

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

CASE NO. 2018-CP-20- 158

Dan Jones,

Plaintiff,

vs.

Vivint Solar Developer LLC, Vivint
Solar, Inc., and Bryant Katilus,

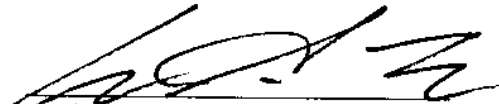
Defendants.

SUMMONS
(JURY TRIAL DEMANDED)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber, at his office, P. O. Box 50143, Columbia, South Carolina 29250, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,



Andrew S. Radeker
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com (email)

ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
April 2, 2018

W. Hugh McAngus, Jr.
CHAPPELL, SMITH & ARDEN, P.A.
P.O. Box 12330
Columbia, South Carolina 29101
(803) 929-3600
hugh@csa-law.com (email)

ATTORNEY FOR PLAINTIFF

2018 APR -2 PM 12:34
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M BOND

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CASE NO. 2018-CP-20- 158

FAIRFIELD COUNTY
CLERK OF COURT
JUDY M BONDS

Dan Jones,

Plaintiff,

vs.

Vivint Solar Developer LLC, Vivint
Solar, Inc., and Bryant Katilus,

Defendants.

COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiffs, complaining of the Defendants herein, allege:

1. This lawsuit concerns property located at 10301 State Highway 215 South, Jenkinsville, South Carolina, which is located in Fairfield County, South Carolina, and has Tax Map Number 176-03-02-077-000.
2. The Plaintiff (hereinafter "Mr. Jones") is a citizen and resides of the County of Fairfield, State of South Carolina. Mr. Jones lives and at all times material to this case did live at the property described above.
3. Defendant Vivint Solar Developer LLC is a business entity that operates in South Carolina, including in Fairfield County, South Carolina.
4. Defendant Vivint Solar Developer LLC is hereinafter referred to as "Vivint Solar."
5. Defendant Vivint Solar, Inc. is a business entity that operates in South Carolina, including in Fairfield County, South Carolina.
6. Defendant Vivint Solar, Inc. is, upon information and belief, Vivint Solar's parent company and controls the actions of Vivint Solar.
7. Defendant Vivint Solar, Inc. is hereinafter referred to as "Vivint Parent Company."

8. All acts of the other Defendants described in this case occurred at the direction of and under the control of Vivint Parent Company.

9. Defendant Bryant Katilus is a resident of either Richland County, South Carolina, or Fairfield County, South Carolina.

10. Defendant Bryant Katilus is hereinafter referred to as "Katilus."

11. All of the acts of Katilus described in this case occurred at the direction of and under the control of Vivint Solar, Vivint Parent Company, or both of them.

12. Katilus was employed by Vivint Solar as a district manager at all times material to this case.

13. The majority of the wrongful acts of the Defendants occurred in Fairfield County, South Carolina.

14. Jurisdiction of this action and of the Defendants herein is proper in Fairfield County, South Carolina.

15. Venue in this action is proper in Fairfield County, South Carolina.

16. This case concerns the marketing of, agreement to allow the installation of, purported lease of, and installation of solar panels by the Defendants, as well as the circumstances surrounding the same.

17. Attached as Exhibit A to this complaint is a copy of the purported lease involved in this case.

18. In 2016, Mr. Jones was approached at his home by Katilus.

19. This began a series of communications between Katilus and Mr. Jones.

20. Katilus told Mr. Jones that he was with a government program that provided people with solar panels.

21. Katilus assured Mr. Jones that Mr. Jones' electric bill would be reduced by 30 to 40 percent per month if Mr. Jones purchased a solar panel system from Katilus and his company, Vivint Solar.

22. Based on the assurances by Katilus, Mr. Jones agreed to allow the installation of a solar panel system by Vivint Solar on his home.

23. These assurances were false.

24. These assurances were material to Mr. Jones' decision to allow the installation of the solar panels, and he would not have agreed to that if he had known these assurances were not true.

25. Mr. Jones' agreement was purely spoken and was not reduced to writing.

26. Katilus obtained Mr. Jones' electronic signature on the purported lease involved in this case by tricking Mr. Jones. Katilus told Mr. Jones that he needed his signature in order to check his credit, and, to allow the credit check, Mr. Jones signed a window on an electronic tablet device. Mr. Jones was not aware that he was signing any document, did not read the language of any document he was signing, and did not have the opportunity to read the lease document.

27. Around the end of August of 2016, the solar panels were turned on after being installed.

28. Vivint Solar began drafting monthly payments for the solar panel system from Mr. Jones' bank account, which Vivint Solar continues to do to this day.

29. The effect on Mr. Jones' monthly electric bills has been negligible and is nowhere near the promised reduction in the amount of his monthly electric bill.

30. Per the lease document, however, Mr. Jones' monthly payments for the solar panel system will continue to rise through time, growing ever larger.

31. Mr. Jones was not made aware of this before the Defendants obtained his electronic signature on the lease document.

32. When Mr. Jones discovered this, he confronted Katilus. Katilus promised him that Vivint Solar would remove the solar panels for free and cancel the contract.

33. Katilus and Vivint Solar then reneged on that promise.

34. Vivint Solar is now telling Mr. Jones that he will have to pay about \$40,000.00 to have the solar panel system removed.

35. More than 30 days ago, Mr. Jones filed a written complaint about the matters involved in this case with the South Carolina Department of Consumer Affairs.

36. The Defendants' actions in this case are part of an ongoing pattern of similar behavior in which Vivint Solar, Vivint Parent Company, and their agents and employees have similarly treated and deceived other customers.

37. Vivint Solar has filed and recorded at least one UCC financing statement document claiming a security interest in the property involved this case.

38. Mr. Jones never agreed to give a security interest in any of his property to Vivint Solar.

39. The solar panel agreement and purported lease involved in this case are and were unconscionable and were induced by unconscionable conduct, such conduct including, but necessarily being limited to, the following:

- a. The Defendants' knowingly false assurances given by Katilus;
- b. The Defendants' knowledge that Mr. Jones would not be able to receive any substantial benefit from paying for the solar panel system;
- c. A gross disparity between the price of the solar panel system and its value; and
- d. The fact that the Defendants knowingly took advantage of Mr. Jones' inability to protect his interests reasonably as a result of his ignorance of the process and his inability to understand the language of the lease document, which he never saw until after Katilus obtained his signature on it through trickery.

FOR A FIRST CAUSE OF ACTION
(Unconscionability Under S.C. Code Ann. § 37-5-108)

40. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

41. The agreement and purported lease involved in this case are unconscionable and were induced by unconscionable conduct.

42. Mr. Jones is entitled to a judgment for all relief available under S.C. Code Ann. § 37-5-108 and the South Carolina Consumer Protection Code generally.

43. The judgment to which Mr. Jones is entitled includes an order refusing the enforcement of the agreement, a judgment for damages, and a judgment for reasonable attorneys' fees and costs.

FOR A SECOND CAUSE OF ACTION
(Violation of Unfair Trade Practices Act)

44. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

45. Actions of the Defendants, including, but not necessarily limited to, those stated in this pleading, constitute violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, and were unfair and deceptive actions in trade or commerce.

46. The Defendants knew or should have known that the said actions were violations of the Unfair Trade Practices Act and were unfair and deceptive actions in trade or commerce.

47. These actions are capable of repetition, including, but not necessarily limited to, in that the Defendants' procedures and processes allow for and actually foster and encourage such behavior.

48. Mr. Jones has sustained damages as a result of the Defendants' actions.

49. Mr. Jones is entitled to a judgment against the Defendants for damages, treble damages, reasonable attorney's fees, and costs.

FOR A THIRD CAUSE OF ACTION
(Fraudulent Inducement)

50. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

51. The agreement and purported lease involved in this case were procured by the Defendants' fraudulent inducement.

52. The purported lease subject of this case was, further, procured through fraud in the factum.

53. The Defendants made the false representations noted in this complaint.

54. The Defendants knew those representations were false or recklessly disregarded whether they were true or false.

55. Those representations were material to Mr. Jones' decision to enter into the agreement involved in this case.

56. The Defendants intended for Mr. Jones to act upon those representations.

57. Mr. Jones did not know the representations were false and was not in a position to know that reasonably.

58. Mr. Jones relied on the representations being true and entered into the agreement as a result.

59. Mr. Jones had a right to rely on the truth of the representations, as he was not familiar with the workings of solar power and the Defendants held themselves out to have expertise in that field.

60. As a proximate result of Mr. Jones' reliance on the Defendants' representations, he has sustained damages.

61. Mr. Jones is entitled to the rescission of the agreement and purported lease.

FOR A FOURTH CAUSE OF ACTION
(Unconscionability – Equitable or Common Law)

62. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

63. Mr. Jones is entitled to the rescission of the agreement and purported lease or an order declaring them to be unenforceable against Mr. Jones on the grounds that they are unconscionable under equity and at common law.

FOR A FIFTH CAUSE OF ACTION
(Injunctive Relief)

64. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

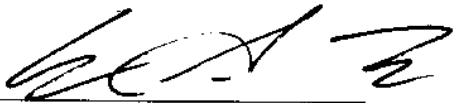
65. The court should enjoin the Defendants to stop drafting money from Mr. Jones' back account, refrain from treating him as being in default of the agreement or purported lease, and return to him the money he has already paid.

WHEREFORE, the Plaintiff prays:

- a) For judgment against the Defendants for actual damages;
- b) For judgment against the Defendants for punitive damages;
- c) For judgment against the Defendants for treble damages;
- d) For judgment against the Defendants for all available statutory penalties;
- e) For judgment against the Defendants for all relief available under the South Carolina Consumer Protection Code, Title 37 of the South Carolina Code of Laws;
- f) For a declaration that the Plaintiff has no obligation to any of the Defendants under the purported subject lease;

- g) For rescission of the subject lease, should the court find such lease actually exists;
- h) For a declaration that the subject lease, should the court find such lease actually exists, is unenforceable as against the Plaintiff;
- i) For an order enjoining the Defendants as described above;
- j) For judgment against the Defendants awarding the Plaintiff reasonable attorney's fees;
- k) For judgment against the Defendants awarding the Plaintiff the costs of this action; and
- l) For such other and further relief as the court may deem just and proper.

Respectfully submitted,



Andrew S. Radeker
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com (email)

ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
April 2, 2018

W. Hugh McAngus, Jr.
CHAPPELL, SMITH & ARDEN, P.A.
P.O. Box 12330
Columbia, South Carolina 29101
(803) 929-3600
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