

DOCKET NO: CV-99-0589528-S : SUPERIOR COURT
NICOLE FRENETTE, ET AL : JD OF HARTFORD
VS. :
NORTH AMERICAN MARKETING,
ET AL : MARCH 22, 2000

ARBITRAL AWARD

This matter was heard by the undersigned as an arbitrator on or about February 23, 2001. The case was withdrawn concerning Defendant North American Marketing Corp. d/b/a Namco ("Namco") on October 13, 1999.

I find the following facts:

1. Plaintiff Nicole Frenette and Plaintiff Harold Mills owned 111 Linwood Street, New Britain, Connecticut at all relevant times.

2. Plaintiff Nicole Frenette purchased a 24 foot diameter round above-ground pool for installation 111 Linwood Street, New Britain, Connecticut from Namco for a total of \$1,570.92 (as amended by purchase order 40193, Defendant's exhibit C) on or about April 6, 1998.

3. This purchase price included a number of upgrades (such as a thicker lining, higher pool sides, etc.), but did not include installation.

4. At the time of purchase, Plaintiff Nicole Frenette agreed for Namco to arrange for a contractor to install the pool.

5. Once this election was made, Namco would not allow Plaintiff Nicole Frenette to select an installer.

6. Namco assigned this installation to Defendant Tolis & Associates, LLC of 28 Vance Street, New Britain, Connecticut.

7. Plaintiff Nicole Frenette clearly indicated to Mr. Tolis of Defendant Tolis & Associates, LLC where the pool should be installed. The installation location was partially necessitated by a six foot deck Plaintiff Nicole Frenette planned to place around the pool.

8. Mr. Tolis failed to mark where the pool was to be installed. Mr. Tolis also failed to take notes about the pool's location.

9. After a delay of several months, Defendant Tolis & Associates, LLC began installing the pool. Installation required digging because the ground was sloped.

10. Installation was completed on or about July 11,

1998.

11. The installation had the following defects:
 1. The pool was not level.
 2. The pool liner had a hole in it.
 3. The site did not have enough sand on it, which made the bottom of the pool rocky.
 4. The pool was so close to the garage's foundation that the proposed six foot deck could not be installed and the garage foundation was undermined.
 5. There was not enough clearance between the ground and the top of the pool, necessitating a fence (the purpose of purchasing the extra high sides was to avoid the necessity for a fence).

12. A careful workman would not have made the foregoing errors. These errors also violated the implied warranty of merchantability and fitness for a particular purpose. These errors also violated the written

guarantee.¹

13. Plaintiffs spent the following sums to install the pool:

Installation:	\$ 720.00 ²
Purchase of pool:	1,570.92 ³
Pool fence:	676.86 ⁴
Electrical work:	580.00 ⁵
Building permit	30.00 ⁶
Crushed stone	250.16 ⁷
Vacuum head	6.98 ⁸
<u>Total:</u>	<u>\$3,834.92</u>

14. Plaintiffs are required to spend the following sums to correct the damage incurred as a result of the pool installation:

Garage foundation:	\$1,900.00 ⁹
<u>Fill in hole:</u>	<u>1,500.00¹⁰</u>
<u>Total:</u>	<u>\$3,400.00</u>

15. Plaintiffs have suffered a total of \$7,234.92 in damages. This amount must be reduced by Namco's payment

¹ Plaintiffs' Exhibit 1.
² Plaintiffs' exhibit 1.
³ Defendant's exhibit 2.
⁴ Plaintiffs' exhibit 5.
⁵ Plaintiffs' exhibit 5.
⁶ Plaintiffs' exhibit 6.
⁷ Plaintiffs' exhibit 6.
⁸ Plaintiffs' exhibit 7.
⁹ Plaintiffs' exhibit 3.

of \$3,000 because Plaintiffs are entitled to only one recovery of their damages.

16. Defendant's actions, while wrongful and a breach of contract, do not violate the Connecticut Unfair Trade Practices Act.¹¹

17. Plaintiffs are therefore not entitled to attorneys fees under the Connecticut Unfair Trade Practices Act.

18. Plaintiff Nicole Frenette is entitled to attorneys fees under Connecticut General Statutes §42-150bb because Defendant's contract allows the recovery of attorneys fees. Plaintiff Harold Mills was not a party to that contract, so he may **not** recover an attorneys fee.

19. Because of the limitations of Connecticut General Statutes §42-150aa(b), the amount of the attorneys fee shall be \$635.240

Judgment shall enter in favor Plaintiff Nicole

¹⁰ Plaintiffs' exhibit 4.

¹¹ Plaintiffs proved their case on counts one through three of the December 22, 1999 complaint (and Plaintiff Harold Mills as a third party beneficiary). Plaintiffs failed to prove the fourth count.

Frenette for \$4,870.16 (plus costs to be taxed) and Plaintiff Harold Mills for \$4,234.92 (plus costs to be taxed). In no event shall the total amount collected from Defendant by both Plaintiffs combined shall exceed \$4,870.16 plus costs to be taxed in favor of the Plaintiffs.

Dated at Meriden, Connecticut on this ____ day of March, 2001.

Houston Putnam Lowry, Esq.
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed on this 22nd day of March, 2001 to:

James Fischer, Esq.
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