

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SPARTANBURG COUNTY CIRCUIT COURT

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SC Court of Appeals

THE HONORABLE J. DERHAM COLE

TRIAL COURT CASE NO. 2009-CP-42-00781

APPELLATE CASE NO. 2013-002439

Ray Long and Mary Long.....Appellants

vs.

Tuck and Howell, Inc.....Respondent

RECORDS FROM THE COURT OF COMMON PLEAS
IN SPARTANBURG COUNTY, SOUTH CAROLINA
RECORDS ON APPEAL SEPTEMBER 17, 2014

Ray and Mary Long
131 Taylor Road
Greer, SC 29651
(864)877-7039
Appellants

Mr. James P. Walsh, Esquire
P.O. Box 6728
Greenville, SC 29606
(864)232-4400
Attorney for the Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY CIRCUIT COURT

THE HONORABLE J. DERHAM COLE

TRIAL COURT CASE NO. 2009-CP-42-00781

APPELLATE CASE NO.: 2013-002439

Ray and Mary Long,.....Appellants


vs.

Tuck & Howell. Inc.,.....Respondant

Proof of Service By Mail

The undersigned certifies that a true copy of the "Records from the court of common pleas in Spartanburg County, South Carolina records on appeal" was mailed this 7th day of August, 2015, postage prepaid to:

James P. Walsh, Esquire
P. O. Box 6728
Greenville, SC 29606



Ray Long, Appellant



Mrs. Mary Long, Appellant

131 Taylor Road
Greer, SC 29651
Phone (864) 877-7039

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)

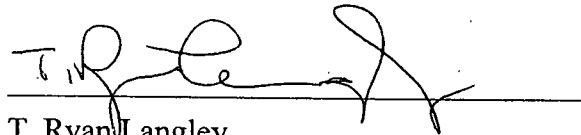
8. The foregoing allegations contained in the complaint are incorporated by reference herein as if restated verbatim.
9. Defendant Tuck & Howell is a merchant who regularly deals in the sale of heating and air conditioning units like the one sold to Plaintiffs.
10. Defendant warranted, expressly and/or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

2007 OCT -3 PM 2:45
FACED BY
FACED BY

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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 SPARTANBURG COUNTY
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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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SOUTH CAROLINA

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
COURT OF COMMON PLEAS
2007 MAY 29 PM 1:45

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
JAMES P. WALSH

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

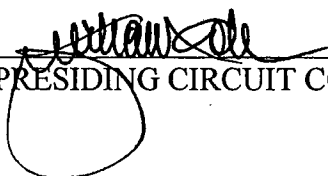
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CLERK OF COURT
SPARTANBURG COUNTY
2008 AUG - 6 AM 10: 09
MARC KITCHENS

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:

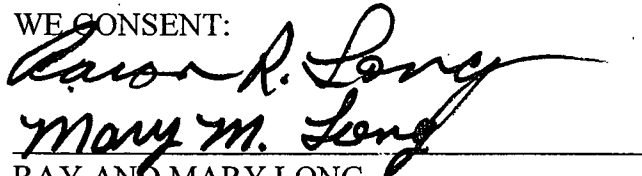


T. RYAN LANGLEY
ATTORNEY FOR THE PLAINTIFF



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)

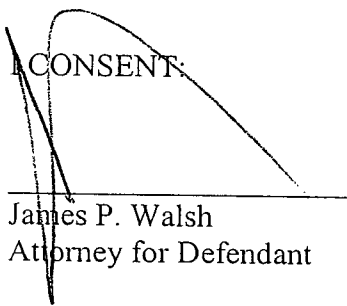
Greenville, South Carolina

Phone: (864) 298-0084; Fax: (864) 298-0146

Attorney for Plaintiffs

December 1, 2008

CONSENT



James P. Walsh
Attorney for Defendant

MARC KITCHENS

2008 DEC 15 PM 2:27

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SPARTANBURG COUNTY



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

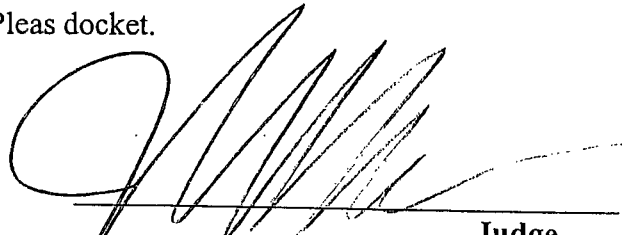
2009-CP-42-0781

Consent Order To Restore

BANNISTER, D. W.

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

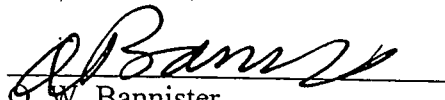
IT IS SO ORDERED.



, Judge
Common Pleas, Seventh Judicial Circuit

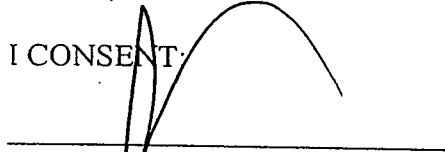
January 13 2009

I SO MOVE:



G. W. Bannister
Attorney for Plaintiff

I CONSENT:



James P. Walsh
Attorney for Defendant

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

FEE PAID

60

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Ray and Mary LONG,)
)
) PLAINTIFFS,)

CIVIL ACTION NO: 09-CP-42-0781

-vs-

TUCK and HOWELL, Inc.,)
)
) DEFENDANT.)

VERDICT FORM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 AM 9:08
K HOPE BLACKKEY

✓ We, the jury in the above-entitled action, find for the plaintiffs and award damages as a natural consequence of the defendant's breach of the implied warranty in the sum of:

Six Thousand, Five Hundred Dollars
(\$ 6,500.⁰⁰)

_____ We, the jury in the above-entitled action, find for the defendant.

Wm. C. [Signature]
Foreperson

September 18, 2013

This judgment was entered on 1 day of October, 2013, and a copy mailed first class or placed in the appropriate attorney's box on 1 day of October, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Oscar W. Bannister PO Box 10007 Greenville, SC 29603

James P. Walsh PO Box 6728 Greenville, SC 29606

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

M. Hope Blackley / Martha Long, D.C.
M Hope Blackley - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

VERDICT FOR PLAINTIFF IN THE AMOUNT OF SIX THOUSAND, FIVE HUNDRED DOLLARS. (\$6, 500.00).

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT - 1 AM 10:55
M HOPE BLACKLEY