

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY

SC Court of Appeals

Master In Equity

The Honorable Dale E. Van Slambrook, Master In Equity

Appellate Case No.: 2022-001611

Steve Cumbee and Palmetto Kitchen & Remodeling, LLC.....Appellants,

v.

Bernard Milligan.....Respondent.

RECORD ON APPEAL

VOL. 2

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1 quality. And do you know of any other incidents
 2 with Mr. Cumbee that this happened? Pretty much
 3 anybody you talked to that's had dealings with him.
 4 From what I understand -- now, I didn't know this
 5 from the beginning, but after the work was done for
 6 me, yes, sir. Everybody I talked to told me that.
 7 That was without objection, Your Honor.
 8 So it happened more than once? Yes, sir. Other
 9 than me? Yes, sir. Well, Mr. Wren was one.
 10 Mr. Milligan was one.
 11 That's certainly repetitious and the
 12 likelihood that is -- that it is to be inflicted
 13 on other homeowners doing repairs in the future I
 14 think is very clear. I think we have clearly
 15 established that he -- he does shotty work. He's
 16 done it the past and would do it again in future.
 17 In your order, Your Honor, you
 18 determined that the work was shabby and the --
 19 there's no -- he -- Mr. Cumbee other than his own
 20 testimony never presented one witness to say that
 21 the work was up to standard whereas Mr. Milligan
 22 presented not only himself, the town inspector, but
 23 two licensed contractors to establish that it was
 24 shotty, defective. And, in fact, they said they
 25 thought they -- they'd never seen anything so

1 to Your Honor that the -- your order previously
 2 handed down should be confirmed.
 3 I'll be glad to answer any questions
 4 the Court may have, but we -- we feel that Your
 5 Honor clearly perceived and it's a statement of
 6 fact which the Court determines. It's not a
 7 question of law but a statement of fact in this.
 8 Thank you. If the Court -- if you have any
 9 questions I'll be glad to respond. Judge.
 10 THE COURT: Thank you. Mr. Williams.
 11 Ms. Wilson, anything further?
 12 MS. WILSON: No, Your Honor. Thank
 13 you.
 14 THE COURT: Okay. No. It was
 15 certainly unfair. It's certainly deceptive. It
 16 certainly had -- his actions had a potential for
 17 or are capable of repetition. They weren't done
 18 to any building standard. There's two experts that
 19 said that.
 20 He said he was doing it according to
 21 his normal practice, which is almost frightening if
 22 that's his normal practice. No. I will -- I will
 23 absolutely stand by the -- by the order. I'll deny
 24 the motion to reconsider. I'll ask you prepare me
 25 a short order to that effect. Mr. Williams.

1 poorly done as -- as this work that was done on
 2 Mr. Milligan's house. They say Mr. Cumbee's
 3 actions taken on the project were those of standard
 4 practice for residential renovations. No, sir,
 5 Your Honor.
 6 Under the case of Hill versus Polar
 7 Pantries it is well settled that: Where a person
 8 holds himself out as specially qualified to perform
 9 work of a particular character there is an implied
 10 warranty that the work which he undertakes will be
 11 of proper workmanship and reasonable fitness for
 12 its intended use.
 13 In this none of that was -- was
 14 present. It was not proper workmanship and not
 15 reasonable fitness for the intended use. The
 16 Plaintiff talks about the pictures that were
 17 presented at the trial. There was never any
 18 testimony that the pictures that were presented
 19 show anything other than the work that was done.
 20 Mr. Cumbee never came in and said, no,
 21 no, no, no. I didn't do that and that's somebody
 22 else doing that. That never happened. The work
 23 did not change.
 24 It was just as bad two or three years
 25 later as it was when he finished. We would submit

1 MR. WILLIAMS: Thank you, Your Honor.
 2 I will submit it to you and to Ms. Wilson when I
 3 submit it to you.
 4 THE COURT: Yes, please. Okay.
 5 MS. WILLIAMS: Thank you.
 6 THE COURT: Anything else?
 7 MS. WILSON: That's it.
 8 THE COURT: All right. Thank y'all.
 9 MS. WILSON: Thank you.
 10 MR. WILLIAMS: Your Honor.
 11 THE COURT: Yes, sir.
 12 MR. WILLIAMS: I had submitted an
 13 affidavit of attorney's fees to prepare for this
 14 hearing. I would like to submit that to Your Honor
 15 for your consideration. It's about --
 16 THE COURT: I'll -- I'll pass on -- on
 17 that. I understand why, but, you know, I'll -- no.
 18 MR. WILLIAMS: You're denying this?
 19 THE COURT: I'll deny that.
 20 MR. WILLIAMS: Okay, sir. Thank you.
 21 sir. At least we got it on the record.
 22 THE COURT: Okay.
 23 MR. WILLIAMS: Thank you.
 24 THE COURT: Yes. All right. No.
 25 Thank you for reminding of that. I should have

1 brought it up, but I did not.
 2 MR. WILLIAMS: Okay. Thank you, Judge.
 3 I had my paralegal to remind me.
 4 THE COURT: Okay. Thank y'all.
 5 (The hearing was adjourned at 2:16 PM.)
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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHARLESTON)
 3 I, Priscilla Nay, a Court Reporter and
 4 Notary Public of the State of South Carolina at
 5 Large, do hereby certify that the witness in the
 6 foregoing deposition was by me duly sworn to
 7 testify to the truth, the whole truth and nothing
 8 but the truth in the within-entitled cause; that
 9 said deposition was taken at the time and location
 10 therein stated; that the testimony of the witness
 11 and all objections made at the time of the
 12 examination were recorded stenographically by me
 13 and were thereafter transcribed by computer-aided
 14 transcription; that the foregoing is a full,
 15 complete and true record of the testimony of the
 16 witness and of all objections made at the time of
 17 the examination; and that the witness was given an
 18 opportunity to read and correct said deposition and
 19 to subscribe the same.
 20 Should the signature of the witness not
 21 be affixed to the deposition, the witness shall
 22 not have availed himself of the opportunity to
 23 sign or the signature has been waived.
 24 I further certify that I am neither
 25 related to nor counsel for any party to the cause
 pending or interested in the events thereof.
 Witness my hand, I have hereunto
 affixed my official seal on _____ at
 Charleston, Charleston County, South Carolina.

 Priscilla Nay,
 Court Reporter
 My Commission expires:
 December 10, 2031

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
STEVE CUMBEE AND PALMETTO)
KITCHEN & REMODELING, LLC,)
)
Plaintiffs,)
)
)
vs.)
)
BERNARD MILLIGAN,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-08-00889

**PLAINTIFF’S MOTION FOR
RECONSIDERATION
UNDER SCRCP 59(e)**

The Plaintiff, by and through his undersigned counsel, pray this Court to grant relief in the interests of justice and pursuant to South Carolina Rules of Civil Procedure, Rule 59(e), by reconsidering and setting aside its Order Granting Judgment to Defendant/Counter-Claimant Bernard Milligan entered on August 15, 2022.

In addition, and pursuant to the South Carolina Rules of Civil Procedure, the Plaintiff hereby requests that a hearing be held before the Court regarding this motion so that the parties may present oral arguments.

PROCEDURAL HISTORY

On May 15, 2018, the Plaintiff filed a Summons and Complaint against the Defendant for debt collection and a mechanic’s lien foreclosure. The Defendant in turn filed counterclaims for breach of contract and unfair trade practices. A trial was held on July 11, 2022, and the court issued an order on August 15, 2022, granting judgment to Defendant/Counter-Claimant Bernard Milligan because the Defendant presented evidence that the Plaintiffs unfair methods and acts were knowing and willful.

FACTS OF THE CASE

On or about September 25, 2017, Palmetto Kitchen and Remodeling, LLC entered into a contract with the Defendant to replace the roof, facial and windows, replace flooring in the entire home, can lights, remodel the laundry room, all walk through areas and doors to be upgraded, remove the wall between two bedrooms to combine as one, remodel both bathrooms, make entry from bedrooms to bathrooms, paint entire interior of house and replace AC condenser unit at the subject property, located at 306 A. Live Oak Drive, Moncks Corner, South Carolina for Thirty-Six Thousand Five Hundred Dollars (\$36,500.00).

The Defendant made an initial down payment of Eighteen Thousand Two Hundred and Fifty Dollars (\$18,250.00) for the project to begin and that draws may be needed as work progressed. Once the project began, the Defendant approached Plaintiff Steve Cumbee with additional work that he needed done on the subject property that was not included in the original contract. A work change order was then created between the parties that added an additional Twenty-Two Thousand Seven Hundred Dollars (\$22,700.00) to the contract. The full amount of the contract price then coming to Fifty-Nine Thousand Two Hundred Dollars (\$59,200.00).

On or about the end of November 2017, Plaintiff Steve Cumbee approached the Defendant about another draw on the project as he had regularly done throughout the previous two (2) months. The Defendant refused to make this payment. The Plaintiffs were then not able to progress on the project as funds were no longer coming in.

At the time that the project was forced to stop, the Defendant had paid a total of Thirty-Four Thousand Two Hundred Fifty Dollars (\$34,250.00). The Plaintiffs had spent a total of Forty-Two Thousand One Hundred Fifty Dollars (\$42,150) on the project. The Defendant owes

the Plaintiffs Seven Thousand Nine Hundred Dollars (\$7,900.00) for money that was spent on the project conducted on the property at 306 S. Live Oak Drive.

LEGAL ARGUMENT

Our courts determine what is considered to be unfair and deceptive based on the facts of the case presented. Young v. Century Lincoln-Mercury, Inc., 396 S.E.2d 105 (S.C. Ct. App. 1989). Here, the Plaintiffs did not engage in any actions that would rise to the level of being unfair or deceptive. Mr. Cumbee's actions taken on the project were those of standard practice for residential renovations. Mr. Cumbee did testify before the Court that the project was not completed due to the fact that he stopped receiving payments from the Defendant to put toward the materials and labor of the project. However, even though the project was not completed, the completed portions were done to standard. The only evidence that was presented by the Defendant at trial regarding the project were photos that were taken several years after work on the project had been completed. This evidence was not reflective of the work that the Plaintiffs had done on the project at the time that it was actively being worked on. Therefore, not proving that at the time the Plaintiffs were working on the project that the actions taken were unfair or deceptive.

“To be actionable under the Unfair Trade Practices Act, the unfair or deceptive act or practice in the conduct of trade or commerce must have an impact upon the public interest; the act is unavailable to redress a private wrong where the public interest is not affected.” Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc. (S.C.App. 1986) 290 S.C. 475, 351 S.E.2d 347. “Unfair deceptive acts or practices in the conduct of trade and or commerce have an impact upon the public interests if the acts and or practices have the potential for repetition.” Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.

(S.C.App. 1986) 290 S.C. 475, 351 S.E.2d 347. “South Carolina Unfair Trade Practices Act's (SCUTPA) "public interest" requirement may be satisfied if the alleged unfair or deceptive acts or practices have the potential for repetition; potential for repetition may be shown (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence, or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts.” Liberty Mut. Ins. Co. v. Employee Resource Management, Inc., 2001, 176 F.Supp.2d 510.

At trial, the Defendant failed to provide evidence proving that the alleged unfair and deceptive actions taken by the Plaintiffs had an any public interest. The Defendant presented Mr. Tony Wren as a witness who testified that he was a client of the Plaintiffs in 2018. During his testimony, Mr. Wren admitted that he did not allow for the project at his home to be completed and that he was unaware if it was Mr. Cumbee or someone else who was actually working on the project at his home. Therefore, failing to show that any actions on behalf of the Plaintiffs was repetitive and therefore of public interest.

If the Court finds that the deceptive and unfair methods, practices, acts, and omissions were knowing and willful the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. S.C. Code Section 39-5-140. As stated above, there was no evidence presented before the court to establish that the actions taken by the Plaintiffs were capable of repetition and therefore of public interest. Since no evidence was presented to the court to establish the actions taken by the Plaintiffs violated Section 39-5-20 of the South Carolina Code, treble damages and attorney's fees should not have been awarded in this case.

CONCLUSION

The Defendant failed to present evidence to establish that the Plaintiffs actions were capable of reparation and therefore of public interest in violation of the South Carolina Unfair Trade Practices Act. Based on the above, the Plaintiff respectfully requests this Honorable Court reconsider the Order granting treble damages and attorney's fees and costs.

WIGGER LAW FIRM, INC.

s/Kindrea N. Wilson
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Facsimile: (843) 203-1496
Attorney for Plaintiff

North Charleston, South Carolina
This 25th day of August 2022

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY)	CASE NO.: 2018-CP-08-00889
)	
STEVE CUMBEE AND PALMETTO)	
KITCHENS & REMODELING, LLC)	DEFENDANT/COUNTERCLAIMANT
)	BERNARD MILLIGAN'S RESPONSE
Plaintiffs,)	TO PLAINTIFFS MOTION FOR
)	RECONSIDERATION
v.)	
)	
BERNARD MILLIGAN)	
)	
Defendant.)	
_____)	

Plaintiffs have filed a Motion for Reconsideration under Rule 59(e) asking the Court to set aside its Order granting judgment to Defendant/Counterclaimant Bernard Milligan entered on August 15, 2022. Plaintiffs' motion fails to raise any issue upon which the Court failed to rule nor have they identified any issue of fact or law misapprehended by the Court. Plaintiffs motion must therefore be denied.

I. THE FACTS OF CASE AS ESTABLISHED BY THE EVIDENCE

Without referencing any particular evidence or exhibits introduced during the trial, Plaintiffs assert that they spent a total of \$42,150 on the project. Plaintiff's Motion, p. 2. Plaintiffs' bank records, at best, show that Plaintiffs expenditures amounted to \$21,554.10. (See Plaintiffs' Exhibit 4.) From that \$42,150 amount, Plaintiffs deduct the \$34,250 that everybody now agrees that Mr. Milligan paid for the work and neatly conclude that he owes them \$7,900. But that amount is not what was stated, under oath, as due and owing in Plaintiffs' mechanic's lien. (See Plaintiffs' Exhibit 3). That \$7,900 figure is not the "somewhere between 25 and 30,000" that Steve Cumbee testified Mr. Milligan owed on the project, nor is it the \$10,900 sum that Mr. Cumbee testified was due—after

he “found” an additional \$3,000 paid by Mr. Milligan—for his supposedly “completed work.” (See Trial Transcript, 34:6-36:8.)

In short, Plaintiffs continue to dissemble and prevaricate about sums due to them under the contract and the nature of their work on Mr. Milligan’s property. The salient facts, based on the evidence, are that Plaintiffs grossly overcharged Mr. Milligan for unpermitted and unlicensed work that was so defective it would have to be torn out. See Trial Transcript, 63:11-85-17, 93:21-96:25, 102:9-107:7, Defendant’s Exhibit 1. Plaintiffs then demanded more funds from Mr. Milligan to continue working on the project. See Trial Transcript 16:10-17:19. Plaintiffs failed to go through the permitting process and flatly lied to the Moncks Corner Building Inspector about having a building permit and business license from Berkeley County. See Trial Transcript, 112:20-114:23. The Town shut the project down and the work could not have been restarted without proper plan approvals. See Trial Transcript, 115:10-12.

Tony Wrenn testified that he contracted with Steve Cumbee to install new kitchen and bathroom cabinets. See Trial Transcript, 129:24-130:4, Defendant’s Exhibit 2. The work was of very poor quality. See Trial Transcript, 130:15-20. Despite the poor quality of the work, Cumbee kept asking for more funds. See Trial Transcript, 131:13-23. The cabinets installed by Cumbee were of such poor quality that they had to be torn out and were destroyed. See Trial Transcript, 138:1-139:5. Cumbee had a reputation in the community for poor workmanship and continuing demands of more funding. See Trial Transcript, 131:13-132:14.

II. THE COURT PROPERLY DETERMINED THAT PLAINTIFFS ACTIONS VIOLATED SOUTH CAROLINA CODE OF LAWS § 39-5-140.

Plaintiffs correctly cite the case of *Young v. Century Lincoln-Mercury, Inc.*, 302 S.C. 320, 396 S.E. 105, (Ct. App. 1989) for that proposition that our courts determine what is considered to be unfair and deceptive based on the facts of the case presented. *Id.*, at 108. Plaintiffs then make the eye-

popping pronouncement that they “did not engage in any actions that would rise to the level of being unfair or deceptive.” Plaintiffs’ Motion, p. 3. A deceptive act is any act which has the capacity or tendency to deceive. *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486, 499 (Ct. App. 2006). As summarized in Section I above, Plaintiffs performed unlicensed, substandard work without a building permit or a business license. Plaintiffs attempted to extort more funds from Mr. Milligan to correct and finish their defective work. Plaintiff led Mr. Milligan to believe they were competent, licensed, and that their work on his property was approved and authorized by the Town. Plaintiffs lied to the building inspector to conceal the nature and extent of their unfair and deceptive acts, and then doubled down on those lies at trial by claiming that their substandard work was merely “incomplete” and that work on the project was stopped due to nonpayment rather than the Towns stop order, Plaintiffs’ lack of a building permit or business license, and building code violations. These acts have the capacity or tendency to deceive. *See id.*

Plaintiffs next make the incredible claim that “Mr. Cumbee’s actions taken on the project were those of standard practice for residential renovations.” Plaintiffs fail to reference any testimony or exhibits that establish their actions on this project are generally the “standard practice” in the residential renovations trade. It is “well settled that where a person holds himself out as specially qualified to perform work of a particular character, there is an implied warranty that the work which he undertakes shall be of proper workmanship and reasonable fitness for its intended use....” *Hill v. Polar Pantries*, 219 S.C. 263, 271, 64 S.E.2d 885, 888 (1951). The testimony and exhibits presented at trial amply support the Court’s determination that Mr. Cumbee’s unfair and deceptive acts were part and parcel of *his* standard practice in conducting his renovation business and therefor unlawful under South Carolina Code of Laws § 39-5-140.

Plaintiffs argue that the project was not completed “due to the fact that he stopped receiving payments from Defendant to put toward materials and labor of the project.” The evidence established that the work was stopped by the Town because Steve Cumbee did not have a business license or a building permit, the building plans had not been approved, and the work was not up to code. Trial Transcript 112:20-117:15. Plaintiffs further argue that “even though the project was not completed, the completed portions were done to standard.” In reaching its decision, the Court had to balance Steve Cumbee’s circular and self-serving testimony on this point against the expert testimony offered by David Johnson, James Henson, and Chad Kelly.¹ Completing some work “to standard”—even if true—does not preclude a determination that the Plaintiffs’ actions violated South Carolina’s Unfair Trade Practices Act.

Plaintiffs contend that “the only evidence that was presented by the Defendant at the trial regarding the project were the photos that were taken several years after work on the project had been completed.” This statement is nonsense on a number of levels: First of all, work on the project was never completed. The Town stopped work on the project because Plaintiffs did not have a building permit or a business license. Plaintiffs never made any further effort to obtain the necessary approvals from the Town and secure a building permit for the project. Plaintiffs likewise failed to take any steps to protect their supposedly “completed” work on the project from the elements. Second, the photos were not the *only* evidence presented regarding the work on the project. Mr. Milligan, Mr. Johnson, Mr. Henson, and Mr. Kelly all provided eye-witness testimony describing the nature and quality of Plaintiffs’ substandard work. Further, the testimony was that the work ended in late in 2017 and that the photos were taken in 2021, a period of maybe 3-4 years at most—hardly “several” years. Mr.

¹ Steve Cumbee: “I’m testifying that the work that is complete is to code. If there is anything not to code, then it is incomplete.” Trial Transcript, 48:5-7.

Henson inspected the work in late 2017 or early 2018 and testified that Mr. Johnson's photographs accurately depicted the nature and quality of Plaintiff's work. See Trial Transcript, 105:7-106:13. Third, even if the photos were taken long after Plaintiffs abandoned the project, the defective images of Plaintiffs work depicted—e.g., 2x4 rafters, improper foundation, improper window sizing/installation, deck improperly secured to house, siding/shingles improperly installed—was neither caused by nor the result of the passage of time. Plaintiffs' work was substandard at the end of 2017 and remained substandard at the time of trial.

Moreover, Plaintiffs never raised any objection to, much less move to exclude, Mr. Johnson's photographs, his report or, for that matter, any of the other documents entered into evidence. A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial. *Miller Construction Company, LLC v. PC Construction of Greenwood, Inc.*, 418 S.C. 186, 206, 791 S.E.2d 321, 332 (Ct. App. 2016). The Court properly relied on the photographic evidence presented during the trial in ruling that Plaintiffs' actions were unfair and deceptive in violation South Carolina Code of Law § 39-5-140.

Plaintiffs final argument is that "the Defendant failed to provide evidence proving that the alleged unfair and deceptive actions taken by Plaintiffs had any public interest." Plaintiffs contend that Tony Wren, who contracted with Plaintiffs to install kitchen and bathroom cabinets in his new house, "admitted he did not allow for the project at his home to be completed and that he was unaware if it was Mr. Cumbee or somebody else who was actually working on the project at his home." Because of this, Plaintiffs conclude that Mr. Milligan "failed to show that any actions on behalf of the Plaintiffs was (sic) repetitive and therefore of public interest." Plaintiffs fail to cite any authority for their proposition that Wren's decision to stop work on a project due to Cumbee's deceitful and unfair actions, or that Cumbee might not have been the one who actually performed the substandard work

under his contract with Wren, somehow disqualifies Wren's testimony that the same kind of acts had occurred in the past and had the potential for repetition.

To prevail in an action under the South Carolina Unfair Trade Practices Act, Mr. Milligan must show: (1) the Plaintiffs engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest, and (3) the Plaintiffs suffered monetary or property loss as a result of the unfair or deceptive act(s). *See RFT Management Co., LLC v. Tinsley & Adams LLP*, 399 S.C. 322, at 337, 732 S.E.2d 166, at 174 (2012). To be actionable under the UTPA, an unfair or deceptive act or practice must have an impact upon the public interest. *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486, 502, (Ct. App. 2006). "An impact on the public interest may be shown if the acts or practices have the potential for repetition." *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004)

As stated by the Court of Appeal in *Wright v. Craft*:

The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts. (Interior citation omitted.) These two ways are not the only means for showing the potential for repetition or public impact, and each case must be evaluated on its own merits to determine what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA. (Interior citations omitted.) Nevertheless, a plaintiff proves an adverse effect on public interests if he proves facts that demonstrate the potential for repetition.

Id., *supra*, 640 S.E.2d 502.

Wren's testimony established that Plaintiffs have engaged in the same kind of actions in the past. Plaintiffs admit at page 3 of their Motion for Reconsideration that "Mr. Cumbee's actions taken on the project were those of [his] standard practice." As such Plaintiffs' procedures create a potential for repetition of the same unfair and deceptive acts perpetrated on Mr. Milligan. The Court properly determined that the evidence presented by Mr. Milligan satisfied either or both prongs as set forth in

Wright to establish a potential for repetition which impacts the public interest. Accordingly, the Court properly awarded Mr. Milligan treble damages and attorneys fees under South Carolina Code of Laws § 39-5-140,

CONCLUSION

Based on the above, the Defendant/Counter-Claimant, Bernard Milligan, respectfully requests this Honorable Court deny Plaintiffs Motion for Reconsideration. Further, Mr. Milligan requests that the Court award him reasonable attorney's fees pursuant to §39-5-140 for having to respond to this motion, as set forth in the affidavit of John B. Williams filed contemporaneously.

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ATTORNEY FOR
DEFENDANT/COUNTER-CLAIMANT ,
Bernard Milligan

Dated: October 19, 2022
Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA
COUTY OF BERKELEY

STEVE CUMBEE AND PALMETTO
KITCHEN & REMODELING, LLC;

PLAINTIFFS;

V.

BERNARD MILLIGAN;

DEFENDANT.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-08-889

STATE OF SOUTH CAROLINA
COUTY OF BERKELEY

BERNARD MILLIGAN;

PLAINTIFF;

V.

ROBERT STEVE CUMBEE a/k/a ROBERT S.
CUMBEE, a/k/a STEVE CUMBEE, and
PALMETTO KITCHEN & REMODELING,
LLC;

DEFENDANTs.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-08-904

2018 JUL 27 PM 3:53
FILED
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

**PLAINTIFFS, STEVE CUMBEE AND PALMETTO KITCHEN & REMODELING,
LLC'S MOTION TO CONSOLIDATE**

TO: John B. William, as ATTORNEY FOR BERNARD MILLIGAN:


YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, Steve Cumbee and Palmetto Kitchen & Remodeling, LLC, by and through their undersigned attorneys and pursuant to Rule 42(a) of the South Carolina Rules of Court, will move before the Judge of the above captioned Court as soon as counsel may be heard for an Order consolidating cases 2018-CP-08-889 and 2018-CP-08-904.

Plaintiffs make this motion on the basis that both cases arise out of the same incident, occurrence or series of occurrences, share common parties and same question of law or fact with all parties involving the same incident. Consolidation of these cases would also avoid unnecessary costs and delays for the parties and the Court.

"[C]onsolidation may be ordered whenever actions involving a common question of law or fact are pending before the court...the parties and pleadings are not merged and each action retains its own identity....The merger of actions under consolidation is never so complete as to deprive any party of a substantial right." Ellis v. Oliver, 307 S.C. 365, 367, 415 S.E. 2d 400, 401 (1992). Consolidation of these actions would not prejudice any of the parties because, "The parties and pleadings are not merged, and each action retains its own identity." Saryghad v. Sitton Buick Co., 440 S.C. 2d 894, 895 (Ct. App. 1994).

WHEREFORE, the Plaintiffs hereby moves for an Order consolidating Civil Action Numbers: 2018-CP-08-889 and 2018-CP-08-904.

WIGGER LAW FIRM, INC.



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North Charleston, South Carolina
This 27 day of July, 2018.