

APR 16 2019

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

ALEXANDRA SZCZEPINSKI, et al.)	CASE NO.: CV-2017-11-4603
)	
Plaintiff)	JUDGE JILL LANZINGER
-vs-)	
)	
IMAGEN PHOTOGRAPHY LLC)	<u>ORDER</u>
)	
Defendant)	

- - -

This matter comes upon review of the Magistrate’s Decision filed on March 18, 2019 recommending this Court grant default judgment against Defendants, jointly and severally, and in favor of Plaintiffs, in a total amount of \$25,737.50, plus interest from the date of judgment, and costs. No objections were filed.

The Court has made an independent review and analysis of the issues, appropriate rules of law applicable to the issues in this case, and the Magistrate’s Decision in this case filed pursuant to Civ.R. 53(D). Upon consideration of the Magistrate’s Decision, the Court determines there is no error of law or defect on the face of the Magistrate’s Decision.

The Court further finds the Magistrate’s Decision contains sufficient findings of fact and conclusions of law to allow this Court to make its own independent analysis of the issues and to apply the appropriate rules of law in making its final judgment entry in this matter.

Therefore, pursuant to Civ.R. 53(D), the Court shall adopt the Magistrate’s Decision with its conclusions and findings.

The Court **GRANTS** default judgment against Defendants Nathan Migal and Imagen Photography LLC, jointly and severally, and in favor of all three Plaintiffs, Alexandra Szczepinski, Keven Szczepinski, and George Kappos, in a total amount of \$25,737.50, plus interest from the date of judgment, and costs, awarded as follows:

1. This Court grants judgment in favor of George Kappos, and against Defendants, jointly and severally, as to all issues raised in the Complaint, and awards damages in

the amount of \$12,960.00, representing treble the actual damages of \$4,320.00 caused by Defendants' violations of the Consumer Sales Practices Act, including but not limited to those outlined in the declaratory relief awarded in this Order;

2. This Court grants judgment in favor of Alexandra Szczepinski, and against Defendants, jointly and severally, as to all claims raised in the Complaint, and awards judgment in the amount of \$5,000.00 in non-economic damages cause by Defendants' conduct in violation of the Consumer Sales Practices Act;
3. This Court grants judgment in favor of Kevin Szczepinski, and against Defendants, jointly and severally, as to all claims raised in the Complaint, and awards judgment in the amount of \$5,000.00 in non-economic damages cause by Defendants' conduct in violation of the Consumer Sales Practices Act;
4. Costs are taxed to Defendants;
5. Interest to accrue at five percent (5%) from the date of this judgment;
6. The Court also awards Plaintiffs their reasonable attorney fees under R.C. §1345.09(F)(2) in the amount of \$2,777.50. The Court also notes that the contract attached to the Complaint as Exhibit, the contract between the parties, mandates to recovery of attorney fees by the prevailing party, here Plaintiffs. Plaintiffs produced time records of counsel showing a total of \$3,138.00, of which \$360.40 was for the filing fee costs, and the remainder was fees. The Court finds that the 10.10 hours worked by counsel was reasonable for his case. The Court finds that \$275.00 per hour for both attorneys Dan Myers and Samantha Vajskop is a reasonable rate to charge in the community for this type of case given the experience, reputation, and ability of counsel, the degree of success achieved for Plaintiffs, the issues involved in litigation, and the rates charged customarily in the legal community for this type

of work. Attorneys Myers and Vajskop have exceptional and rare experience in the area of consumer law litigation.

The Court also declares the following conduct, engage in by Defendants, to be unfair, deceptive, and/or unconscionable under the Consumer Sales Practices Act, in violation of R.C. §1345.02 and/or R.C. §1345.03:

1. Defendants engaged in unfair and deceptive conduct when the violation O.A.C. §1109:4-3-09(A)(2) by accepting payment from its customer, George Kappos and allow more than eight (8) weeks to elapse without delivering all of the promised final product/videographer services, and without making a full refund (Compl. ¶52);
2. Defendants engaged in unfair and deceptive conduct when they stalled and evaded in their obligations to Plaintiffs to promptly deliver the services by the contracted date, in violation or O.A.C. §109:4-3-09 (Compl. ¶50-51);
3. Defendants engaged in unfair and deceptive conduct by failing to respond to repeated calls and messages from Plaintiffs (Compl. ¶49);
4. Defendants knowingly breached their contract with Plaintiffs, violating the holding in *Brown v. Spears*, OPIF #10000403, a case published in the Online Public Inspection File prior to the conduct alleged in this case (Compl. ¶48)'

Furthermore, because the wedding videography in this case is unique and cannot be reproduced, because Defendants' unfair and deceptive acts are continuing and still ongoing to this day due to the missing tapes and record, and because damages alone cannot fully compensate Plaintiffs for the harm cause by the failure of Defendants to deliver the final product, this Court orders that, pursuant to R.C. §1345.09(D), which permits this Court to issue an injunction against an act that violates R.C. §1345.01 *et seq.*, Defendants must within thirty (30) days of entry of final judgment in this case, turn over all videos, recordings, and all electronically stored or physically existing recordings of the Kappos-Szczepinski wedding, i.e.

the wedding that occurred on or around October 3, 2015. The recordings to be turned over should be turned over in their current state. Defendants need not make any edits or alterations to the video, or perform any additional services, other than causing transfer of the videos in their current form and condition to Plaintiffs. Defendants are prohibited from deleting, destroying, or otherwise causing the videos, recordings, or files to be lost from this date forward, until after transfer of same has been made to Plaintiffs.

This is a final appealable Order. There is no just cause for delay.

The Clerk of the Summit County Common Pleas Court shall serve upon all parties a notice of this Judgment and its date of entry upon the journal.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Jill Lanzinger". The signature is written in black ink and is positioned above a horizontal line.

JUDGE JILL LANZINGER

CC: ATTORNEY DANIEL J. MYERS
ATTORNEY SAMANTHA A. VAJSKOP

RECEIVED
ATTORNEY GENERAL OF OHIO

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IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

ALEXANDRA SZCZEPINSKI, et al.)	CASE NO. CV-2017-11-4603
)	
Plaintiff)	JUDGE JILL LANZINGER
-vs-)	MAGISTRATE KANDI S. O'CONNOR
)	
IMAGEN PHOTOGRAPHY LLC)	
)	<u>MAGISTRATE'S DECISION</u>
Defendant)	
)	
)	

To the Honorable Jill Lanzinger, Judge of the Court of Common Pleas, Summit

County, Ohio:

Pursuant to Civil Rule of Practice 53, Local Rule of Practice 18, and the Order of Reference made in this case, the Magistrate hereby reports her Decision to the Court, based upon the evidence and exhibits adduced in this matter.

This Court held a damages hearing on March 8, 2019 pursuant to a prior order granting default judgment to Plaintiffs. Defendant Imagen Photography LLC was served with a Complaint and summons, according to the docket, on or around May 24, 2018, via service upon the Secretary of State due to that Defendant's failure to maintain an up to date agent for service of process in the State of Ohio. Defendant Nathan Migal was served via regular mail service to him on September 14, 2018. Neither Defendant had filed an Answer or otherwise responded to the Complaint.

At the damages hearing, the Court took testimony from George Kappos, Alexandra Szczepinski, Kevin Szczepinski, and Daniel Myers, Esq. Attorney Myers testified about the attorney fees in this case. The Court is satisfied that this case involves a consumer transaction under the Consumer Sales Practices Act, which entitles Plaintiffs to actual economic damages, treble actual economic damages, non-economic damages of up to \$5,000 each, attorney fees, statutory damages, declaratory judgment, and injunctive relief. *See, generally*, R.C. 1345.09.

Based on the evidence, the Court grants default judgment against Defendants Nathan Migal and Imagen Photography LLC, jointly and severally, and in favor of all three Plaintiffs, in a total amount of \$25,737.50, plus interest from the date of judgment, and costs, awarded as follows:

1. This Court grants judgment in favor of George Kappos, and against Defendants, jointly and severally, as to all issues raised in the Complaint, and awards damages in the amount of \$12,960, representing treble the actual damages of \$4,320 caused by Defendants' violations of the Consumer Sales Practices Act, including, but not limited to, those outlined in the declaratory relief awarded in this Entry;
2. This Court grants judgment in favor of Alexandra Szczepinski, and against Defendants, jointly and severally, as to all claims raised in the Complaint, and awards judgment in the amount of \$5,000 in non-economic damages caused by Defendants' conduct in violation of the Consumer Sales Practices Act.
3. This Court grants judgment in favor of Kevin Szczepinski, and against Defendants, jointly and severally, as to all claims raised in the Complaint, and awards judgment in the amount of \$5,000 in non-economic damages caused by Defendants' conduct in violation of the Consumer Sales Practices Act;
4. Costs are taxed against Defendants;
5. Interest to accrue at 5% per annum from the date of this judgment;
6. The Court also awards Plaintiffs their reasonable attorney fees under R.C. 1345.09(F)(2) in the amount of \$2,777.50. The Court also notes that the contract attached to the Complaint as Exhibit 1, the contract between the parties, mandates the recovery of attorney fees by the prevailing party, here Plaintiffs. Plaintiffs produced time records of counsel showing a total of \$3,138, of which \$360.50 was for the filing fee costs, and the remainder was fees. The Court finds that the 10.10

hours worked by counsel was reasonable for this case. The Court finds that \$275 per hour for both attorneys Dan Myers and Samantha Vajskop is a reasonable rate to charge in the community for this type of case given the experience, reputation, and ability of counsel, the degree of success achieved for Plaintiffs, the issues involved in litigation, and the rates charged customarily in the legal community for this type of work. Attorneys Myers and Vajskop have exceptional and rare experience in the area of consumer law litigation.

The Court also declares the following conduct, engaged in by Defendants, to be unfair, deceptive, and/or unconscionable under the Consumer Sales Practices Act, in violation of R.C. 1345.02 and/or R.C. 1345.03:

1. Defendants engaged in unfair and deceptive conduct when they violated OAC 109:4-3-09(A)(2) by accepting payment from its customer, George Kappos and allowing more than eight weeks to elapse without delivering all of the promised final product / videographer services, and without making a full refund (Compl. ¶ 52);
2. Defendants engaged in unfair and deceptive conduct when they stalled and evaded in their obligations to the Plaintiffs to promptly deliver the services by the contracted date, in violation of OAC 109:4-3-09 (Compl. ¶¶ 50-51);
3. Defendants engaged in unfair and deceptive conduct by failing to respond to repeated calls and messages from the Plaintiffs (Compl. ¶ 49);
4. Defendants knowingly breached their contract with the Plaintiffs, violating the holding in *Brown v. Spears*, OPIF # 10000403, a case published in the Online Public Inspection File prior to the conduct alleged in this case (Compl. ¶ 48).

Furthermore, because the wedding videography in this case is unique and cannot be reproduced, because Defendants' unfair and deceptive acts are continuing and still ongoing to this day due to the missing tapes and recording, and because damages alone cannot fully

compensate Plaintiffs for the harm caused by the failure of Defendants to deliver the final product, this Court orders that, pursuant to R.C. 1345.09(D), which permits this Court to issue an injunction against an act that violates R.C. 1345.01 *et seq.*, Defendants must within thirty (30) days of entry of final judgment in this case, turn over all videos, recordings, and all electronically stored or physically existing recordings of the Kappos-Szczepinski wedding, i.e. the wedding that occurred on or around October 3, 2015. The recordings to be turned over should be turned over in their current state. Defendants need not make any edits or alterations to the video, or perform any additional services, other than causing the transfer of the videos in their current form and condition to Plaintiffs. Defendants are prohibited from deleting, destroying, or otherwise causing the videos, recordings, or files to be lost from this date forward, until after transfer of the same has been made to Plaintiffs.

This judgment, including but not limited to the above stated injunction, shall be in full force upon adoption by the judge in this case.

The parties and/or their counsel are specifically warned and noticed hereby that a party may not assign as error on appeal the adoption by the trial court of any finding of fact or conclusion of law set forth herein unless a timely and specific objection is first made to the trial court pursuant to Civ.R. 53(D)(3)(a)(iii).

Pursuant to Civ.R. 53(D)(3)(a)(iii), the Clerk of Courts shall serve upon all parties not in default for failure to appear or counsel of record notice of this Magistrate's Decision and its date of entry upon the journal.

It is so decided.



MAGISTRATE KANDI S. O'CONNOR

CC: JUDGE JILL LANZINGER
ATTORNEY DANIEL J. MYERS
ATTORNEY SAMANTHA A. VAJSKOP