IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

RICHARD L. EWING d/b/a R. L. EWING COMPANY, GENERAL CONTRACTING,	:	
Plaintiff,	:	
	:	C.A. No. 01L-04-013
5.	:	
CYNTHIA BICE a/k/a CINDY BICE,	:	
Defendant.	:	

MEMORANDUM OPINION

Date Submitted: June 15, 2001
Date of Decision: July 25, 2001

Dean A. Campbell, Esquire, Moore & Rutt, P.A. 122 West Market Street, P.O. Box 554, Georgetown, Delaware 19947, attorney for Plaintiff;

William B. Wilgus, Esquire, 221 East Dupont Highway, Millsboro, Delaware 19966, attorney for Defendant.

BRADLEY, J.

This Court must decide whether to grant the Motion for Enlargement of Time filed by Plaintiff Richard L. Ewing, doing business as R.L. Ewing Company, General Contracting ("Ewing"). The Court must also decide whether to dismiss Ewing's Mechanics' Lien claim, and whether he is entitled to partial summary judgment on Counterclaims III and IV filed by Defendant Cindy I. Bice ("Bice"), regarding violations of Delaware's Deceptive Trade Practices Act and Consumer Contracts Act, respectively.

PROCEDURAL HISTORY AND STATEMENT OF THE FACTS

On April 17, 2001, Ewing filed a Complaint in Scire Facias Sur Mechanic's Lien and In Personam Complaint alleging that Bice owes him $19,088.72. Ewing claims that Bice contracted with him to construct a residential dwelling at 405 Washington St., Seaford, Delaware. Ewing further claims that the construction on the house was substantially completed, and that the last draw of $10,000 was due, along with $6,588.72 for "extras," and $2,500 for tapping into the City of Seaford's well and septic lines. In his Complaint, Ewing urges the Court to grant a Mechanics' Lien against the structure for all amounts due.

Ewing alleges that approximately 99% of the construction was completed, and a Certificate of Occupancy was obtained for Bice. Bice then complained that certain items were not complete, and that several punch-list items were unsatisfactory. Ewing maintains that he offered to repair the complained-of items for which he was responsible under the contract, but when he attempted to make repairs, Bice ordered him from the

property. As a result, Ewing asserts breach of contract and quantum meruit claims against Bice for the amounts due him.

On May 1, 2001, Ewing filed a Motion for Enlargement of Time for notice of filing of a Mechanics' Lien. Ewing's counsel, upon reviewing the file on April 30, 2001, discovered that no notices had been sent as required by Super. Ct. Civ. R. 4(f)(4), and no posting had occurred. According to the Rule, notice and posting should occur within ten days of the filing of the complaint, in this case, April 27, 2001. After discovering the deficiency, counsel sent notices by certified mail and posted the property on May 1, 2001.

Bice filed her Answer to Ewing's Complaint on May 16, 2001, asserting affirmative defenses, and counterclaiming against him. Bice also filed an Answer in Opposition to Ewing's Motion for Enlargement of Time and Cross-Motion to Dismiss. Bice argues that Ewing's claim for a Mechanics' Lien was defective in several respects, and failed to adhere to notice requirements prescribed by Super. Ct. Civ. R. 4(f)(4). She counterclaims against Ewing for: breach of contract with resulting damages of $15,000; conversion with resulting damages of $86,500; deceptive trade practices with resulting damages of $86,500; and a Consumer Contracts violation with resulting damages of $259,500.

In response to Bice's counterclaims, on June 1, 2001, Ewing filed a Motion for Partial Summary Judgment for those claims based on Delaware's Deceptive Trade Practices Act, and Delaware's Consumer Contracts Act. Bice opposes this Motion by

Answer filed on June 6, 2001.

The Court must now decide whether to dismiss Ewing's Mechanics' Lien claim on the structure at 405 Washington Street, and whether he is entitled to partial summary judgment on Counts III and IV of Bice's Counterclaim.

DISCUSSION

I. Did Ewing fulfill the statutory requirements of 25 Del. C. Ch. 27 necessary for the proper filing of a Mechanics' Lien?

Bice argues that Ewing failed to satisfy the technical requirements of 27 Del. C. §2712(b) for filing a Mechanics' Lien. 25 Del. C. §2712(b) reads as follows in relevant part:

> (b) The complaint and/or statement of claim shall set forth:
> (3) The name of the contractor and whether the contract of the plaintiff-claimant was made with such owner or his agent or with such contractor;
> (4) The amount claimed to be due, the nature and kind of the labor done or materials furnished with a bill of particulars annexed, showing the kind and amount of labor done or materials furnished;
> (5) The time when the doing of the labor or the furnishing of the materials was commenced;
> (6) The time when the doing of the labor or the furnishing of the materials was finished;

Bice asserts that Ewing failed to properly identify the name of the contractor, and the beginning and ending dates of the construction. She further claims that a proper bill of particulars was not attached to the Complaint, and that notice was not timely served. As a result of these deficiencies, Bice asks the Court to dismiss Ewing's Complaint Scire Facias Sur Mechanics' Lien.

Name of the contractor

Bice maintains that she contracted with "Richard L. Ewing, General Contractor". The contract attached to Ewing's Complaint, and signed by "Rick Ewing" and "Cindy I. Bice," includes headings on the first and last page proclaiming, "Richard L. Ewing, General Contractor". Paragraph 9 of the Complaint, however, reads as follows, "R.L. Ewing Company, Plaintiff herein, was the general contractor for the construction and contracted directly with the property owner." Bice argues that this inconsistency does not satisfy §2712(b)(3), and, therefore, the Mechanics' Lien action should be dismissed.

The mechanics' lien statute, being in derogation of the common law, must be strictly construed. Greenhouse v. Duncan Village Corp., Del. Super., 184 A.2d 479 (1962). However, the necessity for strict construction does not require that the Court be "overly technical or excessively strict." William M. Young Co. V. Ticor Title Ins. Co., Del. Super., C.A. No. 93C-08-146, Silverman, J., (June 22, 1994). Instead, the Court must look to determine whether the provisions of the Mechanics' Lien Statute setting forth the requirements for obtaining a lien have been *substantially* complied with. Active Crane Rentals, Inc. v. Formosa Plastics Corp., Del. Super., C.A. No. 85L-JA-24, Stiftel, J. (December 29, 1987).

In this case, Ewing sets forth the name of the contractor as "R.L. Ewing Company". Furthermore, he avers in paragraph 7 of the Complaint, "The claimant is the Plaintiff herein, Richard L. Ewing d/b/a R.L. Ewing Company, General Contractors." The Court finds that Ewing substantially complied with the requirements of §2712(b)(3).

Ewing specifically alleged the name of the contractor, and further clarified the name of the Plaintiff. It would be difficult to imagine a scenario in which Bice would not, from the Complaint, be aware of the identity of the contractor who is seeking to impose a mechanics' lien on her house. Whether Ewing misstated the name of the contractor is a question of fact that is a question of fact to be resolved at a later stage of the litigation.

Date of commencement and completion of construction

Bice also contests the legitimacy of the mechanics' lien claim by maintaining that Ewing alleged incorrect dates for commencement and completion of the construction. Ewing states in paragraph 11 of the Complaint, "The furnishing of labor and material commenced on September 19, 2000." In paragraph 12 he states, "The furnishing of labor and materials was completed on February 19, 2001." Bice claims that the correct dates for commencement and completion are October 12, 2000, and February 17, 2001, respectively.

The averment of the dates of commencement and completion are essential, and a mechanics' lien may not be obtained unless the statement of claim affirmatively sets them forth. Poole v. Oak Lane Manor, Del. Super., 118 A.2d 925 (1955). In the matter sub judice, Ewing furnished exact dates for commencement and completion of construction. In Middle States Drywall, Inc. v. DMS Properties-First, Inc., Del. Super., C.A. No. 95L-01-041 SCD, Del Pesco, J. (May 28, 1996), the contractor furnished exact dates of commencement and completion that were wrong, or arguably wrong. The Court held,

> the necessity of giving exact dates of commencement and completion is akin to the necessity of pleading certain matters with particularity. See Super. Ct. Civ. R. 9. The necessary averments must be made as a matter of fairness to the opposing party. If the averments are proven untrue at trial, that does not make the complaint deficient, although it may effect the merits of the dispute.

Id. at 42-43. This Court similarly finds that Ewing provided exact dates of commencement and completion in the Complaint, thus the Complaint will not be dismissed for lack of compliance with §2712(b)(5) & (6).

Bill of Particulars

Bice contends that the bill of particulars attached to the Complaint is insufficient to meet the requirements of §2712(b)(4). However, Bice does not elaborate on the reason she finds the bill of particulars wanting. Because the amount for "extras" is specifically listed in an attachment to the bill of particulars, I can only assume that Bice has taken issue with the fact that Ewing has sought $10,000 due as the last draw on the contract, but has not reduced that amount to a detailed accounting of the specific labor and materials supplied. This is the issue that I will address below.

The purpose of the bill of particulars is to set forth the facts upon which plaintiff bases his claim with sufficient particularity that the defendant can have no doubt as to the details of the claim. Thomas v. Goldhahn, Del. Super., 156 A. 363 (1929). In this case, Ewing provided a Bill of Particulars that reads as follows:

Amount of Last Draw Due:	$10,000
Extras and additional costs over allowances given, all as set forth in the attachment:	$ 6,588.72

Additional costs over the allowance paid by Plaintiff to tap into the City water, sewer and hook-up: $19,088.72

"Exhibit A" and the list of extras are incorporated by reference herein.

"Exhibit A" is the contract signed by Rick Ewing and Cindy I. Bice. It contains a list of specifications for the construction of a residence, and states that the total bid for the house is $96,500 with the payment draw schedule to be discussed at a later date. It appears from the face of the contract that specific prices were not agreed upon for each individual item or for labor. Ewing was to construct a house meeting the specifications listed in the contract, and Bice was to pay $96,500 for the finished product. In Mayor and Council of Wilmington v. Recony Sales and Engineering, Del. Supr., 185 A.2d 68 (1962) ("Mayor"), the plaintiff sought to assert a lien for the balance due under a construction contract. The Court held that the parties had contracted for materials and labor in a lump sum, therefor a bill of particulars alleging the total contract amount met the requirements of §2712(b)(4). Id. The situation in the instant case is akin to Mayor, thus, the Court finds that Ewing filed a proper bill of particulars, and accordingly refuses to dismiss the mechanics' lien complaint on that ground.

II. Does the Court have discretion to permit an enlargement of time for the service of notice of a writ of scire facias sur mechanics' lien?

Bice argues that Ewing failed to comply with the notice requirements prescribed by Super. Ct. Civ. R. 4(f)(4) ("Rule (4)(f)(4)"). Rule(4)(f)(4) reads in relevant part as follows:

> Scire Facias...Not later than ten (10) days following the filing of an action begun by scire facias, the plaintiff, or his counsel of record, shall send by certified mail, postage prepaid, return receipt requested, to holders of liens on the real estate..., a notice consisting of a copy of the complaint and a written Notice to Lien Holders and Tenants of Filing of Action...and in addition, the plaintiff or his counsel of record or a representative of the plaintiff or his counsel of record shall post such notice on the common entrance door or in a common area of any building or buildings on the real estate which is the subject of such action.

Ewing filed the complaint on April 17, 2001. According to Rule(4)(f)(4), notice should have been posted by April 27, 2001. Ewing's counsel admits, however, that due to an office mix-up, notices were neither sent nor posted until May 1, 2001.

Ewing filed for a Motion for Enlargement of Time for notice of the filing of the mechanics' lien arguing that the strict construction mandates of the mechanics' lien law have been applied to the time requirements for filing a mechanics' lien rather than the notice provisions. Ewing points out that 25 Del. C., Ch. 27 does not provide for notice except to say that all proceedings shall be by a writ of scire facias. Rule(4)(f)(4) provides the procedure for the filing of an action by scire facias, not the mechanics' lien law. Ewing further asserts that no party will be prejudiced by the four-day extension. But, if an enlargement is not granted, he will be forced to withdraw his mechanics' lien claim and refile the complaint. Such action, he argues, will prolong the resolution of this matter unnecessarily.

To resolve this matter, the Court must decide whether the strict construction requirement of the mechanics' lien statute prevents the Court from exercising its usual

discretion to allow "enlargements of time" when the "enlargement" is sought for the notice of a writ of scire facias sur mechanics' lien.

25 Del. C. §2714 requires proceedings to recover amounts claimed through a mechanics' lien to be by writ of scire facias, the form of such writ to be prescribed by the Superior Court.[1] 25 Del. C. §2715 governs how the writ of scire facias shall be issued and served. §2715 reads as follows:

> The writ shall be issued, returnable and served in the same manner as other writs of scire facias upon the defendant therein named, if he can be found within the county. A copy of the writ shall be left with some person residing in the structure to which the labor was done or for which the materials were furnished, if occupied as a place of residence, but if not so occupied, the sheriff shall affix a copy of such writ upon the door or other front part of such structure.

Bice cites to Ceritano Brickwork, Inc. v. Kirkwood Industries, Inc., Del. Supr., 276 A.2d 267, 268 (1971) ("Ceritano") for the proposition that the validity of a mechanics' lien depends on an affirmative showing that every essential statutory step in the creation of the lien has been duly followed. Bice argues that, by failing to serve notice of the writ of scire facias, Ewing failed to follow every essential step to secure his lien, and that the lien should therefore be denied.

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[1] §2714. Proceedings by scire facias; form.
(a) The proceedings to recover the amount of any claim shall be by writ of scire facias.
(b) The writ of scire facias used under the provisions of this chapter shall be in the form prescribed by the Superior Court.

In most cases, strict adherence to the statute is advocated to prevent mechanics' lien claimants from amending a defective claim after the statutorily allotted time for filing has passed, not to prevent late notice of a claim that has been timely filed. In Carswell v. Patzowski, Del. Super., 53 A. 54 (1902), the Court found that service upon the defendant without a copy of the writ being left with a person residing in the structure was insufficient. The Court's opinion reads in full as follows, "The statute requires two things to be done; the return of service shows that but one thing was done, viz., service on the defendant. We make the order to vacate the return of the sheriff." It seems that Carswell emphasizes the statute over the Rules. However, the current mechanics' lien statute does not address the details of how the writ of scire facias should be issued and served, only that it "shall be issued, returnable and served in the same manner as other writs of scire facias." 25 Del. C. §2715. This implies that Rules of the Court which are applicable to other writs of scire facias are equally applicable to writs of scire facias sur mechanics' lien. Under Super. Ct. Civ. R. 6(b) the Court has been granted discretion to permit motions for enlargement of time. It seems to follow, therefore, that an Enlargement of Time for service of notice of a writ of scire facias sur mechanics' lien would fall within the discretion of the Court as provided by Rule 6(b).

II. Whether the failure of Ewing's counsel to serve notice of the mechanics' lien claim within the ten days prescribed by Rule 4(f)(4) may be attributed to excusable neglect?

The admitted facts are as follows. Upon reviewing Ewing's file at or about the close of business on April 30, 2001, Ewing's counsel discovered that notices of the

mechanics' lien claim had not yet been sent, and no posting had occurred. At or about the same time the complaint in this matter was filed, counsel was clearing files from his office and sending them to the central filing location for the law firm. Ewing's file became intermixed with the files being archived. The file did not go to counsel's legal secretary, as is customary, and no notice or posting was prepared. After discovering this deficiency on April 30, 2001, notices were sent by certified mail on May 1, 2001, and the property was posted the same day. Thus, notices were sent on the fourteenth day rather than on the tenth as required by Rule 4(f)(4). Ewing contends that the circumstances which led to the late filing constituted excusable neglect on the part of Ewing and his counsel.

Bice opposes Ewing's Motion for Enlargement of Time, and counters his argument that the four-day extension will not create prejudice. She maintains that the lien already negatively affects her title to the house. It is preventing her from securing permanent mortgage financing because the in rem lien would remain in its intervening position. She contends that the internal office error committed by Ewing's counsel cannot be described as excusable neglect so as to afford Ewing a second opportunity to perfect his lien. Therefore, Bice requests that this Court deny Ewing's Motion for Enlargement of Time, and dismiss his complaint and claim for mechanics' lien.

Super. Ct. Civ. R. 6(b) allows a party to move the Court for an enlargement of time. It reads in relevant part as follows:

Enlargement. When by these Rules or by a notice given thereunder

> or by order of court an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion (1) with or without motion of notice order the period enlarged if request is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect....

"Excusable neglect" has been defined as "that neglect which might have been the act of a reasonably prudent person under the circumstances." Cohen v. Brandywine Raceway Assoc., Del. Super., 238 A.2d 320, 325 (1968). Mere negligence or carelessness without a valid reason does not necessarily constitute excusable neglect. Id. "Whether a party's failure to act constitutes excusable neglect is a matter of judicial discretion." Radzewicz v. Neuberger, Del. Super., 490 A.2d 588, 591 (1985). When determining excusable neglect, Rule 6(b) permits the Court to enlarge the time for moving where good cause is shown, absent bad faith on the part of the movant and undue prejudice to the other parties to the suit. Wilson v. DeMaio, Del. Super., C.A. No. 85C-JL-47, Martin, J. (November 22, 1988). The Court should liberally grant discretionary extensions. Id. Furthermore, Delaware public policy favors giving a litigant his day in court. Draper v. Medical Center of Delaware, Del. Supr., 708 A.2d 630 (1998).

In this case, counsel's omission was not a result of bad faith, but of oversight. Moreover, counsel discovered the deficiency relatively quickly. Although the Court does not condone the careless handling of client files by an attorney, still it is highly unlikely that Bice suffered undue prejudice from the four-day delay in notice. The Court notes that in this case, the deadline for filing a mechanics' lien claim has not yet passed.

Therefor, if the Court were to deny Ewing's Motion for Enlargement of Time, one could reasonably assume that Ewing would simply refile the claim and take care this time to do so within the prescribed time limits. The Court finds that the four-day delay in service of process was not unduly prejudicial to Bice, and Ewing's Motion for Enlargement of Time for notice of a writ of scire facias sur mechanics' lien is hereby granted.

III. Is Ewing entitled to summary judgment on Bice's counterclaim alleging violations of the Deceptive Trade Practices Act?

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact. Moore v. Sizemore, Del. Supr., 405 A.2d 679, 680 (1979). Once the moving party meets its burden, then the burden shifts to the non-moving party to establish the existence of material issues of fact. Id. at 681. Where the moving party produces an affidavit or other evidence sufficient under Super. Ct. Civ. R. 56 in support of its motion and the burden shifts, then the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial. Super. Ct. Civ. R. 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 322-323 (1986). If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of his or her case, then summary judgment must be granted. Burkhart v. Davies, Del. Supr., 602 A.2d 56, 59 (1991), cert. den., 112 S. Ct. 1946 (1992); Celotex Corp. v. Catrett, supra. If however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then

summary judgment is inappropriate. Ebersole v. Lowengrub, Del. Supr., 180 A.2d 467, 470 (1962).

Bice alleges that Ewing violated the Deceptive Trade Practices Act, 6 Del. C. §2531, et seq. ("DTPA") by seeking to recover from her sums for labor and materials not included in her contract with him. Specifically, Bice contests the legitimacy of Ewing's claims for "extras" and his attempt to recover extra costs for tapping into the City of Seaford's sewer and water lines.

Ewing maintains that, as an individual consumer, Bice has no standing to sue under the DTPA. He asks the Court to dismiss Count III of Bice's Counterclaim and assess against her the costs of defending this claim.

Prior to 1993, the issue of an individual consumer's standing to sue under the DTPA was muddy, to say the least. Then, in 1993, the Supreme Court cleared the waters with its decision, Grand Ventures, Inc. v. Whaley, Del. Supr., 632 A.2d 63 (1993) ("Grand Ventures"). In Grand Ventures, the Court held that "a litigant has standing under the DTPA only when such person has a business or trade interest at stake which is the subject of interference by the unfair or deceptive trade practices of another." Id. at 70. The Court found that the DTPA protects consumers, albeit indirectly, by preventing unfair trade practices between business competitors. If, as in the instant case, an individual consumer seeks redress against a deceptive producer or seller, her recourse is to sue under the Consumer Fraud Act, 6 Del. C. §2511 et seq. Id.

Bice's charges that "business interests" were created when Ewing allegedly

misappropriated money earmarked for subcontractors, and caused her to incur additional interest charges from her lender. The Court finds this argument to be without merit. The Supreme Court found that the DTPA was designed to protect businesses from gaining an unfair competitive advantage through the use of deceptive trade practices. As Bice has not claimed that she is in the construction business, any alleged deceptions practiced by Ewing affect her only on the consumer level. The record is devoid of any evidence supporting her claim that she has suffered damage to a genuine business interest. Thus, as an individual consumer, her redress for such practices lies under the Consumer Fraud Act. The Court finds that Bice, as an individual consumer, has no standing to sue under the DTPA, and accordingly grants summary judgment in favor of Ewing on Count III of Bice's Counterclaim.

IV. Is Ewing entitled to summary judgment on Bice's claim alleging violations of the Consumer Contracts Act?

Bice alleges that Ewing violated the Consumer Contracts Act, 6 Del. C. §2731 et seq. by purportedly rendering additional labor or materials without a written modification of the contract and then billing Bice for those services. Ewing counters this allegation by pointing out that 6 Del. C. §2735 states that the Consumer Contracts Act shall not apply to contracts exceeding $50,000.[2] The contract price for the house Ewing was to construct

[2] 6 Del. C. §2735 reads in relevant part as follows:
§2735. Application.
This subchapter shall not apply to contracts in which the total contract price or the total amount financed exceeds $50,000....

was $96,500, therefor, Ewing argues, the Consumer Contracts Act is inapplicable to the matter sub judice. Bice maintains that the "extras" for which Ewing seeks to be paid were never a part of the original contract, and because their total value does not exceed $50,000, she may pursue a claim for deceptive practices under the Consumer Contracts Act.

The contract submitted by Ewing contains a clause which reads, "Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become a[n] extra charge above the estimate." Attached to the contract are four pages titled "Cindy Bice Extras" ("Extras Pages") which list specific upgrades desired for the house. The Extras Pages are unsigned. If the Extras Pages are incorporated into the contract, then Bice may not use the Consumer Contracts Act as a basis for her claim against Ewing because the total contract amount exceeds $50,000. If, as Bice claims, they were never contracted for at all, then presumably they are not the subject of *any* existing contract, and thus the Consumer Contracts Act is equally inapplicable. In either instance, a claim under the Consumer Contracts Act is not sustainable. The Court holds that, under these facts, Ewing is entitled to summary judgment on Bice's Counterclaim IV.

CONCLUSION

For the reasons outlined above, the Court finds that Ewing substantially complied with the requirements of the Mechanics' Lien Statute, and will not dismiss Ewing's claim on the basis of alleged technical defects. The Court has discretion to permit an

enlargement of time for serving notice of a mechanics' lien. The statute does not prescribe a specific time by which notice must be delivered, but charges that the writ of scire facias should be served in "the same manner as other writs of scire facias". The Court has discretion to enlarge the time for filing of other writs of scire facias, therefor it follows that the Court has discretion to enlarge the time for filing writs of scire facias sur mechanics' lien as well. The Court finds that Bice was not unduly prejudiced by the four-day delay in serving notice of the mechanics' lien, and it does not serve the interests of judicial economy to force Ewing to refile this claim. As a result, Ewing's Motion for Enlargement of Time should be granted.

The Court further finds that Bice's claims under the DPTA and the Consumer Contracts Act are not sustainable under the circumstances of this case. Claims under the DTPA may not be pursued by an individual consumer, and that is what Bice is. Her contention that business interests were affected is not supported by any evidence in the record. The Consumer Contracts Act is inapplicable to contracts which exceed $50,000. The "Extras Pages" are most likely incorporated into the contract. If, as Bice alleges, they were never a part of any contract, then there is no remedy under this Act as it is designed to prevent deceptive practices in consumer contracts. In any event, neither circumstance supports a claim under the Consumer Contracts Act. The Court therefor grants summary judgment in Ewing's favor on Bice's Counterclaims III and IV.

IT IS SO ORDERED.