

RICKENBAUGH v. POWER HOME SOLAR

Case No.: 19CVS244

SUPERIOR COURT OF NORTH CAROLINA, MECKLENBURG COUNTY

January 7, 2019

Reporter

2019 NC SUP. CT. PLEADINGS LEXIS 111 *

JAMES RICKENBAUGH and MARY
RICKENBAUGH, Husband and Wife, Individually and
on Behalf of all Others Similarly Situated, Plaintiffs, v.
POWER HOME SOLAR, LLC, a Delaware Limited
Liability Company, Defendant.

Type: Pleading

Counsel

WEAVER, BENNETT & BLAND, P.A., Matthews,
North Carolina, Matthew M. Villmer [48239], Bo Caudill
[45104], M. David Bland [8173], Attorneys for Plaintiff.

Title

CLASS ACTION COMPLAINT

Text

[*1] (Jury Trial Demanded)

COME NOW the Plaintiffs, James and Mary Rickenbaugh, individually and on behalf of a class of all others similarly situated, who bring this action for damages against Defendant Power Home Solar, LLC ("Power Home"), and allege as follows:

NATURE OF THE ACTION

1. Power Home-a company based put of Mooresville, North Carolina-operates a sophisticated and fraudulent scheme throughout the states of North Carolina, South Carolina, Virginia, Ohio, and Michigan, selling millions of dollars' worth of solar panels and other home energy efficiency equipment to homeowners based upon intentionally false promises.

2. Between 2014 and the filing of this Class Action Complaint, Power Home sold its allegedly "energy efficient" products to thousands of unsuspecting

consumers using intentionally deceptive practices.

3. Power Home boasts that it was ranked "as the No. 7 overall solar installation company in the U.S." and that the company's "revenue is projected to exceed \$ 100 million for the first time in 2018."

4. In addition. Power Home boasts that it has "partnered" with the Carolina Panthers NFL team, with plans to "install a solar system at Bank of America Stadium [*2] to help the Carolina Panthers go green to maximize energy efficiency, reduce energy costs, and minimize their carbon footprint."

5. Power Home charges most residential customers \$ 15,000 - \$ 20,000 for "energy efficiency systems" that consist of a Nest thermostat, a small number of LED light bulbs, attic insulation, a water heater "blanket," and solar panels.

6. To generate its sales, Power Home's salesforce makes the intentionally false promise to their customers that the installation of Power Home's products is guaranteed to reduce customer utility bills by a large percentage, including, in many instances, by 99%.

7. Power Home's guaranteed energy savings are made regardless of the size of the customer's home or the customer's energy usage.

8. These energy savings guarantees are false and Power Home's executive leadership knows they are false.

9. In selling their costly energy efficiency systems, Power Home regularly utilizes its network of third-party lenders to provide financing to its customers, often at unconscionable interest rates.

10. After Power Home installs its equipment and receives immediate payment through its third-party lending relationships, the [*3] customer later learns for the first time that the savings associated with Power

Home's "energy efficiency system" are miniscule, and certainly not what was guaranteed by Power Home.

11. At this point in time, the customer is locked into a high interest rate loan for a sum of money that he or she cannot afford for a grossly underperforming product.

12. James and Mary Rickenbaugh are victims of Power Home's sophisticated and fraudulent scheme.

13. The members of the class that Plaintiffs represent are each and every person:

a. Who owns or co-owns any interest in any real property upon which Power Home installed energy efficiency equipment that Power Home guaranteed would result in certain energy savings;

b. Who expressly or impliedly consented to such installation in reliance on or in consideration for the guaranteed savings; and

c. Who never realized the guaranteed savings after the installation of such equipment.

PARTIES AND JURISDICTION

14. Power Home is a Delaware limited liability company that received a Certificate of Authority to transact business in the State of North Carolina from the North Carolina Department of the Secretary of State on or about April 6, [*4] 2016.

15. Power Home's principal place of business at all times relevant to this action in the State of North Carolina was 919 N. Main Street, Suite 200, Mooresville, North Carolina 28115, Iredell County.

16. James and Mary Rickenbaugh are residents and citizens of Mecklenburg County, North Carolina, and appear herein as individuals and representatives of the class more fully set forth herein.

17. This court has jurisdiction over the Defendant pursuant to [N.C. Gen. Stat § 1-75.1](#), et seq.

18. Pursuant to [N.C. Gen. Stat § 1-82](#), venue is proper in the Superior Court of Mecklenburg County, North Carolina.

FACTUAL ALLEGATIONS

I. POWER HOME'S BACKGROUND AND INTENTIONALLY DECEPTIVE SALES PRACTICES

19. Power Home is owned and operated by its two co-founders: Chief Executive Officer William Jayson Waller and Chief Operating Officer Kevin Klink.

20. To bilk money from North Carolina homeowners under the guise of "going green" Power Home and its agents knowingly, willfully, and wantonly employ false, misleading, and deceptive sales tactics.

21. Power Home's executives designed its sales process to intentionally mislead customers into believing they would experience a guaranteed [*5] drop in their energy bills, typically by between 80% and 99%, after installation of Power Home's products, for the 25-year lifespan of the solar system.

22. In reality, the products typically installed by Power Home at residential homes are not physically and mechanically capable of producing the promised energy savings-they produce just a fraction of such savings.

23. Power Home's sales team makes such energy savings guarantees even though the "energy efficiency products" and solar panels sold to its customers are physically and mechanically incapable of generating such savings.

24. Power Home is well aware of its product's power-generation and energy-saving limitations, but it promises its customers impossibly high savings anyway to generate sales, and thus, income.

II. POWER HOME'S DEALINGS WITH PLAINTIFFS

25. James and Mary Rickenbaugh own real property in Mecklenburg County, located at 5310 Robinhood Rd., Charlotte, NC 28211 ("Property").

26. In or around December 2016, Mary Rickenbaugh noticed an advertisement online for solar panels posted by Power Home, boasting a complete solar energy system "at no cost to you."

27. Immediately after seeing Power Home's advertisement, [*6] Mazy Rickenbaugh called Power Home at its Mooresville, North Carolina location, seeking more information.

28. The Power Home representative who answered the phone indicated that Power Home had a solar expert in the area, and that the sales person would arrive that same day.

29. Mary Rickenbaugh agreed to a visit from the Power Home salesperson.

30. A Power Home representative arrived that same day and during his presentation, the following conversation occurred:

- a. The Power Home representative presented himself as an energy efficiency expert, taking approximately 10 minutes to look around the Rickenbaughs* home.
- b. James and Mary Rickenbaugh indicated to the representative that they wanted to "go off the grid," and have an energy bill totaling, effectively, \$ 0 each month.
- c. The Power Home representative stated that Power Home's standard energy savings package, consisting of a NEST thermostat, 10 LED light bulbs, blown insulation, a hot water heater "blanket," and 12 solar panels was guaranteed to save the Rickenbaughs at least 97% on their energy bills, and any bill from Duke Energy would be a nominal amount.
- d. James and Mary Rickenbaugh stated that they had a detached building [*7] that was used for an office, and they asked whether the guaranteed savings would apply to this detached building as well.
- e. The Power Home representative replied that the guaranteed energy savings applied to both their primary residential structure, and the detached structure.
- f. James and Mary Rickenbaugh asked about Power Home's advertisement language, indicating that the energy savings package would be "at no cost to you."
- g. The Power Home representative stated that Power Home had a network of third-party lenders, and that the entire purchase price of the system would be financed. However, the monthly payments upon the financed amount would be less than the energy savings guaranteed by Power Home-therefore, the system was effectively "at

no cost" to the Rickenbaughs.

31. In or about February 2017, an "account manager" with Power Home e-mailed Power Home's standard purchase contract to the Rickenbaughs (the "Agreement").

32. James Rickenbaugh .executed the Agreement electronically, via "DocuSign," and it was returned to Power Home, whereby the Rickenbaughs agreed to pay \$ 15,708.00 for Power Home's "energy package." A true and correct copy of the Agreement is attached hereto, [*8] as **Exhibit A**. Mary Rickenbaugh consented to James Rickenbaugh's execution of the Agreement and Power Home's installation of its "energy package."

33. Between die execution of the Agreement and April 10, 2017, Power Home worked on the installation of its energy efficiency products, including the solar panels.

34. On April 11, 2017, the solar panels were activated and turned on.

35. In May 2017, after receiving their electric bill for usage in the month of April 2017, the Rickenbaughs noticed that their energy savings were a fraction of those guaranteed by Power Home.

36. Similarly, the Rickenbaughs' June 2017 power bill, which showed their electric energy usage and costs for May 2017, indicated that their energy savings were a fraction of those guaranteed by Power Home.

37. In or about June 2017, Mary Rickenbaugh contacted Power Home via phone to complain.

38. During this call, Mary Rickenbaugh stated to the Power Home representative that she had been guaranteed at least 97% energy savings, and that she was not experiencing this 97% energy savings, as promised.

39. During this call, Mary Rickenbaugh also stated that the entire reason she and her husband agreed [*9] to purchase Power Home's products-and take out financing to pay for the products-was that Power Home guaranteed at least 97% energy savings, an amount that would far exceed her monthly payment upon the loan used to purchase Power Home's products.

40. During this call, in response, the Power Home representative said that Mary Rickenbaugh must have been mistaken about the energy saving guarantee, and that Power Home would take no action to remedy the

situation.

41. Due to Power Home's false representations, the Rickenbaughs are now saddled with \$ 15,708.00 in debt financed through the third-party lender GreenSky, and they are making large monthly payments for solar panels and other supposed "energy efficiency equipment" that have little-to-no benefit when compared to the benefits guaranteed by Power Home.

42. This debt, along with the discovery that they did not receive the benefits promised by Power Home, has caused the Rickenbaughs great stress and anguish.

CLASS ACTION ALLEGATIONS

43. This action is brought by Plaintiffs as representatives of all others similarly situated under the provisions of Rule 23(a) of the North Carolina Rules of Civil Procedure for compensatory [*10] damages, court costs, and attorney fees as set forth in more detail below (collectively referred to as the "Class").

A. Existence of a Class and the Predominance of Legal and Factual Issues

44. The Class is defined as each and every person (a) who owns or co-owns any interest in any real property upon which Power Home installed energy efficiency equipment that Power Home guaranteed would result in certain energy savings; (b) who expressly or impliedly consented to such installation in reliance of or in consideration for said guaranteed savings; and (c) who never realized the guaranteed savings after the installation of such equipment.

45. Excluded from the Class are Defendants and all of their affiliated companies, directors, officers, agents, and employees.

46. Plaintiffs are members of the Class, as defined herein.

47. Plaintiffs reserve the right to amend the class definitions if discovery and further investigation reveal that the Class should be expanded or otherwise modified.

48. The precise members of the Class may be ascertained through discovery-Power Home has access to its customer lists, its sales staff scripts, any proposals generated for customers, and any [*11] contracts generated for and executed by its customers, as well as records of product installation and performance-related complaints.

49. Common questions of law and fact exist as to all Class members and these questions predominate over questions affecting only individual members of the Class. These common questions of law and fact include, but are not limited to, the following:

- a. Whether Power Home knowingly or recklessly made false representations of material fact to the Rickenbaughs and members of the Class concerning the extent to which the installation of Power Home products at its customer's properties would result in the reduction of its customers' electric utility costs, the energy-generating capabilities of such products, and the likely average energy savings over the 25-year life of such products;
- b. Whether such representations induced the Rickenbaughs and members of the Class into entering into a contract with Power Home for the purchase of Power Home's energy-efficiency products or otherwise consenting to the installation of such products at the Class member's real properties;
- c. Whether Defendant's actions were unfair or deceptive, in or affecting commerce, and whether [*12] such actions proximately caused injury to the Rickenbaughs and members of the Class;
- d. Whether Power Home failed to perform according to the terms of the Agreement entered into with the Rickenbaughs and other members of the Class, and as a result, whether the Rickenbaughs and members of the Class received what they bargained-and paid-to receive; and
- e. Whether, as a result of Power Home's actions, the Rickenbaughs and members of the Class are entitled to recover damages, attorney fees, and other relief as requested herein, and the amount and nature of such relief.

50. The Rickenbaugh's claims are typical of the claims of members of the Class. The Rickenbaughs and members of the Class have been injured by the same wrongful practices of Power Home. The Rickenbaughs' claims arise from the same practices and course of conduct that give rise to the claims of members of the Class and are based on the same legal theories. The Rickenbaughs have no interests that are antagonistic to those of members of the

Class.

B. Adequate Representation

51. The Rickenbaughs will fairly and adequately protect the interests of the members

E. Numerosity

59. The members of the proposed classes are so numerous [*13] and geographically dispersed that joinder of all members would be impracticable.

60. Members of the Class are adult homeowners who reside throughout North Carolina, South Carolina, Ohio, Michigan, and in other places throughout the United States and its territories. The potential number of Class members is more than approximately 10,000 persons.

F. A Class Action is the Superior Method of Adjudication

61. A class action is superior to any other available means for the fair and efficient adjudication of this dispute, and no unusual difficulties will likely hamper the management of this class action.

62. The injury suffered by each Class member, while meaningful on an individual basis, is relatively small compared to the burden and expense required to individually litigate each claim against Power Home.

63. Individual litigation would therefore increase the delay and expense for all involved parties as well as the court system itself

64. Further, individual litigation would create a risk of inconsistent or varying adjudications, which would impede other Class members' ability to protect their interests and create incompatible standards of conduct for Power Home.

65. [*14] In contrast, given the similar nature of Class members' claims, a class action presents far fewer difficulties and presents the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

H. Notice to Members of the Class

66. Adequate notice to the members of the Class may be effectuated through U.S. Mail, e-mail, publication, and

other similar means utilizing contact information that is already in the possession of Power Home and through public record searches.

67. The Rickenbaughs shall provide a proposed Class notice as a part of their ultimate Motion for Class Certification.

FIRST CLAIM FOR RELIEF-COMMON LAW FRAUD & FRAUD IN THE INDUCEMENT

68. Each and every one of the above allegations is incorporated herein by reference.

69. Power Home made false representations to the Rickenbaughs and concealed material facts from the Rickenbaughs.

70. The false representations include the Power Home sales representative's repeated statements in December 2016 that Power Home's products were guaranteed to save the Rickenbaughs at least 97% on their electricity bills.

71. Power Home made false representations to the Class that are substantially [*15] similar to the false representations made to the Rickenbaughs, as alleged herein.

72. At the time Power Home's representations were made, Power Home knew such representations were false.

73. Power Home's false representations and concealment of material facts were reasonably calculated to deceive the Rickenbaughs, and did in fact deceive the Rickenbaughs.

74. Power Home's false representations and concealment of material facts were reasonably calculated to deceive the Class and did in fact deceive the Class.

75. James Rickenbaugh justifiably relied upon Power Home's representations in his consideration and execution of the Agreement, and Mary Rickenbaugh justifiably relied on such representations in deciding to consent to Power Home's installation of energy efficiency equipment at the Rickenbaughs' property.

76. The Class justifiably relied upon Power Home's representations in their consideration and execution of similar agreements, executed by the Class members, or in otherwise consenting to Power Home's installation of energy efficiency equipment at the Property.

77. By presenting themselves as experts in the energy efficiency and solar electricity field, Power [*16] Home's representatives' representations and concealment of material facts induced the Rickenbaughs to forego additional investigation.

78. By presenting themselves as experts in the energy efficiency and solar electricity field, Power Home's representatives' representations and concealment of material facts induced the Class members to forego additional investigation.

79. These false representations and concealment of material facts resulted in damage to the Rickenbaughs and the Class members.

SECOND CLAIM FOR RELIEF - UNFAIR & DECEPTIVE TRADE PRACTICES

80. Each and every one of the above allegations are incorporated herein by reference.

81. Power Home committed an unfair or deceptive act or practice within the meaning of *N.C. Gen. Stat. § 75-1.1 et seq.*, by making intentionally false statements, promises, and guarantees concerning guaranteed energy savings that the Rickenbaughs would experience after their purchase and installation of Power Home's products. Such intentionally false guarantees included that the Rickenbaughs would experience savings of 97% on their monthly electric bills for the 25-year useful life of Power Home's products.

82. Power Home committed an [*17] unfair or deceptive act or practice within the meaning of *N.C. Gen. Stat. § 75-1.1 et seq.*, by making intentionally false statements, promises, and guarantees concerning guaranteed energy savings the Class would experience after their purchase and installation of Power Home's products. Such intentionally false guarantees were substantially similar to the representation that Power Home's representatives made to the Rickenbaughs.

83. All of Power Home's conduct as described herein was in or affecting commerce.

84. Power Home's conduct proximately caused injury to the Rickenbaughs and the Class.

85. Power Home's conduct-knowingly and intentionally guaranteeing energy savings that far exceed the physical

and mechanical limitations of the products sold by Power Home-constitute aggravating circumstances and fraud.

86. The Rickenbaughs and the Class members justifiably relied upon Power Home's misrepresentations due to its representative's claims of expertise.

THIRD CLAIM FOR RELIEF-BREACH OF CONTRACT

87. Each and every one of the above allegations are incorporated herein by reference.

88. This breach of contract claim is brought in the alternative. Specifically, the Rickenbaughs [*18] allege that the Agreement entered into between the parties was fraudulently induced, a result of fraud, and otherwise unconscionable. If the Court were to deny the Rickenbaughs' claims for all causes of action sounding in fraud and unfair and deceptive trade practices, the Rickenbaughs' breach of contract claim would be pled in the alternative.

89. A contract existed between Power Home and the Rickenbaughs; specifically, the Agreement To the extent that she was not a party to the Agreement, Mary Rickenbaugh was a known and intended beneficiary of the Agreement who has standing to enforce the terms of the Agreement

90. A similar contract existed between Power Home and each member of the Class. To the extent that certain Class members are not parties to contracts with Power Home, they are known and intended beneficiaries of such contracts with standing to enforce the terms of such contracts, by virtue of their ownership or co-ownership of the real property upon which Power Home installed its products.

91. Power Home breached the Agreement by selling and installing products that were physically and mechanically incapable of producing the guaranteed 97% energy savings.

92. [*19] Power Home breached its contracts with members of the Class by selling and installing products that were physically and mechanically incapable of producing the savings that Power Home guaranteed to each Class member.

93. Power Home's breach caused damage to the

Rickenbaughs and the Class members.

FIFTH CLAIM FOR RELIEF - PUNITIVE DAMAGES

94. Each and every one of the above allegations is incorporated herein by reference.

95. That the conduct of Power Home as alleged herein was willful, wanton, fraudulent, and malicious as those terms are defined under [N.C. Gen. Stat. § 1D-5](#).

96. The Rickenbaughs and the Class, pursuant to N.C. Gen. Stat. § 1D-15, are entitled to an award of punitive damages in an amount in excess of \$ 25,000.00.

SIXTH CLAIM FOR RELIEF - UNJUST ENRICHMENT

97. Each and every one of the above allegations is incorporated herein by reference.

98. The Rickenbaughs and the Class plead unjust enrichment in die alternative to their claims at law.

99. The Rickenbaughs conferred a measurable benefit upon Power Home by providing the company with over \$ 15,000.00.

100. Likewise, each member of the Class conferred a measurable benefit upon Power Home by providing [*20] the company with certain funds to pay for Power Home's "energy efficiency" products.

101. Power Home consciously accepted these benefits.

102. The Rickenbaughs and the Class did not confer this benefit officiously or gratuitously to Power Home.

103. If allowed to retain the benefit, Power Home would be unjustly enriched.

WHEREFORE, the Plaintiffs pray the Court award them the following relief:

A. Trial by jury as to all matters so triable;

B. That the Court enter an order certifying the proposed class, designating Plaintiffs as the named representatives of the class, and designating Weaver, Bennett & Bland, P.A. as Class Counsel;

C. That Plaintiffs and the Class have and recover

damages from Defendants in an amount to be determined at trial;

D. That Plaintiffs and the Class have and recover pre- and post-judgment interest on such award of damages to the extent the law allows;

E. That Plaintiffs and the Class have and recover from Defendants treble damages pursuant to [N.C. Gen. Stat. § 75-16](#);

F. That Plaintiffs and the Class have and recover from Defendants punitive damages pursuant to N.C. Gen. Stat. Chapter 1D, et seq.;

G. That the costs of this action [*21] be taxed against Defendants, including but not limited to Plaintiffs' and the Class' reasonable attorney's fees pursuant to [N.C. Gen. Stat. § 75-16.1](#) or as otherwise provided by law; and

H. Any such other relief as the Court deems just and proper.

This the 2nd day of January, 2019.

Respectfully submitted,

WEAVER, BENNETT & BLAND, P.A.

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **CONSENT MOTION FOR DESIGNATION OF ACTION AS MANDATORY COMPLEX BUSINESS CASE UNDER [N.C. GEN. STAT. § 7A-45.4](#), OR IN THE ALTERNATIVE, DESIGNATION AS EXCEPTIONAL AND COMPLEX CASE PURSUANT TO RULE 2.1. GENERAL RULES OF PRACTICE** was served as

follows:

Weaver, Bennett & Bland, P.A.

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This 20 day of February, 2019.

/s/ [Signature] [*22]

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[SEE EXHIBIT A IN ORIGINAL]

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