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JUL 10 2014
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No.: 2010-CP-40-8155
Appellate Case No. 2014-000272

Howard Nankin and Nancy Nankin Appellants,

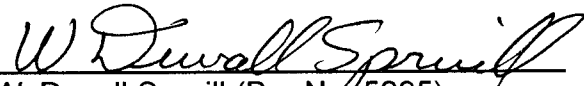
v.

Donald M. Danford d/b/a Don Danford Interiors Respondent.

RESPONDENT'S MOTION TO DISMISS APPEAL

Respondent hereby moves the Court for an Order Dismissing The Appeal in this action. The ground for the Dismissal, as more particularly set out in the attached Memorandum, is that Appellants have elected recovery under the Breach of Contract claim, so they can claim no other basis for recovery of the damages they have incurred.

The attached Memorandum explains the merits of this Motion in full detail.


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Attorneys for Respondent

July 10, 2014

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Howard Nankin and Nancy Nankin Appellants,

v.

Donald M. Danford d/b/a Don Danford Interiors Respondent.

**MEMORANDUM IN SUPPORT OF
RESPONDENT'S MOTION TO DISMISS APPEAL**

The following facts are apparent from the two Orders of Judge Edgar W. Dickson which are being appealed and which are attached to this Motion as Exhibits A and B. The Appellants sued the Respondent in 2010 asserting five separate causes of action, each arising out of the renovation of their existing bathroom. The claims were for breach of contract, negligence, negligent misrepresentation, fraud and breach of the South Carolina Unfair Trade Practices Act. All of the allegations of the complaint arise from the very same set of facts. Appellants were awarded relief by the Trial Court who tried the case without a jury. He awarded them judgment for remedial expenses and anticipated additional repairs based upon the breach of contract claim. The Trial Court

concluded that the Appellants had failed to prove their claims for negligence, negligent misrepresentation, fraud and unfair trade practices. Appellants have filed this appeal holding on to their judgment for breach of contract while, at the same time, urging this Court to allow them further pursuit of the claims which the Trial Court denied. Those claims were for the same consequences of the same alleged wrongdoing. Thus, Appellants have a judgment for their damages related to the renovation of the bathroom, but they ask this Court to find that they should be able to recover for the same consequences under related legal theories. Yet, if the court had found in favor of the Appellants on all five causes of action, the Appellants would have had to elect only one of those as the basis of their recovery since they can only recover once. Their pursuit of the final judgment for breach of contract is an election and precludes their recovery on any other claim.

By filing this appeal, the Appellants ask the Court to spend its time and effort performing a meaningless act since they have already recovered a judgment for their loss. It would now make no difference if this Court reviewed the Trial Court's orders on the merits and concluded that one or more of the claims which were dismissed should be revitalized. The Appellants have received a judgment and have elected to pursue that recovery. They can only recover once for their damages. The Appellants' election of remedies is made abundantly clear by the actions they have taken since filing their Notice of Appeal. As is evidenced by Exhibits C, D and E, the Appellants have procured a Writ of Execution for the amount established by the Order of the Trial Court. Not

only that, the Writ of Execution was presented to the Sheriff of Richland County, and Appellants have initiated Supplemental Proceedings to collect the full amount awarded by the Trial Court on the Breach of Contract claims. Thus, the choice by Appellants is clear. They are now precluded from seeking other claims to recover those very same damages.

The doctrine of election of remedies involves choosing between “two or more different and coexisting forms of relief afforded by law for the same injury.” *Adams v. Grant*, 292 S.C. 581, 584, 358 S.E.2d 142, 144 (Ct. App. 1986). Election of remedies operates to prevent double redress of a single wrong. *Williams v. Riedman*, 339 S.C. 251, 275, 529 S.E.2d 28, 36 (Ct. App. 2000). Application of the doctrine should be confined to cases where double recovery of the plaintiff is threatened. *Save Charleston Found. V. Murray*, 286 S.C. 170,175, 333 S.E.2d 60, 64 (Ct. App. 1985). “When an identical set of facts entitle the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both.” *Id.* Stated differently, election of remedies is the act of choosing between different remedies allowed by the law *on the same state of facts.*” *Barfield v. J.L. Coker & Co.*, 73 S.C. 181, 189, 53S.E.170, 173 (1906).


The five theories under which Appellants proceed in the present case represent the same actual damages or conduct under differing theories of recovery, thus requiring Plaintiffs to elect which theory will be the basis of recovery. South Carolina cases applying or commenting upon the doctrine of election of remedies do not allow a plaintiff to recover damages for multiple

causes of action based on the same conduct. *Williams v. Riedman*, 339 S.C. 251, 529 S.E.2d 28 (Ct. App. 2000) (prohibiting double recovery where the breach of contract and the breach of implied covenant of good faith and fair dealing claims resulted from employees improper termination); *Cowart v. Poore*, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999) (requiring election among breach of contract, negligence, and violations of the Unfair Trade Practices Act had the action been brought to trial where all the causes of action arose out of a fee dispute.); *Carolina Chem. Equip Co. v. Muckenfuss*, 322 S.C. 289, 471 S.E.2d 721 (Ct. App. 1996) (prohibiting double recovery on bad faith and misappropriation causes of actions where both concerned the misappropriation of trade secrets); *Sorin Equip. Co. v. Firm, Inc.*, 323 S.C. 359, 474 S.E.2d 819 (Ct. App. 1996) (disallowing plaintiff to recover damages on both quantum meruit and fraud causes of action involving manufacturing rights if plaintiff prevailed on both causes of action at trial); *Brown v. Felkel*, 320 S.C. 292, 295, 465 S.E.2d 93, 95 (Ct. App. 1995) (barring recovery on a tort claim arising under identical facts involving accountants' breach of fiduciary duties under which plaintiff had already received a judgment based on contract); *Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 316 S.C. 331, 450 S.E.2d 66; (Ct. App. 1994)(electing to recover on negligence claim over contract claim where insurer refused to pay insurance proceeds for damaged frozen goods). In *Perry v. Green*, the plaintiffs proceeded on similar dual theories of breach of contract and breach of contract accompanied by a fraudulent act in addition to the cause of action for specific performance when a seller refused to transfer registration papers on a registered

Arabian mare. 313 S.C. 250, 250, 437 S.E.2d 150, 151 (Ct. App. 1993). The jury returned verdicts in favor of the plaintiff on both causes of action. *Id.* The trial judge sua sponte allowed only one recovery of actual damages, recognizing that “the breach of contract and the breach of contract accompanied by a fraudulent act causes of action necessarily arose out of the same transaction.” *Id.* The trial judge corrected the double recovery and thereafter granted specific performance. *Id.*, 437 S.E.2d at 152. On appeal, the Court of Appeals affirmed this portion of the result, finding no error by the trial judge. *Id.*

Judgment has now been entered against the Respondent on the breach of contract claim according to Judge Dickson’s orders. In spite of the fact that the Appellants appealed his refusal to find in their favor on any of the other causes of action, the Appellants have elected to recover the damages awarded for breach of contract. So, even if the Court of Appeals were to conclude that there was a gap in the decision of Judge Dickson, the matter would be moot since the Appellants have elected to collect for their bathroom under the award for breach of contract. Therefore, the Court need go no further in evaluating the Appellants’ additional claims.

It is respectfully submitted that this Appeal should be dismissed.


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Attorneys for Respondent

July 10, 2014

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-40-08155

Howard Nankin and Nancy)
Nankin,)

Plaintiffs,)

vs.)

Donald M. Danford d/b/a Don)
Danford Interiors,)

Defendant.)

Donald M. Danford d/b/a Don)
Danford Interiors,)

Third-Party Plaintiff,)

vs.)

Jeff Stahl,)

Third-Party Defendant.)

ORDER

JENNIFER W. McBRIDE
C.C.P. & G.S.

2013 MAY -9 PM 3:45

RICHLAND COUNTY
CLERK

THIS MATTER came before the undersigned for a bench trial on October 4, 2012. Wesley D. Peel, Esquire appeared on behalf of Plaintiffs Howard and Nancy Nankin. W. Duvall Spruill, Esquire appeared on behalf of Defendant Donald M. Danford d/b/a Don Danford Interiors ("Danford"). Third-Party Defendant Jeff Stahl ("Stahl") appeared *pro se*. Based on the exhibits, testimony of witnesses, and arguments presented at trial, I make the following Findings of Fact and Conclusions of Law:

1. Findings of Fact

Plaintiffs own and live in the residence at 247 Southlake Drive in Columbia, South Carolina and decided to renovate the master bathroom of their home (the "Project"). Specifically, Plaintiffs wanted to upgrade all existing features of their master bathroom as well as install a handicap accessible shower to ensure that the renovated bathroom remained usable and practical as Plaintiffs grew older. Plaintiffs were referred to Danford as an interior designer, and Plaintiffs enlisted Danford as a decorator to design the Project. Danford agreed to perform the decorating work and also told the Plaintiffs that he would locate a contractor to perform the renovation. The budget for the project was around \$25,000.00. Danford contacted David Noss, a licensed residential builder, to provide an estimate for the Plaintiffs' bathroom. Mr. Noss visited the home and prepared an estimate, which he gave directly to Danford. Danford told the Plaintiffs that the estimate was too high. Danford then presented the Plaintiffs with a second estimate written on Danford's letterhead showing that the project would cost \$25,974.25, which was within Plaintiffs' budget. Mr. Nankin testified that that he was aware the budget on the letterhead was not all-inclusive, specifically omitting the plumbing fixtures, which cost more than \$4,000.00. The estimate on Danford's letterhead contained a line item for "Contractor's Fees" in the amount of \$3,800.00, which supported the notion that Danford would obtain a contractor. In subsequent invoices, the amount of \$3,800 was shown as fees to Danford for labor. Danford explained to the Plaintiffs that he had reworked his estimate for them to meet budget. Danford represented to the Plaintiffs that his only charges were for decorating services at \$125.00 per hour. The Plaintiffs agreed to the price and the work began.

Rather than hire a general contractor on Plaintiffs' behalf as promised, Danford directly ordered and paid for materials for the Project and directly hired, paid, and coordinated

subcontractors to perform the various tasks required to complete the Project. Matthew Cooper, testified at trial that he worked for and was paid pay by Danford for construction work on the Plaintiffs' home. It is undisputed that Danford self-performed some of the construction. All payments from the Plaintiffs were made directly to Danford. Plaintiffs were not informed that Danford was performing the duties of a general contractor on the Project and, in fact, believed that he had hired a contractor. Plaintiffs experienced problems throughout the Project as a result of poor planning and coordination by Danford. As the Project progressed, Plaintiffs began to notice evidence of poor workmanship and quality throughout the various aspects of the Project. These defects were pointed out to, but not corrected by, Danford. At this point Plaintiffs discovered that Danford had not hired a general contractor and was performing that task himself. As a result of the poor and unacceptable work and Danford's concealing of the fact that he was acting as the general contractor for the Project, Plaintiffs terminated Danford, fixed the bathroom so that it was in a usable condition, and have lived with various problems and deficiencies during the pendency of this action. Danford offered testimony tending to downplay or contradict his role as the contractor, as well as evidence contradicting the Plaintiffs' understanding of agreement. The Court considered this evidence in its deliberation but ultimately gave it little weight in its ruling.

Plaintiffs paid Danford \$24,895.00 for an incomplete and poorly constructed master bathroom. Plaintiffs corrected some of the deficiencies themselves and solicited a bid from Arthur Suggs, a licensed general contractor and residential builder, to correct the defective work and complete the Project. Mr. Suggs was duly qualified as an expert in residential construction, and Danford offered no expert testimony of his own. Significant amounts of the poor work

performed by Danford likely will have to be torn up and re-done to properly remedy the defective condition of the Project at a significant cost.

Danford is neither a licensed general contractor nor a licensed residential builder. Plaintiffs have already paid Danford \$24,895.00 on a project that was supposed to cost \$25,974.25. The Plaintiffs have paid \$2,127.00 to bring the bathroom to a usable condition. Additionally, the Plaintiffs received an estimate of \$22,951.00 from Mr. Suggs to correct the defective workmanship in their master bathroom and to complete the Project.

2. Conclusions of Law

The Plaintiffs instituted this action against Danford for breach of contract, negligence, negligent misrepresentation, fraud, and violation of the South Carolina Unfair Trade Practices Act. Danford filed a counterclaim for breach of contract and/or quantum meruit, alleging that the Plaintiffs did not pay him for all materials and labor he expended on the project. Additionally, Danford filed a third-party complaint against Stahl for indemnity. Stahl installed most of the tile on the Project, and Danford alleged Stahl must indemnify him for any damages awarded Plaintiffs relating to the tile work. I find in favor of the Plaintiff's on their breach of contract action in the amount of Twelve Thousand Nine Hundred Twenty-Seven Dollars (\$12,927.00). I find Danford's counterclaim against Plaintiffs barred by statute. I find for Danford on his third-party claim against Stahl in the amount of Six Thousand Four Hundred Dollars (\$6,400.00).

a. Plaintiffs' Claim for Breach of Contract

To recover for breach of contract against Danford, Plaintiffs were required to plead and prove "(1) the existence of a contract, (2) breach of the contract, and (3) damages caused by the breach." Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct.

App. 2010) (citing Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)). This Court finds that Plaintiffs entered into a contract with Danford whereby Danford was to design a remodeled master bathroom for Plaintiffs. As part of that contract, Danford was to assist Plaintiffs in hiring a general contractor to perform the actual construction work. Danford breached his contract with Plaintiffs by failing to hire a general contractor and concealing this fact from Plaintiffs as well as in constructing a bathroom with numerous deficiencies. As the direct and proximate result of Danford's breach, Plaintiffs have been damaged as follows based upon services Danford promised to perform that were not performed or performed unsatisfactorily: One Thousand Four Hundred Dollars (\$1,400.00) in damages for the plumbing/toilet; Six Thousand Four Hundred Dollars (\$6,400.00) for the tile floor; and Three Thousand Dollars (\$3,000.00) for the glass door/surround. I further find Plaintiffs entitled to the Two Thousand One Hundred Twenty-Seven Dollars (\$2,127.00) they have spent thus far on repairs. In total, I find in favor of the Plaintiffs on their breach of contract claim for Twelve Thousand Nine Hundred Twenty Seven Dollars (\$12,927.00).

b. Plaintiffs' Claim for Violation of the South Carolina Unfair Trade Practices Act

By statute, Danford was required to hold a license with the South Carolina Residential Builders Commission for the work he performed for Plaintiffs. S.C. Code Ann. § 40-59-20(6) defines a "Residential Builder" as

one who constructs, superintends, or offers to construct or superintend the construction, repair, improvement, or reimprovement of a residential building or structure which is not over three floors in height and which does not have more than sixteen units in any single apartment building, when the cost of the undertaking exceeds five thousand dollars. Anyone who engages or offers to engage in such undertaking in this State is considered to have engaged in the business of residential building.

Danford engaged in the business of residential building by ordering materials for the Project and by hiring, overseeing, and coordinating subcontractors and other workers on the Project. Danford also engaged in the practice by offering to return to correct deficiencies in his work. Pursuant to S.C. Code Ann. § 40-59-220(A), "All residential builders must be licensed . . . by the commission for a period established by the commission in regulation." Danford was not licensed and, as such, was sanctioned by the Residential Builders Commission for violating this very section. As the agency charged with administering and enforcing the statutes and regulations related to residential home buildings, the Residential Builders Commission's findings and decision "should be given great deference." Barton v. Higgs, 381 S.C. 367, 371, 674 S.E.2d 145, 147 (2009) (citing Dunton v. S.C. Bd. of Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) for the proposition "that the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration"). "The chapter on residential home builders is designed to benefit the public in general by insuring that only licensed builders perform residential building." Summers v. Harrison Constr., 298 S.C. 451, 456, 381 S.E.2d 493, 496 (Ct. App. 1989); see also W&N Constr. Co., Inc. v. Williams, 322 S.C. 448, 450, 472 S.E.2d 622, 623 (1996) (discussing rulings from other jurisdictions not allowing unlicensed contractors to enforce a contract for construction despite absence a clear statutory mandate, "The rationale is that such licensing statutes protect the public and to permit unlicensed contractors to circumvent licensing requirements by payment of a small fine would defeat the legislative intent.").

S.C. Code Ann. §39-5-20(a), provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful."

To establish a cause of action under the UTPA, the plaintiff must prove unfair or deceptive acts or practices in the conduct of any trade or commerce. The unfair or

deceptive act or practice must affect the public interest. An impact on the public interest may be shown if the acts or practices have the potential for repetition. The potential for repetition may be proven by showing: (1) the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) the defendant's procedures created a potential for repetition of the unfair and deceptive acts

Hollman v. Woolfson, 384 S.C. 571, 580, 683 S.E.2d 495, 499 (2009) (internal citations omitted). Danford violated a statute enacted for the protection of the public. Plaintiffs presented uncontested evidence that Danford has entered into similar arrangements with at least two other clients in the past, where he was performing the duties of a contractor without a license. Plaintiffs presented an invoice from Danford to Rich and Mary Edelson dated July 12, 2010 and an invoice from Danford to Jackie Warrington dated November 23, 2010, both of which were for residential construction projects. However, the Court does not find that Danford's actions arise to the "potential for repetition" threshold required for treble damages and attorneys' fees to be awarded under the South Carolina Unfair Trade Practices Act. While there was evidence presented that Danford had acted in a similar capacity on two prior occasions, the Court feels the underlying dispute in this case was between two private parties and does not substantially affect the public at large.

c. Danford's Counterclaim

Danford's counterclaim against Plaintiffs is barred by statute. S.C. Code Ann. § 40-59-30(B) states,

Notwithstanding Section 29-5-10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter.

Danford alleged that the Plaintiffs failed to reimburse him for the expenses he advanced and for his time and effort. As to Danford's claim for his time and effort, the statute cited above clearly

precludes any recovery as he was engaged in the practice of residential building without a license. As to the "expenses" advanced, South Carolina law also precludes any recovery. In Roberta, Inc. v. Trust, 274 S.C. 53, 260 S.E.2d 818 (1979) the plaintiff, an unlicensed contractor, argued that even though he could not recover for his time and profit, he should be able to recover the cost of materials and payments to third parties. The Supreme Court concluded otherwise:

Appellant, conceding that the statute which prohibits an unlicensed builder from enforcing the contract bars any action for services rendered by it, either on the theory of contract, quantum meruit, or unjust enrichment, contends that the statute should not be so construed as to bar recovery by an unlicensed builder for amounts paid to third parties for labor and materials used in construction, at least, to the extent that the landowner was benefited. In other words, appellant argues that the statute should be construed to prevent any benefit or profit to the unlicensed builder, but should not bar recovery for labor and materials used in the construction from which the unlicensed builder received no profit and from which the landowner received a benefit. We find no basis in the statute for this construction.

The recovery sought in this action is for work and material contracted to be furnished by appellant in the construction of respondent's house. The fact that the work and materials, for which recovery is sought, were furnished by appellant through third parties does not render the bar of the statute any less applicable.

Id. at 54-55, 260 S.E.2d at 818. The entirety of Danford's counterclaim is barred by S.C. Code Ann. 40-59-30(B).

d. Danford's Third-Party Claim Against Stahl

As there was no written contract between Danford and Stahl, Danford's cause of action must be construed as one for equitable indemnity. To recover for equitable indemnity, Danford was required to prove that "(1) [Stahl] was liable for causing [Plaintiffs'] damages; (2) [Danford] was exonerated from any liability for those damages; and (3) [Danford] suffered damages as a result of [Plaintiffs'] claims against it, which were eventually proven to be the fault of [Stahl]."

Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999). At trial, Danford established that any damages Plaintiffs suffered relating to the

tile floor were solely caused by Stahl. As such, Danford is entitled to equitable indemnity from Stahl in the amount of Six Thousand Four Hundred Dollars (\$6,400.00).

3. Conclusion

Judgment in favor of Howard Nankin and Nancy Nankin against Donald M. Danford d/b/a Don Danford Interiors in the amount of Twelve Thousand Nine Hundred Twenty-Seven Dollars (\$12,927.00).

Judgment in favor of Donald M. Danford d/b/a Don Danford Interiors against Jeff Stahl in the amount of Six Thousand Four Hundred Dollars (\$6,400.00).

AND IT IS SO ORDERED.



The Honorable Edgar W. Dickson
Presiding Judge, Fifth Judicial Circuit

April 18, 2013

Orangeburg, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2010 CP 40-8155

Howard Nankin and Nancy Nankin,)
)
Plaintiffs,)

vs.)

Donald M. Danford d/b/a Don Danford)
Interiors,)
)
Defendant.)

Donald M. Danford d/b/a Don Danford)
Interiors,)
)
Third Party Plaintiff,)

vs.)

Jeff Stahl,)
)
Third Party Defendant.)

**ORDER DENYING PLAINTIFFS' RULE
59(e) MOTION**

2014 JAN 23 PM 12:58
C.C.P. & G.O.

This matter is before the Court for consideration of the Plaintiff's Rule 59(e) Motion to alter or amend this Court's Order of April 18, 2013. Having considered the briefs submitted by counsel, I have concluded that the Motion is without merit and deny it.

When this matter was tried before me as a non-jury matter, the principal witnesses were Howard Nankin, one of the plaintiffs, and Don M. Danford, the Defendant. As with all witnesses, the Court was able to observe their demeanor in an effort to fully grasp the scope of the dispute. As concluded in my initial Order deciding the case, the parties had a contract which the Defendant failed to perform, but the

Plaintiffs' effort to convince the Court that it was more than just a contract claim failed. In fact, it was apparent that the relationship between Plaintiffs and Defendant started with Defendant serving simply as an interior designer which was his business and experience. The Court found that, as suggested by the Plaintiffs, the relationship between the parties had evolved from the simple interior design assistance to that of serving as a de facto contractor for the renovation of a bathroom. However, Defendant failed to perform the work which Plaintiffs requested in a timely or workmanlike manner.

The defects in the work which the Court found were simply a failure to achieve the quality of work which the Plaintiffs were entitled to receive. These items included such matters as uneven grout, a ledge at the shower door, the bathtub jets not functioning and, in general, poor workmanship, which resulted in a bathroom which was visually displeasing to the Plaintiffs. The Court concluded at that time that each of these shortcomings were simply failures to comply with the contract terms, not some standards set by law. The Court simply reaffirms its opinions stated in the Order of April 18, 2013 that the dispute is no more than a contract dispute.

The same rationale continues to apply to the rejection of the Plaintiffs' claim under the South Carolina Unfair Trade Practices Act. I concluded and reaffirm that this was simply a private contractual matter between Plaintiffs and Defendant which did not rise to the stature of affecting the public interest. While there was testimony about two other customers which Defendant had served in a somewhat similar manner, it was my conclusion that this did not rise to the level of "potential for repetition" as contemplated under the UTPA.

While the Plaintiffs' arguments at trial were primarily directed to the contract claim and the unfair trade practices claim, they also asserted claims for negligent misrepresentation and fraud, but I concluded that their proof of those claims had failed in several respects. The Defendant's communications with the Plaintiffs in an effort to appease them and regarding the employment of a tile setter who was a family friend of Plaintiff Nankin and her children, were lax and not what might have been sufficient to avoid the misunderstandings which resulted, but Plaintiffs failed to convince the Court that these amounted to misrepresentations made to mislead or that any of the other requirements for supporting such claims were met.

WHEREFORE, having considered these matters again, the Court is still convinced that this was simply a contract dispute and that the Plaintiffs' Motion to alter or amend the Order of April 18, 2013 is without merit and should be denied.



Edgar W. Dickson, Fifth Judicial Circuit

Orangeburg, South Carolina

January 7, 2014

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	IN RE: EXECUTION AGAINST PROPERTY AS TO
	)	DONALD M. DANFORD
Howard Nankin and Nancy	)	Case No.: 2010-CP-40-08155
Nankin,	)	Date of Judgment: April 18, 2013
	)	Date Judgment Filed: May 9, 2013
PLAINTIFFS,)	
	)	<u>Amount Due:</u>
vs.	)	Judgment: \$12,927.00
	)	Payments Made: \$0.00
Donald M. Danford d/b/a Don	)	Interest: As accrued from May 9, 2013
Danford Interiors,)	
)	
DEFENDANTS.)	
)	

TO THE SHERIFF OF RICHLAND COUNTY:

WHEREAS, judgment was rendered and entered in the above-referenced case on the date shown above in favor of Plaintiff against Defendant Donald M. Danford d/b/a Don Danford Interiors in the amount set forth; and


WHEREAS, the judgment was docketed in your county on the date shown, or, if your county is other than that where the judgment was originally entered, a transcript thereof was entered in your county on the date indicated above; and

WHEREAS, the amount itemized is due and owing.

THEREFORE, the undersigned Attorneys for Plaintiff command you to satisfy the judgment out of personal property of the judgment debtor within your county; if sufficient personal property cannot be found, then you are to satisfy the judgment out of real property in your county belonging to the judgment debtor on the date the judgment was docketed in your county or from real property thereafter regardless of the person now claiming ownership or possession, and to duly return this Execution according to law to the Clerk of Court.

DATE: 4/14/14

ATTEST:



Clerk of Court for Richland County (SEAL)

BRUNER, POWELL, WALL & MULLINS, LLC

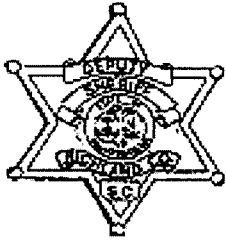


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(803) 252-7693

Attorneys for Plaintiffs Howard and Nancy Nankin

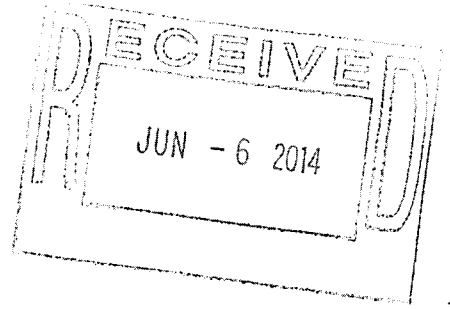
Columbia, South Carolina
April 11, 2014

EXHIBIT D



Richland County Sheriff's Department

LEON L. LOTT, JR.
Sheriff



Bruner, Powell,
Wall & Mullins LLC.
PO Box 61110
Columbia, SC 29260

June 4, 2014

Re: Execution of Judgment for Roll# 2010CP4008155

Dear Bruner, Powell,:

Enclosed please find the Execution Against Property received by this office on the above captioned case with a Nulla Bona return. After checking property records and attempting to contact the defendant, we have determined the judgment is uncollectible as far as remedies available to this office.

At this juncture in the 10 year lifespan of your judgement, you may consider taking the defendant before the Richland County Master-in-Equity court for a complete review of all possible assets. The number for the Master-in-Equity office is (803) 576-1900. The assistance of an attorney is strongly recommended, and as with the Sheriff's execution process, there is no guarantee the process of the Master-in-Equity will result in the satisfaction of your judgement. The Master-in-Equity process is a separate procedure and does not involve the Sheriff's Department.

If we can be of further assistance to you, please call upon us.

Sincerely,

A handwritten signature in black ink that reads "Leon Lott".

Leon Lott
Richland County Sheriff

By: B. Brown
Deputy Sheriff
(803) 576-3157

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

IN RE: EXECUTION AGAINST PROPERTY AS TO
DONALD M. DANFORD

Howard Nankin and Nancy)
Nankin,)
)
PLAINTIFFS,)

Case No.: 2010-CP-40-08155
Date of Judgment: April 18, 2013
Date Judgment Filed: May 9, 2013

vs.)
)
Donald M. Danford d/b/a Don)
Danford Interiors,)
)
DEFENDANTS.)

Amount Due:
Judgment: \$12,927.00
Payments Made: \$0.00
Interest: As accrued from May 9, 2013

RECEIVED
2014 APR 21 AM 11:15
PCSD

TO THE SHERIFF OF RICHLAND COUNTY:

WHEREAS, judgment was rendered and entered in the above-referenced case on the date shown above in favor of Plaintiff against Defendant Donald M. Danford d/b/a Don Danford Interiors in the amount set forth; and

WHEREAS, the judgment was docketed in your county on the date shown, or, if your county is other than that where the judgment was originally entered, a transcript thereof was entered in your county on the date indicated above; and

WHEREAS, the amount itemized is due and owing.

THEREFORE, the undersigned Attorneys for Plaintiff command you to satisfy the judgment out of personal property of the judgment debtor within your county; if sufficient personal property cannot be found, then you are to satisfy the judgment out of real property in your county belonging to the judgment debtor on the date the judgment was docketed in your county or from real property thereafter regardless of the person now claiming ownership or possession, and to duly return this Execution according to law to the Clerk of Court.

DATE: 4/14/14

ATTEST:



(SEAL)
Clerk of Court for Richland County

BRUNER, POWELL, WALL & MULLINS, LLC



Wesley D. Peel
Matthew H. Stabler
1735 St. Julian Place, Ste 200
P.O. Box 61110
Columbia, South Carolina 29260-1110
(803) 252-7693

Attorneys for Plaintiffs Howard and Nancy Nankin

Columbia, South Carolina
April 11, 2014

Entered 6/4/14

Book _____ Page _____

Number 5-20140479

Leon Lott, Sheriff
Pickland County Sheriff's Department

Return to Clerk

Nulla Bona

LEONLOTT

SHERIFF, R. C., S. D.

APR 0 4 2014



EXHIBIT E

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

HOWARD NANKIN AND NANCY NANKIN,

Plaintiffs

v.

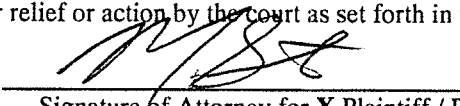
DONALD M. DANFORD D/B/A DON DANFORD INTERIORS,

Defendant

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-40-08155

MOTION INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: Matthew H. Stabler Bar No. 78623 Address: P.O. Box 61110 Columbia, SC 29260 phone: 803-252-7693 fax: 1-803-254-5719 e-mail: WPEEL@BRUNERPOWELL.COM	Defendant's Attorney:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: VERIFIED PETITION TO INITIAL SUPPLEMENTAL PROCEEDINGS Estimated Time Needed: _____ Court Reporter Needed: YES / NO	
SECTION II: Motion Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.	
 _____ Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / Defendant	
June 9, 2014 Date submitted	
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID – AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-08155

Howard Nankin and Nancy)
Nankin,)
)
PLAINTIFFS,)
)
vs.)
)
Donald M. Danford d/b/a Don)
Danford Interiors,)
)
DEFENDANTS.)
_____)

**Verified Petition for Supplemental
Proceedings Against Donald M. Danford**

PETITIONER WOULD RESPECTFULLY SHOW:

1. That heretofore Petitioner recovered and recorded judgment against Respondent Donald M. Danford (“Respondent”) as hereinafter set forth; and that there is still due and owing on said judgment the sum indicated, this Respondent has failed and refused to satisfy same:

JUDGMENT ENTERED : May 9, 2013
JUDGMENT ROLL # : 2010CP4008155
AMOUNT DUE : \$12,927.00, plus interest

2. That execution thereafter was duly issued to the Sheriff of Richland County against this Respondent and said Sheriff has returned same NULLA BONA.

3. That upon information and belief, this Respondent has assets in the County not exempt from levy which this Respondent unjustly refuses to apply toward satisfaction of said judgment.

4. That Petitioner is informed and believes that it is entitled under the law and statutes to have an examination of this Respondent in supplementary proceedings and to ascertain and discover any and all property and assets, real, personal or mixed, and wheresoever situated, belonging to this Respondent; or in which this Respondent could claim any interest, solely or in conjunction with any

person, firm, or corporation or entity, and any or all of which is or should be made applicable by the Court to the payment of said debt.

5. In addition, Petitioner is entitled to the appointment of a receiver of this Respondent for any and all of the aforesaid property, assets, or effects which are so discovered or revealed in order to carry said judgment into effect.

WHEREFORE Petitioner prays that this court do inquire into the matters hereinabove alleged and that it issue such order or orders granting relief to which Petitioner believes it is entitled, for all expended and statutory costs allowable for this proceeding, and for such other and further relief and remedies as may be allowable and which the Court may deem proper.

And further Petitioner requests this matter be referred to the Master-in-Equity pursuant to Rule 53 of the South Carolina Rules of Civil Procedure with authority to enter a final order with any appeal being directly to the South Carolina Supreme Court.

BRUNER, POWELL, WALL, & MULLINS, LLC



Wesley D. Peel
Matthew H. Stabler
P.O. Box 61110
Columbia, South Carolina 29260-1110
(803) 252-7693
Attorneys for Petitioner

June 9, 2014
Columbia, South Carolina

VERIFICATION

PERSONALLY appears Matthew H. Stabler, who first being duly sworn, deposes and says that he is the attorney for the Petitioning judgment creditor and that he has read the foregoing Petition and knows the contents thereof and the same are true of his own knowledge except to matters alleged therein on information and belief, and as to these, he believes it to be true, that he is the attorney for the Petitioner and is authorized to make this oath on their behalf.



Matthew H. Stabler
Attorney for the Petitioner

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 4th DAY OF JUNE, 2014

Nancy G. Steggy
Notary Public for South Carolina
My Commission Expires: 2/4/2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-08155

Howard Nankin and Nancy)
Nankin,)
)
Petitioners,)
)
vs.)
)
Donald M. Danford d/b/a Don)
Danford Interiors,)
)
Respondent.)
_____)

Rule to Show Cause and Order of Reference

Judgment having been rendered, an Execution issued, a *Nulla Bona* return made to said Execution, the Petitioner having moved for an examination of the Respondent, Donald M. Danford, pursuant to the provisions of §15-39-310, *et seq.*, as amended; it is therefore,

ORDERED that **Donald M. Danford** DO APPEAR before The Honorable Joseph M. Strickland, Master-In-Equity for Richland County, 1701 Main Street, Courtroom 2-D, Columbia, South Carolina, on the _____ day of _____, **20**, at _____

.m., to answer under oath concerning your assets; TO SHOW CAUSE why your property should not be applied towards satisfaction of the Judgment set out in the Petition; to SHOW CAUSE why a Receiver of Respondents' property should not be appointed, pursuant to the provisions of § 15-39-430, *et seq.* South Carolina Code Ann. (Law. Co-op. 1976).

The Master In Equity will entertain and rule upon all motions necessary to dispose of this matter, to include but not limited to, motions to dismiss, motions to appoint Receiver, motions to continue the matter, and motions to sell all or certain property of judgment debtor in satisfaction of the Petitioner's

debt and has authority to enter a Final Order. Any appeal from the Master In Equity is directly to the Supreme Court.

IT IS FURTHER ORDERED that the Respondent is hereby restrained and enjoined from making any transaction or transfer or other disposition of property belonging to them which is not exempt from execution pending further Order of this Court.

YOU ARE FURTHER ORDERED TO BRING WITH YOU TO THE HEARING copies of the following:

1. Bank statements for all bank accounts owned in whole or in part by this Respondent for the past year.
2. Pay stubs for the past five (5) years.
3. Federal and State Tax returns for the years 2010-present.
4. Insurance Policies [home, automobile, real estate, etc...].
5. Records of any real estate owned, either in whole or in part.
6. Records of vehicles and boats.
7. Any inventories of personal property.
8. Copies of any contracts entitling you to payment of money.
9. Any personal financial statements prepared for any reasons either by your self or by any independent sources, with any applicable notes attached thereto from January 2007 to date and, if not reflected in such statements, a complete description of any and all contingent liabilities, including guarantees, by you.
10. Any and all year-end financial statements of any corporation, partnership, trust, or other business entity in which you hold directly or indirectly a 10% interest (balance sheet statements and statement of in come and expenses) audited and unaudited for the last three years of the respective entities with any applicable notes attached thereto and any subsequently prepared financial reports or statements prepared by the entity or on its behalf for any reason.
11. Any and all documents and financial records that relate to, refer to, or describe, recount, or are in any way related to any transfer of or pledge, hypothecation, gift, assignment, or granting of a security interest in assets owned or controlled by him, made by him, or on his behalf in excess of One

Hundred Dollars (\$100) in any single transaction from January 2007 to the present, and any and all documents and financial records that relate to, refer to, to describe the disposition of proceeds, promissory notes, or other evidence of indebtedness or consideration received from such transfers, pledges, etc.

12. Any and all documents and financial records that relate to, refer to, or describe any and all transactions between him and members of his family.
13. Any and all documents and financial records, including appraisals which relate to, refer to, or describe or substantiate any valuation of assets disclosed in your financial statements/records produced under paragraph 11 above, and the manner of valuation or fixing of value of such assets, prepared either by you or by any third party or entity relating to these assets.
14. Any and all documents which relate to, or recount or describe any pending or potential claim against you or against any entity referenced in paragraph 10 above, whether or not currently in litigation, together with any and all documents which relate to, recount, or describe any judgments held against you or any entity referenced in paragraph 10.
15. Any and all documents which relate to, refer to, or describe any trust in which you are a beneficiary, including any financial statements of the aforesaid trust and the dispositive provisions of the trust as relates to you and members of your family.

IF YOU DO NOT APPEAR IT MAY RESULT IN THE APPOINTMENT OF A RECEIVER AND AWARDED THE PLAINTIFF/PETITIONER SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUESTED. YOU MAY ALSO BE HELD IN CONTEMPT OF COURT, WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

AND IT IS SO ORDERED.

Presiding Circuit Court Judge, Richland County

Columbia, South Carolina

June __, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No.: 2010-CP-40-8155
Appellate Case No. 2014-000272

RECEIVED
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SC Court of Appeals

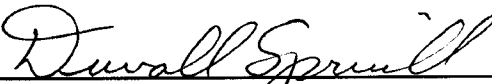
Howard Nankin and Nancy Nankin.....Appellants,

v.

Donald M. Danford d/b/a Don Danford Interiors..... Respondent.

PROOF OF SERVICE

I certify that I have served the **RESPONDENT'S MOTION TO DISMISS APPEAL** on Appellants by depositing a copy of the same in the United States Mail, postage prepaid, on July 10, 2014, addressed to their attorneys of record, Wesley D. Peel and Matthew H. Stabler, Bruner, Powell, Wall & Mullins, LLC, Post Office Box 61110, Columbia, South Carolina 29260.



W. Duvall Spruill (Bar No. 5295)
Turner Padgett Graham & Laney, P.A.
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Columbia, South Carolina 29202
(803) 254-2200
dspruill@turnerpadgett.com
Attorneys for Respondent