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SC Court of Appeals

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS

3
4 RAY AND MARY LONG,) TRANSCRIPT
5 PLAINTIFFS,) OF
6 vs.) RECORD
7 TUCK & HOWELL, INC.,) 2009-CP-42-0781
8 DEFENDANT.)

9
10
11 September 16th - 18th, 2013
12 Spartanburg, South Carolina
13

14 B E F O R E :

15 THE HONORABLE J. DERHAM COLE, Judge, and a jury.
16

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25 Transcribed by Pamela E. Green, Circuit Court Reporter

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P R O C E E D I N G S

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Good afternoon, ladies and gentlemen.

Now, as you know, when we recessed for lunch, all the evidence had been received, and, therefore, what remained to be done are the lawyer's final summations, after which I'll instruct you on the law, and then you can begin with your deliberations in the case. So, please give the lawyers your attention now as they give you their final summations.

Now, the way that's accomplished, the plaintiff has the burden of proof. So the plaintiff goes forward first in the final summation, followed by the defense, and then the plaintiff is permitted a brief reply argument to the defense's argument.

All right. Mr. Bannister.

MR. BANNISTER: Thank you, Your Honor.

Ladies and gentlemen, as the judge has told you, this kind of concludes all of the evidence that you'll hear, and I'll get the last opportunity to address you. So, I will try to be very brief and hit the high points.

The judge will give you the law. What he says is the law. You have to take it, and don't take it from me, but he'll tell you.

1 This is what we call a warranty claim, implied
2 warranty. South Carolina has a history of having the best
3 warranty in the United States. It's an implied warranty, a
4 sound price, denotes a sound product. You pay a sound
5 price, you get a sound product. If you don't get that sound
6 product, you can recover what is known as damages.

7 The facts of the case are a few in dispute. Some
8 aren't. As a beginning part, as I told you initially, one
9 of the strong points of the law is that you have to take the
10 person who is damaged as they are. If you're -- it is no
11 defense to say well, you should have been healthy or you
12 shouldn't of had this or you shouldn't have had that.

13 Unfortunately we don't come that way. There's no
14 baseline human being. There's nobody that you say okay,
15 this is baseline. If you don't have these things, you're,
16 you're deviant because we're all different. Different
17 sexes, different races. We're different heights. We've got
18 different things about us. So, you have to -- the law takes
19 that into account. So, there's no perfect person.

20 There's an old saying, you know, they're only two
21 perfect people ever been in the world, Jesus Chris and the
22 man my wife could have married. But be that as it may, we
23 aren't perfect.

24 Mrs. Long started out, as early as 1980, with
25 allergies. Now, allergies don't mean that she deviates so

1 from the norm of people that she can't be damaged by having
2 these allergies or something that causes a flare-up.

3 She didn't make this up. These -- this has been
4 consistent before she ever heard of Tuck & Howell or heat
5 exchangers, and a couple of things that she said early on,
6 house dust, pollen, and mold. No rag weed, cosmetics, these
7 other things. So, she's had this susceptibility, which she
8 has testified causes these flare-ups.

9 Now, disregard the 2002/2003 incident about a limb
10 falling on the house and there being some mold in the house.
11 That's kind of a smokescreen. But interestingly enough,
12 even then there is in evidence, December of 2002 of a
13 medical doctor, Doctor Goforth, her doctor. Mary Long had
14 been following that practice for years. She's had severe
15 allergy problems in the 80s. She's done well until
16 recently.

17 All right. That's '80 to '90 is ten years. 2000 is 20
18 years. This appears to be secondary to a mold and mildew
19 problem in the ceiling of her den, and this is the important
20 part. If this can be repaired in a timely fashion, this
21 will significantly prevent patient's continued medical
22 problems. So, that was the mold problem in 2002. That's --
23 or 2003 -- 2000/2001 and the doctors say if you can get rid
24 of this problem, your symptoms dissipate.

25 Now I'll go to 2004. 2004, Mr. and Mrs. Long

1 contracted with Tuck & Howell to put in a heat, a heat
2 exchanger.

3 what do they call it?

4 The air conditioning unit in their house.

5 Now, that's not a traumatic event in any stretch of the
6 imagination. Pay the money, they put the heat pump in,
7 correctly, and you go on about your life. The heat pump
8 circulates air, takes air into the house from the house, and
9 as I heard that that's the supply ducts, either heats it or
10 cools it, blows it out the other end, and through the duct
11 work it goes into the house, and it circulates through the
12 house. That's what it does. Duct work, regardless of
13 whatever dispute there was, the duct work was put in by Tuck
14 & Howell, as was the heat pump, in October and November of
15 2004 by Mr. Scott Cooper. He was supervising it.

16 well, not long after the pump was in Mrs. Long called
17 Scott Cooper and says we've got a smell. well, smells are
18 one of the things that affect Mrs. Long. We got a smell.

19 well, she was told, and you recall the testimony as you
20 heard it, not as I say it, but it was all on the new unit
21 and it would burn off in some period of time. Sounds very
22 reasonable to me.

23 That odor changed and another odor came, and Mrs. Long,
24 as she testified, was having flare-ups. She was --
25 headaches and testified other things, you recall, that were

1 happening to her that are the result of her problems with
2 dust, pollen, particles, other things like that, her
3 allergies, and you may have it. Some of you may have
4 allergies. You're lucky if you don't. You know, your nose
5 runs, your eyes water, if it's a mild case. Severe case,
6 give you a headache and makes you sick. Makes you very
7 sick.

8 So, she also noticed this dust seemed to be extreme in
9 her house. Well, dust can be introduced. So, she called
10 Tuck & Howell and said I, I got this smell and there's a lot
11 of dust. So, they came out. Tuck & Howell came out and
12 Mr. Scott Cooper said he went under the house and he saw
13 this kind of white dust and he'd never seen it before.
14 Didn't know what it was.

15 So, he called and was told there's evidence of that,
16 aluminum oxide, which is a metal, kind of like rust, and
17 particles. There are particles because they're all over the
18 place.

19 So, at that point, says you got to have a new coil and
20 also the smell you smell is a stinky sock syndrome. Two
21 things I will point out to you. Those are not really
22 disputed.

23 Let's see. A year later, and the smell, one of the
24 things that exacerbates Mrs. Long's condition, is there
25 admittedly and a white dust, particles, are there, which is

1 another thing that aggravates Mrs. Long's system and, and
2 causes her some of these problems. So, it doesn't clear up
3 right away and she's complaining.

4 There's some dispute about when the duct work was made
5 and when it was put in. But, from the evidence, it appears
6 Tuck & Howell said okay, we will -- we'll, we'll pay for
7 having your duct work vacuumed out for this dust. On the
8 order form it says don't use this cleansing chemical because
9 she's got allergies.

10 According to the bill from Steamatic, they use it
11 anyway, and what happened?

12 She continued to have problems with her allergies.

13 Now, you can certainly conclude that if somebody cleans
14 for mold it has to be mold there. Then we have the disputed
15 element. The disputed element is the Brunson who testified
16 that he was called by Mrs. Long to come and look at the
17 furnace and see what is it about this furnace that keeps me
18 having these allergy flare-ups, and Mr. Brunson testified
19 the light switch was hooked up to the pump. The light
20 switch under the crawl space was off and the pump didn't
21 work. The water overflows, gets out on the ground in the
22 crawl space.

23 There's some dispute about whether there was a light
24 switch under the crawl space or wasn't. The gentleman known
25 as J. P. said there wasn't one. Mrs. Long has been there

1 since I believe she testified 1962. She certainly has had
2 more experience. J. P.'s put in hundreds. But he says he
3 put the light switch in. That's something you have to
4 determine, but I submit to you that you have to conclude
5 that Mr. Brunson is totally making this up.

6 In any event, the experts, both their expert, the
7 gentleman who testified, and common sense, and one of the
8 things about a jury is you bring in your common sense. You
9 got a confined crawl space.

10 If there's too much moisture in there or moisture gets
11 behind ceiling tiles, gets behind anything, what is the
12 possibility of having mold?

13 what's one of the things that Mrs. Long -- sets off her
14 flares?

15 Mold.

16 So, you have to resolve the dispute. But I submit to
17 you that the light switch was not tested by J. P. So, he
18 couldn't tell you yes, I was there and I cut the light
19 switch off and the pump worked. Mr. Brunson was there and
20 he said I cut the light switch off and the pump didn't work
21 and the water overflowed. If that's correct, then for a
22 period of about a year water came out of the heat pump,
23 overflowed that pan when it got full, it was under the
24 house, and that's moisture, and that's going to lead to
25 mold.

1 Now, their expert found aluminum oxide in the house.
2 Their expert found mold one place in the house even though
3 it's been unoccupied for a number of years. So, when you
4 buy a heat pump, you don't expect to have a Stinky Sock
5 Syndrome or smell in your house.

6 Now, technologically, we can send people to the moon.
7 Not, not to be able to say what causes it, they say, you
8 know, we don't know what causes it. So, we just know how to
9 fix it. They fix it by putting in a new coil, but that
10 stinky sock smell was there for over a year in the house
11 Mrs. Long occupied, and she testified she had these
12 flare-ups. We know that aluminum oxide came through that
13 air conditioning because they say yes, that's what it was
14 and yes it came out of the heat pump. So we know it was
15 there.

16 Now, their expert kind of made light of it. He said
17 well, aluminum oxide is like dust. A man sliding into third
18 base and the dust comes up and you smell it and it's
19 disturbing to you and it is. The difference is that, when
20 you slide into third and you stir up the dust, it settles.
21 It's heavier than air. So, it goes down.

22 The aluminum oxide and the stinky Sock Syndrome smell
23 is circulated every time that air conditioning -- that heat
24 pump turns on and that air comes through there it's
25 recirculated.

1 If you had the dust from the sliding boy and you poured
2 it in there and every time the air conditioning comes on and
3 the air blows through and it stirs dust up, what would you,
4 using common sense, conclude?

5 It's gonna be dust and it's gonna bother you.

6 If you have allergies, which she told everybody from
7 day one you got, it's gonna bother you more.

8 So, you'll have to determine, applying your common
9 sense and what you heard, as to whether the mold in the
10 house, ten years later by their hygienist, resulted from the
11 pump not operating and the moisture there got into the
12 system.

13 Now, one last point. Freon leaked out. According to
14 Mr. Cooper, it could also have gotten into the duct system.
15 Mrs. Long testified that she smelled different smells. You
16 know, maybe Freon, whether it's odorless or not, if it's
17 odorless and it's enough, it's certainly, according to her,
18 complaints for 30 years, could also set off these allergies.

19 So, what did Mrs. Long do after Bruson was there?

20 She called someone in to say, you know, what, what
21 would it take to clean up my house.

22 Can you clean it up?

23 Can you get rid of this stuff?

24 I've been in this house a long time. It's a nice house
25 next to my daughter and I want to live there in my old age

1 until I pass on from this world.

2 what does it do to take -- to clean it up?

3 You'll have this document in there and you'll see what
4 he said it would take, but nowhere in there does he say we
5 can get rid of everything. He says we do this, we do this
6 treatment, but we can't promise you one hundred percent that
7 all of this stuff will be out. By that point, I submit to
8 you, Mrs. Long was somewhat afraid of the conditions in this
9 house and so she left it.

10 Now, that brings us to the question of really damages,
11 and they're a lot of ways you can figure damages, and the
12 judge will instruct you how you do it. But if it's the
13 product that she got and the installation is faulty, not up
14 to standard, not what you expect, Stinky Sock Syndrome and
15 aluminum oxide put into your house, water flowing out in the
16 basement that causes mold and gets in, then you can figure
17 damages a lot of ways.

18 There will be exhibits in there as to what she claims
19 has to be thrown away and the value of it. You'll have
20 these documents in there.

21 Given the porous nature of clothes and those things,
22 her expert that came in and gave the -- Mr. Fortenberry said
23 we leave that up to the person in the house only as to
24 whether you throw it away or not. Given the choice, given
25 what she had suffered, she said throw it away and that's one

1 element of damage that she has in there.

2 The other way you can consider damages is to say well,
3 what would it take to clean it up?

4 He gave an estimate of I think of \$31,500. That's what
5 it would take to clean it up. You can add to that what,
6 what reasonably you think should be thrown away and what
7 should be replaced, and then you come to one element is
8 suffering.

9 what did she suffer?

10 what's it worth to suffer?

11 That's within the sound discretion of the jury.

12 You can say it's worth a dollar a day to have the
13 condition she had, headache. She said her hair fell out.
14 She and her husband suffered some muscle spasms and other
15 things that she testified to. You can assign a value to
16 that when you say every bit of it.

17 You say it's worth \$10 a day, say it's worth a hundred
18 dollars a day, that's solely in your discretion, and then
19 you can determine one last thing is she was out of that
20 house a long time. You can determine if she's entitled to
21 recover any of the monies or -- that she spent while she was
22 out of the house.

23 And then when you conclude that, two things, you
24 conclude, number one, if, in fact, this heat pump is
25 installed is what it should have been, was it installed as

1 it should have been, and, number two, what the damages were.
2 Those are the two questions. You add them up and you render
3 your verdict.

4 Now, this is Mrs. Long's single time to come to court.
5 She never comes back. This is it.

6 what you decide can't be changed by me, Mr. Walsh, the
7 judge, nobody because you are the final judges of the facts.
8 We can't ask anything of you but to be fair to us, which I
9 am sure you will be.

10 Thank you.

11 THE COURT: Mr. Walsh.

12 MR. WALSH: May it please the Court.

13 well, thank you-all for being so attentive. I know
14 that it was a lot of testimony, a lot of breaks, a lot of
15 drawn out things, technical issues. You know, we had the
16 unit here, but I know that both sides appreciate you guys
17 listening and paying attention and, and giving us your best
18 effort to render a verdict. We appreciate that. The folks
19 at Tuck & Howell certainly appreciate that.

20 So, at the beginning of the case we talked a little bit
21 about what the case would be about and some testimony that
22 we would hear and the issues that we predicted that we would
23 hear and now we're here at the end, and really what my job
24 today to do is sort of to give you sort of my view of what I
25 think the evidence showed, and what I think is important.

1 And I think, from the beginning, the thing that I think is
2 important to remember is that the, the plaintiff here, the
3 Longs, have to prove that, that just -- not just that they
4 think they were damaged and they think that they had some
5 injury, but they have to prove that they were, in fact,
6 injured or damaged and suffered some kind of loss in some
7 way, and that it was caused by something that Tuck & Howell
8 did, and that they then would be entitled to recover. And
9 we, we don't believe that the evidence shows that in this
10 case based upon things that we talked about, and I'll go
11 sort of through those now.

12 Because -- just because somebody believes something
13 might be true doesn't mean that it is, and we think that
14 there's a lot of that going on in this case. Just because
15 Mrs. Long might believe certain things, the question really
16 is what's the evidence shows.

17 what can be proven and what does the -- do witnesses
18 say and documents prove in this case?

19 So, here's what we know. We know that Tuck & Howell
20 agrees that they put in the air handler that we had and we
21 showed here, a similar one to the one that was in the house,
22 and we heard some testimony from the Tuck & Howell folks
23 about sort of a peculiar series of events that occurred
24 there involving Mrs. Long and this duct and that's in
25 dispute. But the Tuck & Howell people say, both of them,

1 that there was some report of water damage into the house,
2 and they were concerned about the duct, and they pulled it
3 out and they found a smelly mildewy duct.

4 Mrs. Long, Mr. Long were aware of that. They got very
5 concerned, and apparently rightfully so, because Mrs. Long
6 has had problems apparently with allergies and respiratory
7 problems for a lot of years, and so then there was an issue
8 about what is gonna be done about that. Scott Cooper
9 testified that he felt -- I think he said he was cornered by
10 Mrs. Long and sort of got cussed at and they decided to give
11 them the ducts and replace the ducts as a courtesy. It
12 wasn't part of the bill.

13 If you look on the, the invoice that was given to the,
14 to the Longs, it doesn't say duct work to be replaced. It
15 just talks about replacing and adding an air handler in
16 there. So, that, that incident occurred and that sort of, I
17 guess, was the, the -- I don't know if it was a warning, but
18 it was -- as we know now from the medical records that we'll
19 talk about in a little bit, especially those records in 2004
20 in the months before the, the, the air handler was
21 installed, where they were, where they were these repeated
22 allegations by Mrs. Long to her doctor about the mold in her
23 house, and she's leaving the house or has left the house and
24 is getting an attorney.

25 So, Tuck & Howell doesn't know. I can't sit here today

1 and say I know what happened in that house before we got
2 there. I know that the records suggest that a lot of things
3 were happening.

4 I would suggest that, if they weren't happening, why
5 was Mrs. Long telling her doctor they were happening?

6 But clearly, in Mrs. Long's mind, something was
7 happening before Tuck & Howell got there, which I will go
8 into a little more detail about. But, in any event, they
9 installed the system and then a year goes by, and Mrs. Long
10 says, when I was questioning her, I know that was over a
11 couple of days and there were breaks and so forth. So, the,
12 the -- sort of the flow of her testimony got a little bit
13 broken up, but -- so, if you remember something that she
14 said that I, that I, I remember differently, you know, by
15 all means remember it the way you remember it, but my
16 recollection was that she said that she didn't really notice
17 any problem for a, a few months.

18 We, we sort of debated for a while and -- whether it
19 was a couple of days, and whether it was a month, whether it
20 was two months, and I think she finally agreed that it was
21 two or three months. Later she saw some dust that she
22 thought might be a little unusual, and then she said she
23 never saw the dust coming out of the registers at any time,
24 and then she said though that when she went away for some
25 period of time, she came back and she noticed an, an

1 accumulation on her furniture, some accumulation, and a
2 little bit around the register.

3 well -- so, she called Tuck & Howell and, and she also
4 said she had noticed this smell. So, the significance of
5 the concentration of this powder or dust is important
6 because, at the end of the case when we were talking with
7 Sherman Woodson, who was over here, the industrial
8 hygienist, he said that the quantity of this dust is so --
9 has to be so significant -- he used the dusty road sort of
10 analogy where you're walking down the road and the dust is
11 all around you. It requires a significant quantity of this
12 dust, and it's not a -- I think he described it in the way
13 that Jerry Fortenberry described it where they call it a
14 nuisance dust. It's not, it's not a poison as Mrs. Long
15 must have said 25 times. It's, it's just something that can
16 irritate your, your lungs if there's a huge amount of it,
17 but by Mrs. Long's own testimony there wasn't.

18 And so -- but there was something there. So, what
19 does -- she calls Tuck & Howell.

20 what do they do?

21 Immediately, I think it's pretty much uncontradicted
22 that they immediately respond. Mr. Cooper, I believe his,
23 his testimony shows the concern that Tuck & Howell had for
24 this problem, that, that every time she would call they
25 would respond. At one point he was on the floor coaching

1 his church basketball team, took the -- came off the court,
2 took the call just to satisfy her.

3 Okay. So, Tuck & Howell certainly takes this seriously
4 and believes that every customer should be treated with
5 respect.

6 So, what they did was they immediately responded. They
7 immediately called Trane because they had not seen this,
8 this type of powder before and they got the report that this
9 is something that came out of the unit, that the unit comes
10 with this coil, which apparently is what gives us the cool
11 air and gives us the heat, and there was something,
12 something that happened on that coil. So, we replaced the
13 coil. Trane had a warranty. They had, they had put the
14 coil in. They replaced the coil. There's a document in the
15 evidence that everyone calls a stinky sock. Apparently it's
16 a really dirty sock. Whatever it is is not a good thing to
17 have.

18 So, they replace it and they did that immediately, and
19 not only that, Tuck & Howell had the ducts cleaned just to
20 try to satisfy the, the customer. And, again, we're not
21 talking about a situation that there, that there's any
22 evidence to show that this was some sort of heavily infested
23 area of dust. I mean we're talking about a nominal amount
24 and there's no pictures in this case to show any sort of
25 heavy infestation.

1 What we have is we have -- the only pictures we have
2 are years later when no one's been living in the house, but
3 the air handlers have been running because I asked, I think,
4 a couple of different witnesses was the, was the air handler
5 running, was it cooling and heating over all these years,
6 and everyone said that it was.

7 So, what, what Mrs. Long said was even after the coil
8 replaced, it got -- kept getting worse and worse. But
9 there's no evidence of that, and so these pictures, when you
10 take them back, you'll see pictures where you can see the
11 shine on the hardwood floor. I mean it looks beautiful.

12 There's no dust on these floors. So, I think what the
13 point of all of this is it was fixed. The problem got fixed
14 and it got fixed quickly, and so whatever there was with the
15 problem, it got fixed. I know that it's disappointing,
16 anytime we buy something new and it doesn't work right away,
17 it's irritating because it's new, but it does happen.
18 Occasionally it does happen.

19 Really the question is when it happens, what happens
20 next?

21 So, in this case, it was fixed.

22 Okay. And how do we know it's fixed?

23 All right. Well, because every other witness that's
24 gone to this house has failed to identify any sort of
25 problem. Okay. So, it's not just Tuck & Howell's word for

1 it. The witnesses that you heard -- we heard from Eric
2 Burton of The General, and we heard from Jerry Fortenberry,
3 the man who gave the estimate, despite never doing a test,
4 which we'll talk about. They both testified:

5 Okay. What's significant about their testimony is
6 these were the people that the Longs called out there to,
7 to, to second guess or back up their claims. These are
8 those -- these are the best witnesses they have to bring in.

9 Okay. And what did they say?

10 Well, Eric Burton said -- and if you've ever talked
11 about the pump and the Longs want y'all to believe the pump
12 was somehow miswired, although he didn't say how it was, who
13 did it, he doesn't know. Well, you got to believe what else
14 he said. What he said was I went out there, and I didn't
15 see any mold, I didn't see any dust, I didn't see any
16 problems with the air handler, I didn't smell anything. He
17 didn't say he saw anything -- any moisture on the floor, on
18 the dirt.

19 You know, all these things that, that the Longs want
20 you to believe as true, the fact is there's no evidence for
21 them to believe it. In my mind they may very well believe
22 these things that happened, but the evidence doesn't show
23 that it happened.

24 So, when Eric Burton goes out there -- and remember
25 this is the man who was gonna solve the Tuck & Howell

1 problem. He knew -- he was, he was the independent H.V.A.C.
2 man.

3 Okay. He didn't find anything. In fact, there's
4 documents in evidence where, where his records say that the
5 system was operational on two different occasions, and
6 you'll have these back in the jury room. He went a month or
7 so after the, the coil was installed, and then a year later,
8 and, and I would submit to you that he wouldn't service the
9 unit a year later, it had a blower, some kind of failure of
10 this D. C. module, whatever that is, he wouldn't have done
11 that and -- if there was some problem with the unit. I mean
12 he repaired the unit so it would work.

13 So, it seems to me that their witness, their key
14 witness, because we only saw him and Mr. Fortenberry, one of
15 them right there didn't say anything to support the claims
16 of the Longs. So, they might believe it, but the evidence
17 says that it didn't happen.

18 Okay. So, what happened was the coil was replaced, the
19 ducts were cleaned, and the problem was solved. Okay. But
20 it doesn't appear that the Longs believe that, but the
21 evidence seems to suggest that.

22 So then Mr. Fortenberry, the other witness that you
23 hear come in, okay, he does this, this estimate to clean it.
24 well, we'll talk a little about that for a second. He did
25 no tests. He doesn't know that there's any problem with the

1 house. He can't tell you anything about aluminum oxide or
2 mold or anything. He didn't see mold. He didn't have any
3 smells. He didn't see any dust. But yet he says I'm gonna
4 clean it for \$32,000, \$31,900.

5 well, that seems very unreasonable. So, for damage
6 purposes, a man who comes out there and says well, yeah, I'm
7 gonna clean it for \$32,000, but I don't have a test, I don't
8 know if anything's wrong with it, and I asked him, I said,
9 well, if there's a little bit of mold on a wall, you're not
10 gonna -- you might not clean the whole house. You might
11 just clean that area and that will be a \$200 job.

12 Remember I said that, a \$200 job?

13 He said I had a lot of \$200 jobs.

14 well, he didn't even have a \$200 job because he didn't
15 see anything wrong with the house, but yet he comes up with
16 a \$31,900 estimate. But for purposes of both of the fault
17 or liability or who's to blame, they -- he didn't find any
18 problem. So, he doesn't find the mold. He doesn't find any
19 aluminum oxide. He doesn't find anything wrong with the
20 house.

21 So, again, the Longs might have wanted it to be true.

22 But is it true?

23 The evidence doesn't show that it's true.

24 Okay. So, Mrs. Long says she got very sick, and she's
25 been sick and she's gotten sick and she's gotten sick, and

1 then these problems have, have occurred for a long time,
2 and, and Mr. Bannister said well, you know, you've got to
3 take the, the person as they are. If you knock over a 25
4 year old person versus an 80 year old person, you know, the
5 80 year old person gets injured worse than the 25 year old
6 person, then, then that's -- then you got to accept that.

7 well, I would submit to you, ladies and gentlemen, from
8 the evidence we've seen, Mrs. Long didn't get any sicker
9 from anything that happened here. She was very sick from,
10 from before this.

11 So, how do we know that?

12 Because when we go to the 2004 records, okay, and
13 remember that the, the, the unit was installed in October of
14 2004. Okay. And so I went through these with her, and we
15 argued about them a little bit, and I think she questioned
16 whether they were accurate and whether they were true and,
17 you know, but these, these -- this is evidence. This has
18 got an exhibit sticker, but the real exhibits are here that
19 you'll have back in the jury room, and they won't be marked
20 quite like this.

21 But basically we went through this discussion about she
22 had prior mold. She admits she had prior mold. She says
23 she cleaned it up in 2001 and 2002. But when we get to 2004
24 it seems that she's still got some kind of mold problem in
25 her home from back in January. She's got all kinds of

1 respiratory complaints. She says she's got an odor in the
2 house, smelled musty and moldy. She says she moved out.
3 She's been using an apartment owned by her daughter, and
4 that the symptoms get better when she leaves.

5 Then there's another reference here where her or her
6 doctor mentions that she's thinking of getting an attorney,
7 wants a referral to an attorney to help her deal with her
8 insurance company. So, we debated all that, Mrs. Long and
9 I, for a while, and I don't know if there was a problem or
10 she just made up the problem or in her mind there's a
11 problem. I don't know. All I know is these records say
12 there's a problem, okay, and she's, you know, she wants to
13 get advice about the mold problem, and she has the attorney,
14 and she moved out of the house. So, she says this wasn't
15 true.

16 Well, if she told her doctor this, and these are the
17 records that have been agreed to by the attorneys, both
18 sides have agreed that these records are in evidence without
19 objection. I would submit to you that this is evidence of
20 what she said, and so she said all these things, and she
21 said she had all these mold problems. Well, either she made
22 it up to her doctor or she did. You know, I don't know,
23 okay, because we haven't seen any witnesses to come in and
24 talk about all the cleaning that was done on the house and
25 when it was done and what was done.

1 We know there was an, was an, was an issue with her
2 insurance company. We know that she was -- she wanted them
3 to do more and she was concerned, and it appears that it
4 continued on within, within just months of when we came in
5 there.

6 And so, you know, does this, does this duct that we
7 pulled out and that was moldy, does that have something to
8 do with, I'm gonna move a little bit closer, does it have
9 something to do with this prior problem in 2004?

10 You know, we don't know because we were never told. We
11 don't know what happened. But the, the question would be
12 okay, so, if, if, if we take her as she is, and she's
13 already very sick where she's got, you know, heart
14 palpitations, she's got a sore throat, congestion, sneezing
15 feels bad all the time, if you go back a little bit she was
16 talking about she was afraid to go to sleep for fear she
17 wouldn't wake up. I mean these are the same problems,
18 chills, sweats, anorexia, weight loss.

19 These are exactly the same things she's complaining now
20 of, and if she had them already, I would submit to you that
21 she doesn't recover from what she already had. So, whether
22 it was this mold problem she had in 2004, before we got
23 there, whether that's true or not, she certainly believed it
24 was true and, again, I don't know what's, whether she
25 believes things that are true or not, but she believed it

1 because she told her doctor repeatedly those things. But
2 she clearly was sick.

3 So, I would submit to you that the -- that the fact
4 that she had all of those problems before would establish
5 that we didn't make her sicker. In fact, what we did was we
6 fixed the problem and there would be no reason for her to be
7 sicker because nobody found any problems after that.

8 So, we think that this is significant and that, you
9 know, it happened because it's there. You know, there are
10 other records that talk about, in 2001, and there first was
11 the one in 2001 talks about she feels like she's allergic to
12 something in the house, and then 2002, and so forth.

13 There's a numbers of things where she's complaining of the
14 mold problems, but it appears it never got fixed or maybe it
15 did get fixed and, in her mind, it never got fixed. We
16 don't know.

17 But what we -- the other thing we don't know is because
18 her doctors never testified. She claims to have all of
19 these health problems and her and her husband have all these
20 health problems, but she didn't bring her doctors in here to
21 say that she does have health problems caused by anything
22 that, that we did here. There's no doctors, and, again,
23 they have the burden of proof to prove that somehow these
24 problems that she had before are caused by something that we
25 did and there's no evidence of that.

1 So, we would submit that that's their burden to do, is
2 to bring those doctors in, and those doctors didn't testify.
3 The only evidence we have from doctors is the evidence that,
4 that we submitted in these exhibits that you'll have in the
5 back of the -- with you to look at.

6 So, we believe that the evidence would show that
7 there's no proof that anything she's complaining of now had
8 anything to do with these problems and whatever, whatever
9 problems she's had she's had for years and were very severe
10 to the point where she had wanted to move out of the house,
11 get an attorney, and, again, those are just a few months
12 before, and you heard -- I think it was Scott Cooper said,
13 you know, I didn't know about that. If I had known about
14 that I wouldn't have done the job. You know, there's,
15 there's other things that we would of wanted to know if we
16 had been asked to do that and known that and we didn't.

17 So, it's, it's an unfortunate situation with the Longs.
18 You know, they, they believe certain things and they vacated
19 their home apparently. It doesn't appear though that they
20 did for, for reasons that are based on anything other than
21 what they might have thought and what I believe is important
22 is the evidence that we have to see whether it was
23 reasonable or not because Tuck & Howell, when they thought
24 that they -- when they thought that they were -- when they
25 were trying to make them happy, from the very beginning,

1 they replaced the ducts for free. Then they had the coil
2 done immediately which is there -- the customer's right.
3 That's no favor. And having the ducts cleaned, that's no
4 favor.

5 But then, at some point, offering to give them their
6 money back, offering to replace the ducts that they did for
7 free in the first place, giving them their money back for
8 that, agreeing to pay for utility bills, agreeing to pay for
9 Mr. Burton's time to go out there, those are all things that
10 they offered to do, but, of course, they, they didn't know
11 about these medical records which suggested there was
12 something else going on there in the house. Maybe the
13 washing of the groceries at the sink and the hair comment
14 was -- should have been some kind of warning, but, in
15 reflection, maybe it was, but they didn't think that this
16 would ever certainly get to this point.

17 So, there's really a question of reasonableness here
18 that I'm asking y'all to consider.

19 Is it reasonable for the plaintiffs to recover for all
20 this time lost in the house, all the rent, all the mileage,
21 all the personal property, you know, I think these numbers
22 exceed a hundred thousand dollars, and I, and I would submit
23 that it doesn't seem reasonable because what we know from
24 Mr. Fortenberry, he said that he could clean the house. He
25 didn't have any reservations. Even if it was terrible,

1 which he didn't say that it was, but even if it was, he's,
2 he's cleaned -- I think he said I've cleaned seven million
3 dollars worth of property. He's, you know, obviously good
4 at what he does. So, he can clean the house.

5 So, one of the things the judge will tell you about the
6 law is, is that there's a duty to what the law calls
7 mitigate or to make, try to put yourself in a position where
8 you stop incurring damages. So, if they really thought that
9 they could, the Longs thought that they needed to do
10 something with their house, they could have cleaned the
11 house.

12 Mr. Woodson said it didn't need to be cleaned, that it
13 really -- it just, it just wasn't -- I mean he had been in
14 there -- the house had been vacant for five years or so,
15 some significant amount of time, and he expected it to be,
16 to be -- I think he expected it not to be very good because,
17 you know, if you've ever been in a house that's sort of been
18 closed up and, and no one's living in it, you know, it can
19 get sort of stale in there, maybe a little musty. But he
20 didn't find that at all.

21 So, it doesn't, it doesn't suggest that the Longs have
22 any reason to leave, but if they thought they needed a
23 clean-up, they could of cleaned it and moved back in the
24 house, you know. And then in terms of their personal
25 property, you know, their, their belongings, Mr. Fortenberry

1 said well, we can clean anything if we, if we're asked to.
2 But certainly the wood, I think I walked up and I sort of
3 tapped on the wood, oh, the wood stuff he wipes it down,
4 vacuums it, and wipes it down, and it's done.

5 So -- and then -- in this, in this damages thing,
6 there's wooden surfaces. There's a piano. There's all
7 kinds of things like that. There's appliances.

8 One of the damages that you-all are gonna be asked to
9 consider is, by the Longs, is their, is their, their washer
10 and dryer bill, and they -- they're asking for thousands of
11 dollars for that. They have a washer and dryer. It's in
12 the house. Mr. Fortenberry said yeah, we can clean a washer
13 and dryer.

14 So, why didn't the Longs just take the washer and
15 dryer, they went to an apartment, that's what they felt like
16 they needed to do, and wash their clothes?

17 I would submit to you then they could of just stayed in
18 the house. But even if they didn't, they, they could have
19 done that, but they want thousands of dollars for mileage
20 because they came back and forth to the house twice a day to
21 check. well, they checked their messages and their mail.

22 well, they had a daughter living right next door, and
23 they could have easily forwarded their phone to wherever
24 they were living and their mail. They didn't need to do all
25 of these things, but yet now they're standing here saying

1 well, we really want Tuck & Howell to pay thousands of
2 dollars for the mileage, the .51 mile back and forth to the
3 house every -- twice a day. We want the washer and dryer
4 money from the laundromat. We want, we want you to, to pay
5 for, for appliances, a refrigerator, you know, a toaster,
6 and, again, I ask you to look at the pictures to see if
7 there's really evidence of any sort of contamination here
8 that's, that's of anything that shouldn't allow them to use
9 their house and use the things that they did.

10 So, we, we would believe that the damages are really
11 unrelated to anything that happened here at -- in this
12 situation. Tuck & Howell, if there was a way that we could
13 go back and try to solve the problem, we certainly didn't
14 want the, the coil to go bad, but we believe that we did
15 everything that we -- within our power and control at that
16 point to fix the problem and we did, and, and we couldn't
17 account for someone who already had things wrong, and then
18 for that person to blame us for the things that they already
19 had. That's what we believe is here today, and we believe
20 that the medical evidence shows that.

21 we also couldn't account for a house that either was
22 bad already or, if it wasn't, a person who thought it was.
23 I mean it seems to me those are the choices. If the
24 doctor's note say that the house is bad, and they had moved
25 out, and that's not true, then, then I don't know why the

1 Longs would say those things if it's not true. If it was
2 true, then the house was already bad. If it wasn't true,
3 the Longs were thinking about things that weren't true.

4 So, it seems to me, either way, I don't think that Tuck
5 & Howell should be responsible for all of those things. So,
6 so, we, we think that we did everything we could. If you,
7 as a jury, believe that Tuck & Howell should be responsible
8 for something, we think that a reasonable result would be,
9 you know, we would stand behind our refund of the, of the
10 price if that's -- we've offered it. We'd stand behind it
11 and give them back their, their H.V.A.C. system and give
12 them their -- and give them back the money for the ducts. I
13 think that all totals about \$8,500.

14 And if that's what they feel is happy, even though
15 information has come to light that may have been things they
16 didn't know, they will stand behind that if that's obviously
17 to make the Longs happy. But if you, as the jury, think
18 that's reasonable, you know, we think that's reasonable too.
19 We are certainly sorry it all happened, but, at the end of
20 the day, we have to focus on the evidence and what it, what
21 it proves, and, again, just because somebody thinks it's
22 true doesn't mean that it is.

23 So, Mrs. Long may think it's true, and, and that's
24 fine, but the question for y'all is is it true and are these
25 things caused by Tuck & Howell cause part of the, part of

1 the burden of the plaintiff is to prove that it was caused
2 by Tuck & Howell. They have to prove this concept of
3 causation or proximate cause which the judge will talk to
4 you about what that means in the law, and we would submit
5 that there's no evidence of that in this case.

6 So, having said all that, I appreciate your time. Tuck
7 & Howell folks appreciate your time. Mr. Harjehausen does
8 as well.

9 Thank you very much.

10 MR. BANNISTER: And, again, I'll try to be very brief
11 in reply.

12 Mr. Walsh is one of the better Doubting Thomas of the
13 bar. He just doesn't believe anything happens.

14 He describes the aluminum oxide as a nuisance dust.
15 Mr. Fortenberry testified that he had experience with it
16 industrially, and that they wear masks to keep it out of
17 their lungs obviously so it doesn't affect your health, and
18 they keep it wet so it doesn't float up.

19 For over a year the Longs didn't wear masks and they
20 didn't have that dust wet. So, they were exposed to it for
21 a year.

22 He points out the pictures of the Long's house. Well,
23 those pictures were taken after the defective coil was
24 replaced almost ten years later.

25 So, he also criticized the fact that Eric Burton didn't

1 find the problem of the dust, didn't find the problem of
2 mold, that he found a light switch for the pump was hooked
3 up wrong.

4 well, he was brought there to see what was
5 malfunctioning about the heat pump, and that's what he
6 found, that the pump didn't work. He found some holes in
7 the duct work which could of let ground air into the duct
8 work and he wasn't there to find aluminum oxide. Wasn't
9 there to find mold. He was there to look at the air
10 conditioner.

11 I told you there would be a smokescreen about 2004 and
12 there was. If you recall the testimony was, and I believe
13 the -- Mrs. Long testified that they had the problem. After
14 the mold problem was fixed sometime in 2003 they continued
15 to have a smell, which wasn't mold, but was cardboard that
16 had got wet because it was in the tiles.

17 Now, you can look at Tuck & Howell's attempt to fix the
18 problem two ways. Here you have a, a woman who now we know
19 has a lot of problems cause she told you she had a lot of
20 problems. She's been exposed to aluminum oxide for a year.
21 She's been -- the furnace has been hooked up wrong. Had
22 water which may have produced mold and leak Freon into the
23 house.

24 So, you can look at the offer in two ways. Number one,
25 as Mr. Walsh suggests, we're gonna make you happy. We're

1 just gonna give you your money back or you can look at it
2 another way. There is a real problem here bigger than a
3 furnace, and we want to just pay as little as we can and
4 move on. I submit to you that that's what that offer was.

5 The personal property, if you have aluminum oxide, and
6 I believe Mr. Fortenberry testified it gets in the porous
7 substances like a suit, and you may have had experience with
8 that. One of the things I think they tell you is never wash
9 your clothes with fiberglass curtains because you can never
10 get the fiberglass out. Never. And other substances like
11 that.

12 well, aluminum oxide is the same way. You may wash it.
13 How do you know you're getting it out?

14 How do you know it doesn't irritate you and keep
15 irritating you?

16 The better way to go is to say I'm getting rid of it.
17 I don't want it any more because it's contaminating aluminum
18 oxide and these other things.

19 At the end of the day, of course, you will return what
20 the decision is in this case, and, again, I just ask you, if
21 Mr. Walsh says that, that Mrs. Long believes it happened and
22 he believes she believes it happened, then certainly that's
23 a lot of evidence that it really happens. And if it really
24 happened, then she should be compensated.

25 Thank you very much.

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 18th day of September, 2010, as reported by Linda Moffitt and transcribed by myself.

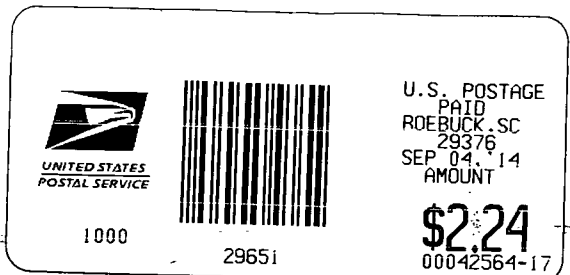
I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 28th, 2014



PAMELA E. GREEN, Court Reporter

AMELA E. GREEN
516 Traversie Court
Spartanburg, SC 29306



* They still did not give us all of the trial transcript.
They did not give us what Judge Cole said to the
jury on closing. He spoke with the jury a long time
on closing. He spoke a long time about the warranty
on the heat pump system. They know that we wanted
to get what Judge Cole said on closing to the jury
also.

Mr. & Mrs. Ray Long
131 Taylor Road
Greer SC 29651

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SEP 25 2014
SC Court of Appeals

When we realized we were going to need an attorney, we spoke with Charles Hodge, owner of Hodge Law in Spartanburg, SC. We had been told that he had been an attorney for a good many years and that he had experience in trying our type case in court. This was what we were looking for, someone who was experienced in similar cases like ours.

We told him about all the problems we are having from the new Trane heat pump system and ductwork that Tuck and Howell put in our home. We told him how both Tuck and Howell and The Trane Company have destroyed our home, our health and most of everything we owned.

We told him that both Tuck and Howell and The Trane Company are guilty of destroying our lives in every way possible and we feel that they both should be held responsible for destroying our home, our health and most everything we owned.

After looking over all the evidence, Mr. Hodge agreed with us that both Tuck and Howell and The Trane Company are guilty and both of them should be held responsible for destroying our lives.

Mr. Hodge looked over all of our records of our evidence. He told us we had a good case against both Tuck and Howell and The Trane Company. He told us he would represent us. He said he would file a lawsuit against both Tuck and Howell and The Trane Company.

We believed what they were saying. We believed that Mr. Hodge had filed our lawsuit with the court and we were waiting on getting a date to go to trial.

A lot of time had passed when Mr. Hodge called us in for a meeting with him. When we arrived for our meeting, he was in a big argument with Stacie, the paralegal, and Ryan Langley, a young man who worked in his office.

We don't know what the argument was about but Mr. Hodge was very angry with them. When he had finished with them, he turned his anger on Ray and I. He screamed at us that he wasn't going to represent us himself. He said he was turning our case over to Ryan Langley, the young man who works in his office. Mr. Hodge did not ask us how we felt about him turning our case over to Mr. Langley.

He did not explain any of this to us or why he was doing this to us. Mr. Hodge said to Mr. Langley, "If they don't want you to handle their case, just drop it." Mr. Hodge said, "I'm out of here." He went out the back door, got in his car and left.

After Mr. Hodge left, we questioned Mr. Langley about what he knew about our case. We found out he knew very little about our case. We asked him if he had ever tried a case similar to ours before and he said he had not. We told him that there is a lot going on with our case and we need an attorney who has experience in similar cases like ours. We could tell by questioning him that he did not know what was going on with our case.

We thought all this time that Mr. Hodge himself had filed our lawsuit with the court and was working on preparing our case for trial. Understandably, we got very upset that Mr. Hodge had treated us this way. He had told us that we had a good case and he would represent us. We had wasted all this time with this law firm.

We asked Stacie, the paralegal, if she would please get our records together and give us a call when she had them together.

We signed a paper on August 5, 2008 releasing Mr. Hodge as our attorney. Mr. Langley's name was also on this paper.

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SEP 25 2014

SC Court of Appeals

Mr. Bannister took over our case on August 29, 2008.

We found out in August 2012 after we received records from the courthouse that Mr. Hodge did not file our lawsuit with the court. Our lawsuit wasn't filed in 2006 like we were told it was and it was not filed by Mr. Hodge.

In August 2012, we also found out from these same records that our lawsuit was filed in court on October 2, 2007 by Ryan Langley as being our attorney.

When Mr. Hodge called us to his office for the meeting in 2008 to tell us he was turning our case over to Mr. Langley, he had already turned our case over to him. The records show that Mr. Langley was the one who had filed our lawsuit with the court on October 2, 2007. He lists himself as being our attorney.

Our lawsuit was not filed in 2006 by Mr. Hodge like we had been told. It was filed in October 2007 by Ryan Langley.

Mr. Hodge told Ray and I on our first visit with him that the evidence showed that both Tuck and Howell and The Trane Company are responsible for damaging our home, our health and most of what we owned.

Mr. Hodge said he would represent us. He said he would be filing a lawsuit with the court against both Tuck and Howell and The Trane Company. He did not do this. He did not file a suit against Tuck and Howell and The Trane Company. He had our case for 2 years and did not do anything to represent us.

Charles Hodge and Ryan Langley are both guilty of legal malpractice. Mr. Hodge is also guilty of misrepresenting us for two years.

Mr. Hodge promised us he would represent us. He promised us he would file a suit in court against both Tuck and Howell and The Trane Company.

*He did not do this. He had our case for two years and was not doing anything to represent us.

*Mr. Hodge promised us he would help us. He promised us he would represent us. He did not do anything that he promised us he would do. For two years he played around with our lives.

*It is very wrong the way the legal system has treated us.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Ray and Mary Long,)
)
Plaintiffs,)
)
vs.)
)
Tuck & Howell, Inc.,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
7TH JUDICIAL CIRCUIT

2007-CP-42-3478

COMPLAINT
(JURY)
C.A.No.: 07-CP-09- _____

1. Plaintiffs are citizens and residents of the county of Spartanburg, South Carolina.
2. Upon information and belief, Defendant is a business organized, operating, and existing under the laws of South Carolina and at all times herein mentioned has done business in the county of Spartanburg, South Carolina.

FOR A FIRST CAUSE OF ACTION
(NEGLIGENCE)

3. On or about November 11, 2004, Plaintiffs purchased heating and air conditioning materials from Defendant Tuck & Howell, Inc. and paid for the installation of a heating and air conditioning unit in the Plaintiffs' home.
4. Since on or about September, 2005, the Plaintiffs have experienced multiple problems with the heating and air conditioning system including but not limited to: emissions of aluminum oxide and other particles from the heating and air conditioning system; damage from the aluminum oxide and other particles to Plaintiffs' personal property;

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and damage from the aluminum oxide and other particles to the interior of Plaintiffs' home.

5. Defendant failed to correct the problems caused to the Plaintiffs by the heating and air conditioning system.
6. Defendant, or an agent or employee thereof, by improperly wiring and installing the air conditioning unit and the attached condensate pump at Plaintiffs' home failed to exercise the degree of care and caution that a reasonable installer of heating and air units would have exercised under the circumstances, and in so doing was negligent, careless, and/or willful, wanton, reckless or grossly negligent.
7. Defendant's negligence, carelessness, and/or wilfulness, wantonness, recklessness or gross negligence was a direct and proximate result of the injuries and damages sustained by Plaintiffs Ray and Mary Long.

FOR A SECOND CAUSE OF ACTION
(BREACH OF EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY)

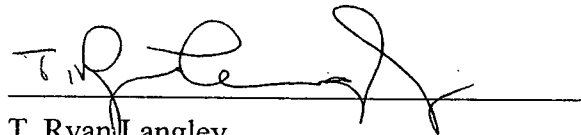
8. The foregoing allegations contained in the complaint are incorporated by reference herein as if restated verbatim.
9. Defendant Tuck & Howell is a merchant who regularly deals in the sale of heating and air conditioning units like the one sold to Plaintiffs.
10. Defendant warranted, expressly and/or impliedly, the merchantability of the heating and air conditioning unit sold to Plaintiffs.
11. Defendant breached this express and/or implied warranty of merchantability.

12. As a direct and proximate result of Defendant's breach of the express and/or implied warranties of merchantability, Plaintiffs have suffered damages.

WHEREFORE, the Plaintiffs pray judgment against Defendant as follows:

- a. For actual damages in the amount found to be fair and equitable within the discretion of the fact finder;
- b. For punitive damages found by clear and convincing evidence to be fair and equitable within the discretion of the fact finder.
- c. For the costs and disbursements of this action.
- d. For such other and further relief as this court may deem just and proper..

Respectfully submitted by:



T. Ryan Langley

Attorney for Ray and Mary Long

Hodge Law, P.C.

229 Magnolia Street

Post Office Box 2765

Spartanburg, South Carolina 29304

October 2, 2007

Spartanburg, South Carolina

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. NO. 2007-CP-42-3478
COUNTY OF SPARTANBURG)	
)	
Ray and Mary Long,)	
)	
Plaintiff,)	ANSWER
)	(Jury Trial Demanded)
vs.)	
)	
Tuck & Howell, Inc.,)	
)	
Defendant.)	

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The defendant, Tuck & Howell, Inc., answering the Complaint of the plaintiffs, would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. The defendant admits, upon information and belief, the allegations of Paragraph 1.
2. The defendant admits the allegations of Paragraph 2.
3. In response to the allegations of Paragraph 3, the defendant admits that on or about November, 2004 a heating and air conditioning system was installed in the plaintiffs' home by the defendant. The defendant denies the remaining allegations of Paragraph 3.
4. The defendant denies the allegations of Paragraph 4.
5. The defendant denies the allegations of Paragraph 5.
6. The defendant denies the allegations of Paragraph 6.
7. The defendant denies the allegations of Paragraph 7.

8. Insofar as the allegations of Paragraph 8 require a response, the defendant realleges and incorporates by reference its prior answers and allegations as if fully repeated verbatim herein.

9. In response to the allegations of Paragraph 9, the defendant admits that it is in the business of selling and servicing heating and air conditioning units. The defendant denies the remaining allegations of Paragraph 9.

10. In response to the allegations of Paragraph 10, the defendant is unable to respond to this paragraph because it calls for a legal conclusion. The defendant denies the remaining allegations of Paragraph 10.

11. The defendant denies the allegations of Paragraph 11.

12. The defendant denies the allegations of Paragraph 12.

13. The defendant denies each and every allegation of the Complaint not specifically admitted, modified, or explained herein above.

FOR A SECOND DEFENSE

14. The defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

15. The defendant alleges that the Complaint of the plaintiffs fails to state facts sufficient to constitute a cause of action against it and, therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

16. The defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

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CLERK OF COURT
SOUTH CAROLINA
NOV 29 01 1:05

17. The defendant alleges that even assuming it was negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on its part operated as a proximate cause of the incident and plaintiffs' resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed more than 50% to the cause of the incident and plaintiffs' resulting injuries and damages, if any. For that reason, this defendant is not liable to plaintiffs in any sum whatsoever.

FOR A FOURTH DEFENSE

18. The defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

19. The defendant alleges that even if it was negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on its part operated as a greater than 50% cause of the incident and plaintiffs' resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, it is entitled to a determination as to the percentage which plaintiffs' negligent, grossly negligent, reckless, willful and wanton conduct contributed to the accident and to a reduction of any amount awarded to plaintiffs in an amount equal to that percentage of plaintiffs' own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

20. The defendant incorporates herein the allegations of its previous defenses, which are consistent with this defense.

21. The defendant alleges that any damages sustained by the plaintiffs, as alleged in the complaint, were due to and caused by the sole acts of negligence, recklessness and wantonness on the part of the plaintiffs and the defendant does plead the sole negligence, recklessness and wantonness of the plaintiffs as the proximate cause of said injury.

FOR A SIXTH DEFENSE

22. The defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

23. The defendant alleges that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding sections of the Constitution of the State of South Carolina, Article 1, Section 3.

24. The plaintiffs' claim for punitive damages violates the defendant's right to access to the Courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills the defendant's exercise of that right.

25. The plaintiffs' claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons:

(a) The standard or test for determining the requisite mental state of the defendant for imposition of punitive damages is void for vagueness; and

(b) Insofar as punitive damages are not measured against actual injury to the plaintiff and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damage that may be awarded is indeterminate at the time of the defendant's alleged conduct.

FOR A SEVENTH DEFENSE

26. The defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

27. The defendant alleges that even if it was negligent or reckless in any respect which is expressly denied, and admitted solely for the purpose of this defense and no other, it is not liable to the plaintiffs for the resulting damages of the plaintiffs, if any, because of the intervening negligent, grossly negligent, reckless, willful and wanton acts of an unknown third party, which negligent and reckless acts were not reasonably foreseeable and intervened and acted as a direct and proximate cause of the incident, and the resulting damages, if any, sustained by the plaintiffs.

WHEREFORE, having fully answered the Complaint of the plaintiffs, the defendant prays that the Complaint be dismissed, for the costs and disbursements of this action, and for any such other and further relief as this court shall deem just and proper.

FILED
MAY 20 2014
CLERK OF COURT
COURT HOUSE
100 N. 3rd St.
TAMPA, FL 33602
PH: 813 274 1400

By: _____

James P. Walsh (15180)
Clarkson, Walsh, Rheney & Terrell, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400
(864) 235-4399 (fax)
Attorneys for the defendant

JURY TRIAL DEMANDED

By: _____

James P. Walsh (15180)

November 28, 2007

FILED
CLERK OF COURT
2007 NOV 29 PM 1:45
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Ray and Mary Long.,)
)
Plaintiff,)

v.)

Tuck and Howell, Inc.,)
)
Defendant.)

ORDER
CA.: 2007-CP-42-3478

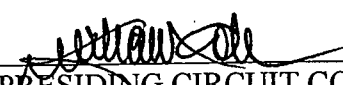
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CLERK OF COURT
SPARTANBURG COUNTY
2008 AUG -6 AM 10:09
MARC KITCHENS

This matter came before the court upon attorneys Ryan Langley and Charles Hodge Motion to be relieved as counsel in the above referenced case based upon the grounds of communication breakdown.

It appears it is appropriate for the Court to grant the attorneys motion.

Therefore it is: ORDERED, ADJUDGED, AND DECREED that Ryan Langley and Charles Hodge are relieved as counsel in the above-referenced matter and the Plaintiffs shall have sixty days in which to substitute other counsel.

IT IS SO ORDERED.




THE PRESIDING CIRCUIT COURT JUDGE


August 5, 2008
Spartanburg, South Carolina

WE SO MOVE:


T. RYAN LANGLEY
ATTORNEY FOR THE PLAINTIFF



CHARLES J. HODGE
ATTORNEY FOR THE PLAINTIFF

WE CONSENT:


RAY AND MARY LONG

Mr. Bannister took our case
on August 29, 2008.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Ray and Mary Long,

Plaintiff,

vs.

Tuck and Howell, Inc.,

Defendant.

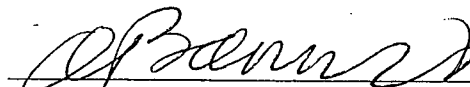
IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2007-CP-42-3478

**Dismissal
Rule 40(j), SCRPC**

NOW COME the Plaintiffs, by and through their undersigned attorney, and the Defendant, by and through its undersigned attorney, and strikes the pleadings in the above-captioned case pursuant to Rule 40(j), *SCRPC*.

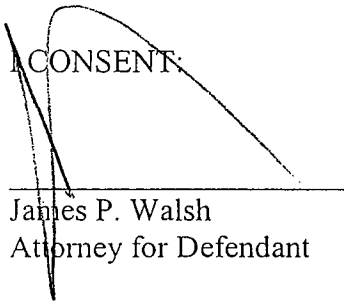
BANNISTER & WYATT, LLC



O. W. Bannister
SC Bar No. 506; Fed. ID No. 1184
401 Pettigru Street (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084; Fax: (864) 298-0146
Attorney for Plaintiffs


December 1, 2008

I CONSENT:



James P. Walsh
Attorney for Defendant

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2008 DEC 15 PM 2:27
MARC KITCHENS



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Ray and Mary Long,

Plaintiff,

vs.

Tuck and Howell, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2007-CP-42-3478

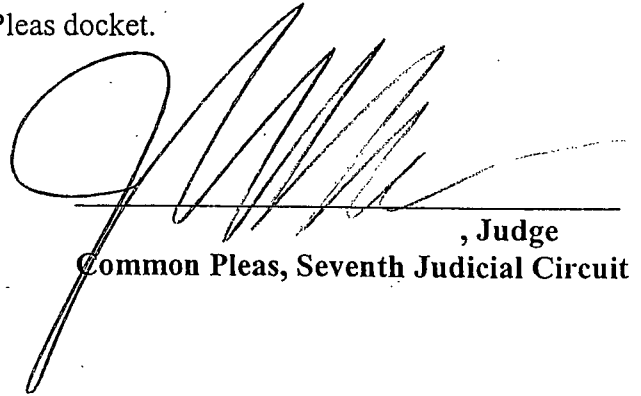
2009-CP-42-0781

Consent Order To Restore

BANNISTER, O. W.

Upon motion of Plaintiff, with consent of Defendant, the above-entitled case is hereby restored to the Spartanburg County Common Pleas docket.

IT IS SO ORDERED.



, Judge
Common Pleas, Seventh Judicial Circuit

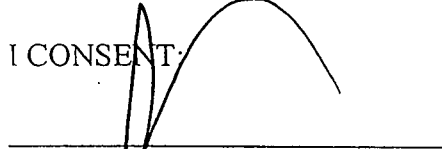
January 13 2009

I SO MOVE:



O. W. Bannister
Attorney for Plaintiff

I CONSENT:



James P. Walsh
Attorney for Defendant

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 JAN 13 PM 3:57
MARC KITCHENS

FEE PAID

10

Enclosed are documents and a short
summary of how we were treated badly
by two different attorneys from two different
Law firms.

RECEIVED

SEP 25 2014

SC Court of Appeals

RECEIVED

SEP 25 2014

SC Court of Appeals

THEREFORE, IT IS ORDERED WITH RESPONDENT'S CONSENT THAT:

1. Respondent's license shall be publicly reprimanded and suspended indefinitely. The suspension may be stayed and the license placed on probation for a period of not less than one (1) year with the following conditions:
 - a. Respondent shall pay a Civil Penalty of \$1,000.00 within thirty (30) days of the effective date of this agreement. Said penalty shall not be deemed paid until received by the Board in the form of a money order or cashier's check.
 - b. Receipt of proof that Respondent has resolved the complaint pending with the South Carolina Contractors' Licensing Board.
2. It is understood and agreed that if Respondent fails to meet the conditions agreed to in this Consent Agreement, Respondent's license may be administratively suspended pending compliance. Non-compliance may also result in further discipline. Any license law violations by Respondent constitute a failure to meet the conditions of this Consent Agreement.
3. Respondent has full knowledge that he has the right to a hearing and to be represented by counsel in this matter, and freely, knowingly, and voluntarily waives such rights by entering into this Consent Agreement. Respondent understands and agrees that by entering into this Consent Agreement he voluntarily relinquishes any right to judicial review of Board action(s) which may be taken concerning any related matters.
4. Respondent understands and agrees that this Consent Agreement will not become effective unless and until approved by the Board. Respondent understands and agrees that this Consent Agreement, if approved, will be disseminated as a public action of the Board in the manner provided by law. Respondent understands and agrees that if this Consent Agreement is not approved, it shall not constitute an admission against interest in this proceeding or prejudice the right of the Board to adjudicate this matter.
5. Pursuant to the South Carolina Freedom of Information Act, this Consent Agreement, with attachments, is a public document.
6. This Consent Agreement shall take effect immediately upon acceptance by the Board.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE CONTRACTORS' LICENSING BOARD**

In the matter of:

**Tuck & Howell, Inc.
P. O. Box 970
Greer, SC 29652**

License # CLM-2159

Case 2008-141

Respondent

CONSENT AGREEMENT

By agreement of the State Contractors' Licensing Board (the Board) and the above-named Respondent, the following disposition of this matter is entered pursuant to the provisions of S.C. Code of Laws §1-23-320(f) (1976, as amended) of the South Carolina Administrative Procedures Act:

FINDINGS OF FACT

1. At the time of the incident respondent was licensed as a mechanical contractor. The Board has jurisdiction over the Respondent and the subject matter herein.
2. In November of 2004 the Respondent engaged in a contract with Mary M. Long to install a new HVAC system on the structure at 131 Taylor Road, Greer, SC. It was observed and noted that the condensate pump was wired to the crawl space light switch and the HVAC system produced a white powder substance that was emitted throughout the house.
3. In October of 2006 a permit was obtained for the mechanical construction work performed, however; the work was performed in 2004.
4. Respondent waives any further findings of fact with respect to this matter.

CONCLUSIONS OF LAW

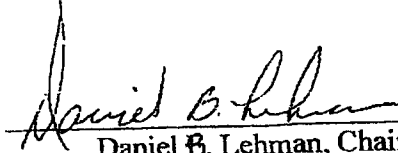
Respondent admits that the Respondent's action in this matter is in violation under SC Code of Laws §40-11-110 (A) (2) and §40-11-110 (A) (13) (1976, as amended). Respondent waives any further conclusions of law with respect to this matter.

AND IT IS SO ORDERED.

**SOUTH CAROLINA CONTRACTORS' LICENSING
BOARD**

12/16/08

Date




Daniel B. Lehman, Chairman

I CONSENT:



Richard J. Tuck
Tuck & Howell, Inc., Respondent

12-4-08
Date



ATTORNEY for the S.C. Department
of Labor, Licensing & Regulation

12/9/08
Date



Mark Sanford
Governor

Adrienne Riggins Youmans
Director

South Carolina
Department of Labor, Licensing and Regulation

Contractors' Licensing Board



110 Centerview Drive;
Post Office Box 11329
Columbia, SC 29211-1329
Office Phone: (803) 896-4686
Licensing Section FAX: (803) 896-4701
www.llr.state.sc.us

M E M O R A N D U M

DATE: June 8, 2009

TO: Ms. Mary Long, Complainant
Tuck & Howell, Inc., Respondents

FROM: Joyce Thurber *Joyce Thurber*
Program Coordinator, Administration

SUBJECT: Corrected Dates on Order on Respondents' Motion to Set Aside A
Consent Agreement

The hearing date was incorrectly stated on the original Order and has been corrected for your records.

Cc: SCLLR, OIE Section
SCLLR, Legal Section

P. Christopher Smith, Jr.
Clarkson Walsh Terrell & Coulter P.A.

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE LICENSING BOARD FOR CONTRACTORS

In the Matter of:
Tuck and Howell, Inc.,
License No. CLM-2159,

Case No. 2008-0141

**ORDER ON THE RESPONDENT'S
MOTION TO SET ASIDE
A CONSENT AGREEMENT
(Corrected)**

This matter came before the Contractor's Licensing Board (Board) for hearing on April 16, 2009, as a result of the Respondent's Motion to Set Aside a December 16, 2008, Consent Agreement. A quorum of Board members was present. The hearing was held pursuant to appropriate provisions of the S.C. Administrative Procedures Act (the APA), S.C. Code Ann. §1-23-10, *et seq.*, (1976), as amended. Suzanne L. Hawkins, Assistant General Counsel, represented the State. The Respondent appeared and was represented by P. Christopher Smith Jr., Esquire.

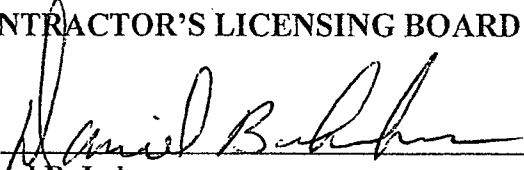
The Respondent entered into the December 16, 2008, Consent Agreement without consulting legal counsel and without informing the State he had legal representation available regarding other matters. He entered into it without consulting legal counsel, after reading it and being informed he did not have to sign and return it within a previously-stated fifteen (15) days. In the Consent Agreement, the Respondent admitted his action violated S.C. Code Ann. §40-11-110(A)(2) and (A)(13), waived further conclusions of law regarding the matter, and sanctions were imposed.

The Respondent asked the Board to set aside the Consent Agreement because of his imbecility, though no evidence of his mental incapacity was provided, and the State opposed the motion on grounds that there is no evidence establishing the Respondent ever was under a mental incapacity or duress, that he read the agreement before signing it, that he failed to contact the State's attorney with any questions, and that he chose not to consult any legal counsel. The Board denied the Respondent's request to set aside the Consent Agreement.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that: the Respondent's motion to Set Aside the Consent Agreement of December 16, 2008, is denied.

AND IT IS SO ORDERED.

CONTRACTOR'S LICENSING BOARD

BY: 
Daniel B. Lehman
Chairman

May 28, 2009

South Carolina Department of Labor, Licensing & Regulation
Before the Contractors' Licensing Board

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

In the Matter of:

TUCK & HOWELL INC,

CLM. 2159,

2008-141 Respondent.

AFFIDAVIT OF SERVICE BY MAIL

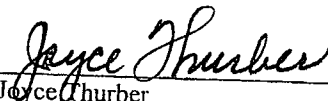
PERSONALLY appeared before me Joyce Thurber, who, being duly sworn, states:

1. That she is the Program Coordinator for the South Carolina Department of Labor, Licensing and Regulation, Contractors' Licensing Board.

2. That she hereby certifies that on the 8th day of June, 2009, she served the Corrected Order on the Respondent's Motion to Set Aside A consent Agreement, in the above-captioned matter by personally depositing a copy of the same in the United States mail, with correct postage affixed thereon, addressed to the person indicated below:

TUCK & HOWELL INC and
PO BOX 970
GREER, SC 29652

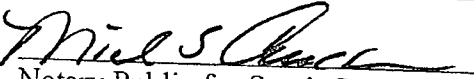
P. Christopher Smith, Jr. Esquire
P O Box 6728
Greenville SC 29606



Joyce Thurber
Contractors' Licensing Board
SOUTH CAROLINA DEPARTMENT OF LABOR,
LICENSING & REGULATION

SWORN to before me this

8th day of JUNE, 2009

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 25 Nov 2018

As noted on the cover letter, during the trial our attorney dropped the negligence lawsuit against Tuck and Howell and went only on the warranty.

Enclosed is the paperwork showing where the Licensing Board found Tuck and Howell guilty of negligence and where Mr. Tuck signed the paper admitting his guilt.

RECEIVED

SEP 25 2014

SC Court of Appeals