

PM UPS
POS 2/9/12

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas


R. Lawton McIntosh, Circuit Court Judge

Case No. 2008-CP-37-415

RECEIVED

FEB 09 2012

SC Court of Appeals

 Jerry Holtzclaw, dba
Green Thumb Landscape
& Irrigation,

Respondent,

v.

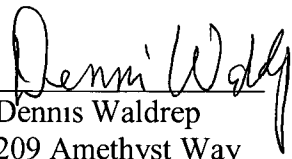
Dennis D. Waldrep,

Appellant.

NOTICE OF APPEAL

Dennis Waldrep appeals the Judgment of the Honorable R. Lawton McIntosh dated January 17, 2012 Appellant received written notice of entry of this order of Judgment on January 25, 2012.

Feb. 08, 2012


Dennis Waldrep
209 Amethyst Way
Seneca, South Carolina 29672
(864) 230-4020

Other Counsel of Record:
William C. Hood
505 N McDuffie Street
Anderson, South Carolina 29621
Attorney for Respondent
(864) 202-4004

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2008-CP-37-415

Jerry Holtzclaw, dba
Green Thumb Landscape
& Irrigation

Respondent,

v.

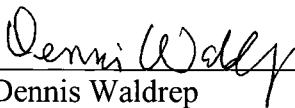
Dennis Waldrep,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Jerry Holtzclaw, dba Green Thumb Landscape & Irrigation by US Mail and by UPS with a signature required for delivery on February 8, 2012. The copy was sent out to his attorney of record, William C. Hood, 505 N McDuffie Street, Anderson, South Carolina 29621 as well as to Jerry Holtzclaw to 917 N Crestview Drive, Seneca SC 29678

Feb. 08, 2012


Dennis Waldrep
209 Amethyst Way
Seneca, South Carolina 29672
(864) 230-4020

RECEIVED
FEB 09 2012
SC Court of Appeals

Dennis Waldrep
209 Amethyst Way
Seneca SC 29672

Feb. 08, 2012

Tanya Gee

SC Court of Appeals
1015 Sumter Street
Columbia SC 29201

RECEIVED
FEB 09 2012
SC Court of Appeals

RE: Jerry Holtzclaw, dba Green
Thumb Landscape & Irrigation
v Dennis Waldrep
Case # 2008-CP-37-415

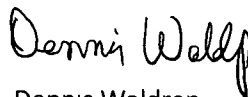
Dear Ms. Tanya Gee,

Please find enclosed an original and 1 copy of the Notice of Appeal along with the filing fee of \$100 for the above referenced case. Please file and return the recorded copy of the Notice of Appeal with the enclosed envelope.

By copy of this letter I am serving the opposing counsel with a copy of the Notice of Appeal.

Thank you for your assistance in this matter and if you have any question I can be reached at 864-230-4020.

Sincerely,



Dennis Waldrep

Cc: William C. Hood

remely Urgent

This envelope is for with the follow

ups.com® or call 1-800-PICK-UPS® (1-800-742-5877)
Schedule a pickup or find a drop-off location

Domestic Shipments

UPS Express Envelopes may be used only for documents, correspondence, urgent documents, and/or electronic media weighing 8 oz. or less. UPS Express Envelopes containing items listed or weighing more than 8 oz. will be billed by weight.

International Shipments

UPS Express Envelope may be used only for documents. Certain countries consider electronic media as documents. Import/export to verify if your shipment is classified as a document.

UPS Express Envelope must be used for documents. UPS Express Envelopes weighing more than 8 oz. will be billed by weight.

UPS Express Envelopes are not recommended for shipments containing sensitive personal information or breakable items. An equivalent service is available.

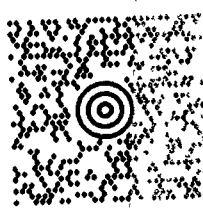
DENNIS WALDREP
(864) 230-4020
THE UPS STORE #378
273 APPLEWOOD CENTER PL
SENECA SC 29678-0914

1 LBS 1 OF 1
DATE: 06 FEB 2012

SHIP ATTN: TANYA GEE
TO: SC CLERK OF COURT
1015 SUMTER ST

COLUMBIA SC 29201-3726

SC 292 9-01



UPS GROUND

TRACKING #: 1Z XX1 305 03 5844 6565



SC CLERK OF COURT
1015 SUMTER ST

COLUMBIA SC 29201-3726

P: GREEN S: MIDYEL I: GR1

42A - 2000

1ZXX1306035844 6565

LCC7JJI SCCL105
US 2920 HIP 11 1 3 FEB 09 06:54:19 2012
OK1EB10

NOTICE ON REVERSE regarding UPS Terms and notice of limitation of liability. Where allowed by law, shipper authorizes UPS to act as forwarding agent for export control and as purposes. If exported from the US, shipper certifies that the commodities, technology or software were exported from the US in accordance with the Export Administration Act. Diversion contrary to law is prohibited.

FILED OCONEE, SC
 STATE OF SOUTH CAROLINA BEVERLY H. WHITFIELD IN THE COURT OF COMMON PLEAS
 CLERK OF COURT TENTH JUDICIAL CIRCUIT
 COUNTY OF OCONEE 2012 FEB 21 AM 10 52

RECEIVED
 FEB 27 2012

Jerry Holtzclaw, d/b/a)
 Green Thumb Landscape)
 & Irrigation,)
)
 Plaintiff,)
)
)
)
 vs.)
)
 Dennis Waldrep,)
)
 Defendant.)
 _____)

SC Court of Appeals
ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION,
TO AMEND FINDINGS OF FACT,
AND TO ALTER OR AMEND JUDGMENT

2008-CP-37-415

Defendant. in a timely manner, filed a motion pursuant to Rules 52 and 59(e), S C R C.P., seeking reconsideration of the Court's Order filed on July 22, 2011 or, in the alternative, seeking to amend the findings of fact or to alter and/or amend the judgment A hearing was held on October 10, 2011, at which time arguments of counsel were heard

Defendant's motion contends that the Court erred in finding that he failed to establish that the lower retaining wall is not in compliance with the block manufacturer's (Allan Block's) specifications for differential settlement. The Defendant's engineer, Chandler, testified that the lower wall is failing However, he performed no tests and made no measurements The Court found his testimony and opinion lacking in credibility.

During his testimony, Chandler referred to the manufacturer's specifications concerning settlement, but did not produce the actual specifications At the conclusion of Defendant's case,

the Plaintiff, in reply, admitted into evidence the manufacturer's specifications for settlement as published on its website. Those specifications provide that "total allowable differential settlement is 1% of total wall length." Evidence as to the actual degree of settlement along the wall varied. However, the largest elevation differential supported by any evidence was 8 1/23 inches. The wall is in excess of 85 feet in length. Accordingly, the Court found that Defendant failed to establish non-compliance with the specifications.

At the conclusion of the trial, the Court allowed counsel for Defendant to submit further argument in writing as to why the Court should not find from the evidence of record that the wall is within the settlement tolerance set by the manufacturer. The Court could not, and did not, allow additional evidence or expert opinion to be submitted after the trial had concluded. Based upon the testimony and evidence admitted at trial, the Court confirms its finding that the settlement of the wall is within the tolerance clearly stated in the specification entered in evidence. The Court cannot consider evidence not admitted at trial, and nothing in Defendant's arguments persuaded the Court that its initial findings were in error.

Defendant's motion further argues that the evidence does not contain documentation for every material cost charged by Plaintiff and that there is no documentary evidence to support the labor costs charged by Plaintiff. There was extensive testimony and evidence received concerning the scope and actual cost of the work performed, including the cost of materials and labor. Aside from the adjustments specifically found proper by the Court, the evidence, whether documentary or testimonial in nature, was sufficient to support the amount found due.

Therefore, after deliberate consideration of the arguments of counsel and careful reconsideration of the evidence as a whole, it is

ORDERED that Defendant's Motion for Reconsideration To Amend Findings of Fact and to Alter or Amend the Judgment is hereby DENIED

IT IS SO ORDERED.

2/16, 2012

S/ R. LAWTON McINTOSH

R Lawton McIntosh
Circuit Court Judge

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 FEB 21 AM 10 52

A TRUE COPY
FEB 21 2012
CLERK OF COURT - O'CONNOR COUNTY

Dennis Waldrep
209 Amethyst Way
Seneca SC 29672

Feb 24, 2012

Tanya Gee

SC Court of Appeals
1015 Sumter Street
Columbia SC 29201

RE: Jerry Holtzclaw, dba Green
Thumb Landscape & Irrigation
v Dennis Waldrep
Case # 2008-CP-37-415

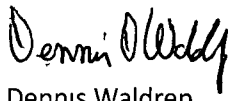
RECEIVED
FEB 27 2012
SC Court of Appeals

Dear Ms Tanya Gee,

Please find enclosed the most recent Order that I just received from my attorney dated February 21-2012 and it looks the same except it has a different Date Stamped.

Thank you for your assistance in this matter and if you have any question I can be reached at 864-230-4020

Sincerely,


Dennis Waldrep

Cc: William C Hood

Dennis D Waldrep
209 Amethyst Way
Seneca SC 29672

2-17-2012

Tanya A. Gee

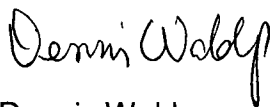
SC Court of Appeals
1015 Sumter Street
Columbia SC 29201

Case # 2008-CP-37-415
Jerry Holtzclaw, dba,
Green Thumb Landscape & Irrigation v
Dennis Waldrep

Dear Ms Tanya A. Gee,

I have enclosed a copy of the Court order as requested regarding the above mentioned case of Jerry Holtzclaw, dba, Green Thumb Landscape & Irrigation v Dennis Waldrep.

Sincerely,



Dennis Waldrep

RECEIVED
FEB 21 2012
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-37-415

Holtzclaw, et al

Waldrep

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented

COPY

FILED O CONEE, SC
BEVERLY WHITFIELD
CLERK OF COURT
2012 JAN 17 AM 11 04

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON)** Rule 12(b), SCRPC, Rule 41(a), SCRPC (Vol Nonsuit); Rule 43(k), SCRPC (Settled), Other
- ACTION STRICKEN (CHECK REASON)** Rule 40(j), SCRPC, Bankruptcy, Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX).**
 Affirmed; Reversed, Remanded, Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court Defendant's motion for clarification of rulings is denied. Defendant's motion to amend the pleading to assert the proper amount by way of setoff is granted. Defendant's motion for reconsideration is denied. Hood, Esq To prepare formal order denying motion for recons. denied. (RM)

ORDER INFORMATION

This order ends does not end the case
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$

A TRUE COPY
JAN 17 2012
COURT - OCONEE CO

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

R. Lawton McIntosh
Circuit Court Judge - R. Lawton McIntosh
SCRPC Form 4C (12/2011)

2155
Judge Code

1-13-12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 17th day of Jan, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 17th day of Jan, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

William C. Hood, Attorney at Law, 505 N. McDuffie St ,
Anderson, SC 29621

Catherine J Berger, Attorney at Law, P O Box 10,
Piedmont, SC 29673-0010

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Beverly H. Whitfield
CLERK OF COURT - Richard A. Shirley

Court Reporter:

FILED CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JAN 17 AM 11 04

William C. Hood
Attorney at Law
505 North McDuffie Street
Anderson, SC 29621
864-375-0530 Phone
864-375-0640 Fax

FACSIMILE TRANSMISSION SHEET

DATE: 1/21/12

TO: Catherine Berger

COMPANY:

FAX #: 845-6467

RE: Holtzclaw v. Waldrep

OF PGS:

FROM: (x) WILLIAM C. HOOD

() _____

If you do not receive all pages or have questions, please call (864) 375-0530. Thank you.

Comments:

This facsimile transmission may contain privileged or confidential information. If this communication was not intended for you, please destroy the same, together with any attachments or copies which were made; do not use, copy or distribute the contents in any manner; and notify the sender by phone or fax at the above numbers. No privilege is waived by inadvertent transmission.

William C. Hood

Attorney at Law

505 North McDuffie Street

Anderson, SC 29621

Telephone: 864-375-0530 Fax: 864-375-0640

January 21, 2012

Via mail and fax to 845-6467

Ms. Catherine Berger

Attorney at Law

P. O. Box 10

Piedmont, SC 29673

Re: Jerry Holtzclaw, d/b/a Greenthumb Landscaping v. Dennis Waldrep
2008-CP-37-415

Dear Catherine:

I have enclosed a revised proposed Order for your review. The revision is near the top of page 2 where I have changed "8.123 feet" to "8.123 inches".

Very truly yours,

A handwritten signature in black ink, appearing to be 'WCH', written over a printed name.

William C. Hood

WCH/

Encl.

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Jerry Holtzclaw, d/b/a)
Green Thumb Landscape)
& Irrigation,)

Plaintiff,)

vs.)

Dennis Waldrep,)
)
Defendant.)

ORDER DENYING DEFENDANT'S

MOTION FOR RECONSIDERATION,

TO AMEND FINDINGS OF FACT,

AND TO ALTER OR AMEND JUDGMENT

2008-CP-37-415

Defendant, in a timely manner, filed a motion pursuant to Rules 52 and 59(e), S.C.R.C.P., seeking reconsideration of the Court's Order filed on July 22, 2011 or, in the alternative, seeking to amend the findings of fact or to alter and/or amend the judgment. A hearing was held on October 10, 2011, at which time arguments of counsel were heard.

Defendant's motion contends that the Court erred in finding that he failed to establish that the lower retaining wall is not in compliance with the block manufacturer's (Allan Block's) specifications for differential settlement. The Defendant's engineer, Chandler, testified that the lower wall is failing. However, he performed no tests and made no measurements. The Court found his testimony and opinion lacking in credibility.

During his testimony, Chandler referred to the manufacturer's specifications concerning settlement, but did not produce the actual specifications. At the conclusion of Defendant's case,

the Plaintiff, in reply, admitted into evidence the manufacturer's specifications for settlement as published on its website. Those specifications provide that "total allowable differential settlement is 1% of total wall length." Evidence as to the actual degree of settlement along the wall varied. However, the largest elevation differential supported by any evidence was 8.123 inches. The wall is in excess of 85 feet in length. Accordingly, the Court found that Defendant failed to establish non-compliance with the specifications.

At the conclusion of the trial, the Court allowed counsel for Defendant to submit further argument in writing as to why the Court should not find from the evidence of record that the wall is within the settlement tolerance set by the manufacturer. The Court could not, and did not, allow additional evidence or expert opinion to be submitted after the trial had concluded. Based upon the testimony and evidence admitted at trial, the Court confirms its finding that the settlement of the wall is within the tolerance clearly stated in the specification entered in evidence. The Court cannot consider evidence not admitted at trial, and nothing in Defendant's arguments persuaded the Court that its initial findings were in error.

Defendant's motion further argues that the evidence does not contain documentation for every material cost charged by Plaintiff and that there is no documentary evidence to support the labor costs charged by Plaintiff. There was extensive testimony and evidence received concerning the scope and actual cost of the work performed, including the cost of materials and labor. Aside from the adjustments specifically found proper by the Court, the evidence, whether documentary or testimonial in nature, was sufficient to support the amount found due.

Therefore, after deliberate consideration of the arguments of counsel and careful reconsideration of the evidence as a whole, it is

ORDERED that Defendant's Motion for Reconsideration To Amend Findings of Fact and to Alter or Amend the Judgment is hereby DENIED.

IT IS SO ORDERED.

_____, 2012

R. Lawton McIntosh
Circuit Court Judge