

FLITTER MILZ, P.C.
CARY L. FLITTER
ANDREW M. MILZ
JODY T. LOPEZ-JACOBS
525 Rt. 73 South, Ste. 200
Marlton, NJ 08053
(856) 396-0600

ATTORNEYS FOR PLAINTIFF
MELISSA KNIGHT

MELISSA KNIGHT
1313 Mulberry Lane
Williamstown, NJ 08094,
Plaintiff,

vs.

VIVINT SOLAR
3301 N. Thanksgiving Way, Suite 500
Lehi, UT 84043,

PHILIP CHAMBERLAIN
9 Prince Edward Drive
Sewell, NJ 08080

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CAMDEN COUNTY

CIVIL ACTION NO.

COMPLAINT

I. INTRODUCTION

1. This is an action for damages and other relief brought by a consumer against a nationwide solar energy company and its salesman pursuant to the New Jersey’s Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.* and common law fraud.

2. Defendant Vivint Solar engages in door-to-door sales for the installation of solar panels on the homes of New Jersey consumers. Vivint’s sales agents claim that the company will design, install and maintain a solar power system for a consumer’s home, and that the consumer would make money from the solar power system. In other words, the system would pay for itself and the consumer would get additional money generated by the sale of electricity from the system.

3. To the consumer, a “moneymaking” solar system is alluring. However, Vivint has skillfully crafted, baited and set a trap. Vivint’s “moneymaking” trap, in truth, comes at a significant cost—it hooks consumers into paying more for energy, entangles consumers’ property rights, and ensnares consumers with a twenty-year contract called a “Residential Solar Power Purchase Agreement” (“PPA”).

4. On behalf of Vivint Solar, a salesman named Philip Chamberlain approached Plaintiff Melissa Knight and sold the company’s solar service to her under the pretext that she would be making money with the service.

5. In doing so, Chamberlain concealed all the pertinent details of how Vivint’s product operates, concealed that he was binding her to a 20-year PPA which would *increase* her energy costs, prevented her from reviewing or even knowing that the PPA existed at all, placed the PPA contract in the name of a total stranger who owned the house previously (with Melissa as a co-borrower), forged signatures on the PPA, did not give Melissa a copy of the bogus “PPA,” and deliberately fudged Melissa’s email address to ensure she would not get a copy of the PPA contract so the company could hide its fraud.

6. Despite a PPA contract executed by fraud and concealed from the consumer by Vivint, the company installed solar panels on Melissa’s home and began to make auto-withdrawals from her bank account for exceedingly large amounts she never agreed to. Only after hiring a lawyer to contact Vivint did Melissa learn about the bogus “PPA” contract she never signed nor saw bearing her name as well as the name of a stranger, and the extent of the fraud perpetrated upon her.

7. This case demonstrates how Vivint engages in a host of deceptive business practices that violate New Jersey law. Vivint fails to provide consumers with two separate paper copies of the notice of their right to cancel the PPA contract. Here, again, Vivint utilizes electronic devices that do not provide consumers with an adequate opportunity to review the notice of consumers' right to cancel the contract. Vivint's continued reprehensible business actions demonstrate a pattern of unfair and unconscionable business practices. Plaintiff seeks monetary damages and injunctive relief, as well as costs and reasonable attorneys' fees.

II. PARTIES

8. Melissa Knight ("Plaintiff") is an adult individual residing in Williamstown, NJ at the address listed above.

9. Defendant Vivint Solar is a Delaware corporation with a principal office in Lehi, Utah as captioned.

10. Defendant Philip Chamberlain ("Chamberlain") is an adult individual residing in Sewell, NJ.

11. At all times relevant, Chamberlain was employed as a Co-District Manager for Vivint, and his job duties included door-to-door sales.

III. STATEMENT OF CLAIM

Vivint's August 2, 2016 Door-to-door Sale to Ms. Knight

12. Plaintiff Melissa Knight lives at 1313 Mulberry Lane, Williamstown, NJ with her mother and seven children.

13. Melissa was interested in obtaining solar energy for her house in order to cut down on her energy costs.

14. She contacted a company called Vivint Solar, who sent a sales agent named Philip Chamberlain to her door to sell her the company's solar product.

15. At all times relevant, Chamberlain was acting on behalf of Vivint Solar.

16. Vivint's sales agent met with Melissa and her mother at Melissa's home on August 2, 2016.

17. At that time, Vivint's salesman Chamberlain told Melissa that Vivint's solar panels would pay for themselves and make money for her.

18. Melissa told Vivint's salesman Chamberlain that she was on a tight budget and that she had poor credit.

19. Chamberlain said that was not a problem and that he would "take care of it."

20. Chamberlain said Melissa needed to give him a voided check to prove that she had a bank account, and she complied.

21. Chamberlain then handed Melissa an iPad, pointed to a signature box on the screen of the device, and told Melissa to "sign here."

22. Melissa signed the iPad where the salesman pointed.

23. Melissa was not presented with, nor allowed to scroll, any documents on Chamberlain's iPad device.

24. Unbeknownst to Melissa, Vivint had used Melissa's signature to create a 23-page "Residential Solar Power Purchase Agreement" (or "PPA") contract purporting to bind her to buy solar energy from Vivint for 20 years at ever increasing prices.

25. This "PPA" document was intentionally hidden and concealed from her for several months.

Solar Panels are Installed and Ms. Knight Experiences Rising Energy Costs

26. After the passage of several months, Vivint Solar installed solar panels on Ms. Knight's roof.

27. Once the panels were installed, Melissa was first informed that she needed broadband internet for the panels to operate. This was an unanticipated added expense to her family.

28. Once the panels were installed, Melissa was surprised to see large sums withdrawn from her checking account in amounts she could not afford.

29. Melissa was constrained to cancel her internet service because she could no longer afford it.

30. Vivint Solar then began harassing her with collection calls to her cell phone and workplace.

31. In early 2017, Melissa hired a lawyer to represent her interests. The lawyer contacted Vivint Solar on her behalf.

Ms. Knight First Learns of the Bogus PPA Contract

32. In or around March 2017, Vivint Solar provided Melissa's attorney with a copy of a "Residential Solar Power Purchase Agreement" with a "Transaction Date" of August 2, 2016. (See Exhibit "A" hereto).

33. Shortly thereafter, the attorney showed Melissa the "Agreement." This was the first time she had ever seen this document.

34. Page 1 of the "Agreement" says the customer names are "James Reilly" and Melissa Knight.

35. James Reilly is the former owner of Melissa's house. Mr. Reilly sold and transferred the house to Melissa and her late husband back in 2008.

36. James Reilly was never with Melissa to sign anything, and certainly Mr. Reilly did not co-sign any agreement for solar panels on Melissa's house.

37. James Reilly is a stranger to Melissa and has no interest, ownership or otherwise, in Melissa's home.

38. Melissa's purported "signature" on page 17 of the document is not authentic.

39. The document also shows a purported signature of a "James Reilly." That signature is not authentic.

40. Upon information and belief, Chamberlain made all the signatures on this PPA.

41. This document was not provided to Melissa in paper or electronic form.

42. Vivint Solar does not provide paper copies of contract documents to consumers during door-to-door sales visits.

43. This document was never sent to Melissa by email.

44. The email address listed on the "PPA": "ladybugknight1@gmail.com" is incorrect. That is not Melissa's email address. Her correct email address is slightly different and does not have the digit "1" at the end.

45. Chamberlain altered Melissa's email address.

46. Chamberlain knew that subtly altering one character in Melissa's email address would ensure that she would not get a copy of the purported PPA, and that Vivint's fraudulent "contract" and its oppressive terms can be hidden from Melissa.

47. Vivint Solar, and Chamberlain specifically, have surreptitiously altered email addresses on New Jersey consumers in other instances.

48. The so-called "PPA" has no effect on Melissa, nor is Melissa bound by any of its terms. This document is a fraud.

49. Vivint Solar fraudulently executed and completed this document without Melissa's knowledge or consent.

50. Vivint Solar withheld from Melissa a copy of this document in order to conceal its fraud.

Damage from Vivint's Fraudulent Conduct

51. As a result of Vivint Solar and Chamberlain's willful, wanton, reckless, and/or negligent actions, Plaintiff has been damaged.

52. Vivint Solar and Chamberlain surreptitiously and fraudulently enrolled Ms. Knight into a bogus PPA contract for services it knew she could not afford.

53. Upon information and belief, Vivint Solar and Chamberlain fraudulently added a complete stranger (Mr. Reilly) to the PPA agreement in order to qualify an otherwise unqualified consumer for its expensive and burdensome solar product.

54. Upon information and belief, Vivint Solar and Chamberlain fraudulently added a complete stranger's name in applications for permits required and credits available for solar panels.

55. Vivint and Chamberlain did so after deliberately concealing from Ms. Knight the true costs of its service and the terms of its PPA.

56. This resulted in Ms. Knight being burdened with solar panels that she does not use, oppressive auto-withdrawals from her bank account in amounts she cannot afford, and harassing collection conduct by Vivint. Moreover, Plaintiff has suffered mental and emotional distress, worry, and aggravation as a result of Defendants' actions.

COUNT I
Plaintiff v. All Defendants
(New Jersey Consumer Fraud Act)

57. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

58. Pursuant to the Consumer Fraud Act (“CFA”), at N.J.S.A. 56:8-1, “merchandise” includes “any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.”

59. The CFA defines “sale” as any including any rental, offer for rental, or “attempt directly or indirectly to [] rent.” N.J.S.A. § 56:8-1(e) (emphasis added).

60. Defendants’ sales and sales practices are subject to the CFA and its implementing regulations.

61. Defendants are subject to the CFA, N.J.S.A. 56:8-1 *et seq.* and its implementing regulations.

62. The CFA, at N.J.S.A. 56:8-2, prohibits the use of “any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise.”

63. The CFA also states: “It shall be an unlawful practice for a person in connection with a sale of merchandise to require or request the consumer to sign any document as evidence or acknowledgment of the sales transaction, of the existence of the sales contract, or of the discharge by the person of any obligation to the consumer specified in or arising out of the transaction or contract, unless he shall at the same time provide the consumer with a full and

accurate copy of the document so presented for signature but this section shall not be applicable to orders placed through the mail by the consumer for merchandise.” N.J.S.A. 56:8-2.22.

64. The CFA’s implementing regulations also prohibit home improvement sellers from engaging in the following practices:

- a. Misrepresenting or misleading the buyer into believing that no obligation will be incurred because of the signing of any document, N.J.A.C. § 13:45A-16.2(a)(6)(iv);
- b. Increasing or falsifying the contract price, or inducing the buyer by any means to misrepresent or falsify the contract price or value of the home improvement for financing purposes or to obtain additional credit, N.J.A.C. § 13:45A-16.2(a)(6)(x);
- c. Knowingly failing to make any material statement of fact, qualification or explanation if the omission of such statement, qualification or explanation causes an advertisement, announcement, statement or representation to be false, deceptive or misleading, N.J.A.C. § 13:45A-16.2(a)(9)(ii);
- d. Failing to furnish the buyer—at the time of execution—a written copy of all guarantees or warranties with respect to labor services, products, or materials furnished in connection with home improvements; N.J.A.C. § 13:45A-16.2(a)(11)(i).

65. Defendants’ conduct stated herein violates the CFA and its implementing regulations, including those pertaining to home improvement practices.

66. As a result of Defendants’ violations of the Consumer Fraud Act and its implementing regulations, Plaintiff has suffered ascertainable losses.

WHEREFORE, Plaintiff Melissa Knight demands judgment against Defendant Vivint Solar and Philip Chamberlain as follows:

- a. For actual damages;
- b. For treble damages under the Consumer Fraud Act at N.J.S.A.56:8-19;
- c. For a declaratory judgment that the contract involved herein is void and canceled;
- d. For equitable relief requiring Defendant to refund all monies paid, remove the solar panels, and repair any damage to Ms. Knight's property;
- e. For reasonable attorneys' fees and costs under the CFA at N.J.S.A.56:8-19 and all other applicable statutes;
- f. For interest; and
- g. For any other relief the Court deems just and proper.

COUNT II
Plaintiff v. Vivint Solar
(Uniform Commercial Code)

67. Plaintiff repeats the allegations contained above as if the same were here set forth.

68. "With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief." N.J.S.A. § 12A:2A-108(2).

69. Vivint Solar fraudulent induced Plaintiff to execute the 20-year solar panel lease through unconscionable conduct, which includes but is not limited to deceiving Plaintiff into believing that the solar panels would make more money for her than it would cost.

70. As a result of Vivint Solar's conduct, Plaintiff has suffered damages.

WHEREFORE, Plaintiff Melissa Knight demands judgment against Defendant Vivint Solar as follows:

- a. For actual damages;
- b. For a declaratory judgment that the contract involved herein is void and canceled;
- c. Cancellation of the lease;
- d. For equitable relief requiring Defendant to refund all monies paid, remove the solar panels, and repair any damage to Ms. Knight's property;
- e. For reasonable attorneys' fees and costs;
- f. For interest; and
- g. For any other relief the Court deems just and proper.

COUNT III
Plaintiff v. All Defendants
(FRAUD)

71. Plaintiff repeats the allegations contained above as if the same were here set forth at length.
72. Defendants made certain misrepresentations and/or omissions of material fact to Plaintiff.
73. Defendants knew or should have known the misrepresentations and/or omissions were false and/or inaccurate.
74. Defendants misrepresented and/or omitted material facts regarding with the intent that Plaintiff rely on the same.
75. Plaintiff reasonably relied on Defendants' misrepresentations and/or omissions to her great harm and detriment.

76. Defendants' intentional conduct was reckless, willful, and/or outrageous.

77. As a result of Defendants' aforesaid misconduct, Plaintiff has been damaged.

78. Plaintiff has incurred out of pocket costs, including legal costs and fees, in connection with this matter.

WHEREFORE, Plaintiff Melissa Knight prays that this Court enter judgment in her favor against Defendants Vivint Solar and Philip Chamberlain for:

- a. compensatory damages;
- b. punitive damages;
- c. reasonable attorney's fees and costs of suit; and
- d. any other legal and equitable relief the Court deems just and proper.

IV. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all issues so triable.

V. DESIGNATION OF TRIAL COUNSEL

Jody Thomas López-Jacobs, Esquire and Andrew M. Milz, Esquire are designated as trial counsel.

VI. CERTIFICATION OF NO OTHER ACTION TAKEN (R. 4:5-1)

Plaintiff hereby certifies that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding, and that no other action or arbitration proceeding is currently contemplated regarding the subject matter of this action. The Plaintiff further certifies that she is not aware of any other parties who should be joined in this action at this time.

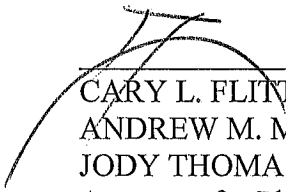
VII. CERTIFICATION OF SERVICE PURSUANT TO N.J.S.A. 56-8:20

The undersigned hereby certifies that a copy of the Complaint was sent via first class United States Mail, postage prepaid, to:

Office of the Attorney General
Richard J. Hughes Justice Complex
P.O. Box 80
Trenton, NJ 08625-0080

Respectfully submitted

Date: 8/2/2018



CARY L. FLITTER
ANDREW M. MILZ
JODY THOMAS LÓPEZ-JACOBS
Attorneys for Plaintiff

FLITTER MILZ, P.C.
525 Rt. 73 South, Ste. 200
Marlton, NJ 08053-9644
(856) 396-0600

Civil Case Information Statement

Case Details: CAMDEN | Civil Part Docket# L-002852-18

Case Caption: KNIGHT MELISSA VS VIVINT SOLAR

Case Initiation Date: 08/02/2018

Attorney Name: JODY THOMAS LOPEZ-JACOBS

Firm Name: FLITTER MILZ, PC

Address: 525 RT 73 SOUTH STE 200

MARLTON NJ 08053

Phone:

Name of Party: PLAINTIFF : KNIGHT, MELISSA

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: OTHER FRAUD

Document Type: Complaint with Jury Demand

Jury Demand: YES - 12 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Business

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

08/02/2018

Dated

/s/ JODY THOMAS LOPEZ-JACOBS

Signed