

District Court, Boulder County, State of Colorado 1777 Sixth Street, Boulder, Colorado 80302 (303) 441-1866	
<b>JOHN HANKS,</b> <b>PLAINTIFF</b>  v.  <b>KENNETH DIMON ET AL.,</b> <b>DEFEDANTS</b>	DATE FILED: January 22, 2013   <b>▲ COURT USE ONLY ▲</b>
	Case Number: <b>2011 CV 1062</b>  Division: <b>3</b> Courtroom: <b>K</b>
<b>MINUTE ORDER</b>	

On January 10, 2013, the following actions were taken in the above-captioned case. The Clerk is directed to enter these proceedings in the register of actions:

**COURT REPORTER:** Trish Butler

**APPEARANCES:** Eric Schunk appeared for the Plaintiff; Defendant Dimon failed to appear

**COURT ORDERS/ACTIONS:**

THIS MATTER came before the Court for a bench trial.

Remax has settled with the plaintiff. The Magistrate issued a default order against the remaining Defendant, Kenneth Dimon, as a sanction for discovery violations. The issues before the Court are damages, proof of willful and wanton conduct and exemplary damages.

The Plaintiff requested, and the Court granted, an amendment to the Complaint to add a claim for exemplary damages.

Having received no objection/response, Plaintiff's request to proceed by affidavit for the expert witness and telephone testimony for the Plaintiff are granted.

The affidavit of expert Caoimhim Connell, accompanied by his CV, qualified the witness as an expert as an Industrial Hygienist. Before testing, it was obvious to Mr. Connell that the home was used for the manufacture and use of meth. He then conducted an exhaustive analysis of the site and sent samples to Analytical chemistry, Inc. of Washington. The results indicated concentrations of meth and meth precursors exceeding 10,000 times the legal limit of contamination. The contamination was profound and widespread in the home, the garage, and the soil in the backyard.

The Plaintiff testimony provided foundation for the admission of various documents. One, the seller's property disclosure form, indicated the only hazardous materials may be in containers in the garage. The Plaintiff testified that he assumed that referred to containers of such things as paint or bug spray. On the question that specifically asks about meth in the home, the Defendant responded, "No."

Mr. Connell was required to report his findings to the County Health Department, who then required the Plaintiff and his wife to vacate the premises.

Plaintiff submitted an exhibit showing the Defendant's criminal history. He testified that that a member of the Drug Task Force told him that other records were sealed. The Defendant contacted the task force member to see if new charges were pending as a result of the investigation of the home. Currently, there are no new charges pending. During discovery in this case, the defendant invoked his 5<sup>th</sup> Amendment rights on several occasions.

Plaintiff testified that he and his wife were debt free prior to purchase of the home. They intended to use "sweat equity" to clean and remodel the house. Instead, now they face huge costs to remediate the home, to pay for alternative housing and continue to pay the mortgage on home they cannot live in.

The Court made findings of fact and conclusions of law at the conclusion of the trial. See transcript for details. The Court gave no weight to any evidence concerning sealed criminal records. The Court specifically found that the defendant's conduct constituted fraudulent conduct. The fraud consisted of: (1) The Defendant knew that the home had been used for meth use and extensive meth production; given the level of contamination found by Mr. Connell, he could not have been unaware of that fact; (2) The fact of meth use and production in the home was a material fact in that it could affect the outcome of the purchase and sale transaction; no reasonable buyer would knowingly purchase a home with profound and widespread contamination; (3) The Defendant knowingly failed to disclose the use and manufacture of meth in the home; (4) The failure to disclose was the proximate cause of the Plaintiff's damages; and (5) The Plaintiff suffered damages.

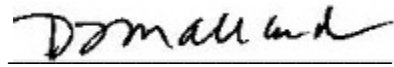
The Court found that Plaintiff has proven the elements of C.R.S. § 13-21-804 by clear and convincing evidence. The Court further found that Plaintiff satisfied the burden of proof for an award of exemplary damages

The Court awarded Plaintiff economic losses in the amount of \$158,759.16, reasonable attorney fees in the amount of \$43,567.65, and the costs of suit in the amount of \$11,219.43. The total amount of damages is \$213,546.21.

The Court reviewed the Proposed Order submitted by Plaintiff and found that it contained essentially the same terms as the Court's oral order, with the addition of further detail.. The Court adopted the Proposed Order.

Counsel for Plaintiff shall submit a form of judgment to include the damages described above, the amount of exemplary damages, and pre-judgment and post-judgment interest.

January 22, 2012, *nunc pro tunc* January 10, 2013

A handwritten signature in black ink, appearing to read "D.D. Mallard", written in a cursive style. The signature is positioned above a horizontal line.

**D.D. Mallard**  
**District Court Judge**