hereby certify that the foregoing is a full, true and complete copy of

ORDER AND JUDGMENT in the Cause Entitled: ELIZABETH LOHSE V. U.S. MECHANICAL CORPORATION, -

Cause No. 81-PSC-1455, April 19, 1984, Judge Bruce W. Douglas:.....

by said Court had in the above entitled cause, as appears of record in my office.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said

Court, at my office at Valparaiso, this 23rd

day of April, A.D. 1984.....

JOANNE WISEMAN

..... Clerk

By... *Betty Cole* Deputy Clerk