

Dated: 6/16/05

James A. McKenna

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SUBSCRIBED and SWORN to me before on this 16th day of June, 2005.

Susan L. Paradis

Notary Public, Attorney at Law

SUSAN L. PARADIS
Notary Public • State of Maine
My Commission Expires: 3/12/06

6/21/05
Default entered against David J. Blaw.

Nancy Nevardin
Clerk of Courts.

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-05-124

STATE OF MAINE,)
)
 Plaintiff,)
)
 v.)
)
 KIMBERLY MARK SMITH and)
 DAVID J. BLAIS, d/b/a CBS)
 ENTERPRISES,)
)
 Defendants.)

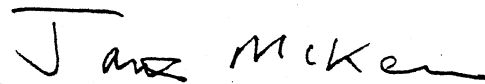
**STATE'S MOTION FOR
DEFAULT JUDGMENT
(M. R. Civ. P. 55(b))**

NOW COMES the State of Maine, Plaintiff in this matter, and pursuant to M. R. Civ. P. 55(b) moves this Court for default judgment against Defendants Smith and Blais, for the reasons set forth more fully in the Memorandum of Law submitted in support of this Motion. A proposed Order is attached to this Motion.

WHEREFORE, the State respectfully requests that its Motion for Default Judgment be granted.

Dated: June 27, 2005

Respectfully submitted,



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NOTICE

Pursuant to M. R. Civ. P. 7(c), opposition to this Motion must be filed not later than 21 days after the filing of the Motion unless another time is provided by the rules or set by the Court. The failure to file timely opposition will be deemed a waiver of all objections to the Motion, which may be granted without further notice or hearing.

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-05-124

STATE OF MAINE,)
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 Plaintiff,)
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 v.)
)
 KIMBERLY MARK SMITH and)
 DAVID J. BLAIS, d/b/a CBS)
 ENTERPRISES,)
)
 Defendants.)

**MEMORANDUM OF LAW
IN SUPPORT OF THE
STATE'S MOTION FOR
DEFAULT JUDGMENT**

INTRODUCTION

NOW COMES the State of Maine, Plaintiff in this matter, and moves this Court pursuant to M. R. Civ. P. 55(b) for a default judgment against Defendants Smith and Blais. The grounds for this Motion are set forth below.

FACTS

Between May and October of 2004, the Defendants entered into numerous contracts to build residential garages or other home construction projects. In at least 12 different instances, the Defendants either failed to complete the project or the work they did complete was done extremely poorly. When the consumers complained to the Defendants about the extremely poor quality workmanship and unfinished structures, the Defendants refused to either properly complete the structures or provide restitution. In at least two instances, the Defendants accepted down payments but failed to do any work at all.

The contracts the Defendants entered into with these consumers were for more than \$3,000 and were in violation of the provisions required by the Home Construction Contract Act,

14 M.R.S.A. §§ 1486-1490. One of the required provisions of the Home Construction Contract

Act is a warranty statement which reads:

In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation or appropriate use. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract.

The Defendants' faulty workmanship was most certainly in violation of this express warranty. Pursuant to 10 M.R.S.A. § 1490, violations of the Home Construction Contract Act constitute "*prima facie* evidence" of a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

The Defendants breached their construction contracts with the following consumers by either substandard work or not completing the contracted for home construction job:

Dennis Clark/William Folger
51 Western
Boothbay Harbor, ME 04538

Natalie M. Cochran
784 Farmington Falls Road
Farmington, ME 04938

Rachel Cyr-Matthews
18 Gladys Lane
Oxford, ME 04270

Thomas E. Foss
P.O. Box 332
East Machias, ME 04630

Owen Gomes
232 South Main Street
Mechanic Falls, ME 04256

Joe and Lora Jackson
161 Mountain Road
Nottingham, NH 03920

Robert J. Jackson
371 Cat Mousam Road
Kennebunk, ME 04043

Anne Marie Jefferson
P.O. Box 129
Sebago, ME 04029

Ellwood W. Kelley
P.O. Box 16
Seal Cove, ME 04674

Edward Kwasz
42 Hawthorne Street
Portland, ME 04103

Don and Sally Leach
891 Augusta Road
Belgrade, ME 04917

Scott and Darlene Lee
P.O. Box 801
Jackman, ME 04945

Keith Morris
45 Brooke Lane
New Gloucester, ME 04260

Joyce L. Moore
611 Moose Hill Road
Livermore Falls, ME 04254

Terrence and Sharon O'Neil
16 Richardson Road
Warren, NH 03279

ARGUMENT

Pursuant to M. R. Civ. P. 55(b)(4), no judgment by default shall be entered until the Plaintiff or the Plaintiff's attorney files an affidavit setting forth the facts showing that the