

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2009-CP-46-01244
Appellate Case No.: 2013-002633

RECEIVED

SEP 22 2015

SC Court of Appeals

Phil Vasey and Pamela Vasey, Appellants

v.

Colton Builders, LLC and Collinswood Cabinetry, LLC, Defendants

Of Whom Colton Builders, LLC is the Respondent.

RECORD ON APPEAL

David B. Sample
1506 Ebenezer Road
Rock Hill, South Carolina 29732
Phone: (803) 981-9900
Attorney for Appellants

F. Craig Wilkerson, Jr.
1050 College Avenue Ext.
Rock Hill, South Carolina 29732
Phone: (803) 324-7200
Attorney for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Phil Vasey and Pamela Vasey,

Plaintiffs,

vs

Colton Builders, LLC and Collinswood
Cabinetry, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 09-CP-46-01244

ORDER

FILED-RECEIVED
2013 SEP 23 PM 2:26
DAVID M. COLTON
J.C.C.P. & G.S.
YORK COUNTY, SC

This matter came before the Court on August 27, 2013, pursuant to a Notice of Motion and Motion to Confirm Arbitration award filed by the Defendant, Colton Builders, a Notice of Motion and Motion to Vacate Arbitration Award filed by the Plaintiffs, as well as any other motions pending in this case. Present at the hearing were counsel for both Plaintiffs and Defendant, Colton Builders. The Defendant, Collinswood Cabinetry, LLC was not present, as they did not participate in the arbitration.

Based on the record and arguments of counsel, the Court finds:

FINDINGS OF FACT

1. This Court has jurisdiction of the parties and subject matter herein.
2. The parties herein entered into a Consent Order for Arbitration filed December 20, 2012, appointing Terry Millar as the Arbitrator. By agreement of the parties, arbitration was scheduled for January 22, 2013. Neither the Plaintiffs nor Plaintiffs' counsel appeared for the arbitration. An Award Upon Binding Arbitration was issued and filed February 7, 2013. The Arbitration Award is attached hereto and incorporated herein by reference, as if set out verbatim.



3. The Plaintiffs' filed a Motion to Vacate Arbitration Award pursuant to §15-48-130(a)(1) alleging the arbitration award was procured by fraudulent means, and §15-48-130(a)(5) alleging there was no valid arbitration agreement. The Court finds that Plaintiffs' motion pursuant to §15-48-1310(a)(1) is not supported by the record. Nothing in the records indicates that the arbitration award was procured by corruption, fraud, or any other undue means. As to Plaintiff's motion pursuant to §15-48-130(a)(5), the Court affirmatively finds that the parties agreed to, and did, in fact, enter into a binding arbitration agreement and are, therefore, subject to the award issued by the Arbitrator. Plaintiffs' motions are predicated on the contention that the Defendant did not have the ability to proceed with litigation that was instituted by the Plaintiffs.

4. The Court finds that the Plaintiffs have suffered no prejudice by the arbitration going forward. The Defendant, as much as the Plaintiffs, had the right to protect their interest, whatever it may have been, as well as the right to have the case timely resolved. The Court, therefore, upholds the arbitration award, confirms the award, and denies motion to vacate.

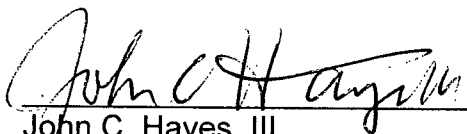
CONCLUSIONS OF LAW

5. This court has jurisdiction of the parties and the subject matter herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiffs' motion to vacate the arbitration award is hereby denied and the award for arbitration is upheld and confirmed and shall be entered as a judgment by the York County Clerk of Court.

AND IT IS SO ORDERED

York, SC
9/16, 2013


John C. Hayes, III
Judge, Sixteenth Judicial Circuit

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP4601244

Phil Vasey	Pamela Vasey	Colton Builders LLC	Collinswood Cabinetry LLC
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

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

FILED-RECEIVED
2013 APR 23 PM 4:00
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before me on March 14, 2013, upon Plaintiffs' Motion to Set Aside Consent Order for arbitration. Representing the parties were: David B. Sample for Plaintiffs; and, F. Craig Wilkerson for Defendants.

Plaintiffs seek to have the court nullify the parties' consent order by which they agreed to arbitrate this dispute upon the grounds that the Defendant Colton Builders, LLC, ("Colton Builders") was non-existent due to an administrative dissolution by the Secretary of State. Plaintiffs assert that Colton Builders could not consent to arbitration, since it had no legal authority to make contracts. An arbitration was held, and a final award of the arbitrator is a part of the record in this matter. Colton Builders has not yet sought to have the arbitration award entered of record and confirmed as a judgment pursuant to statute.

Notwithstanding any merit of Plaintiffs' contention, I do not believe it is appropriate at this stage to vacate the consent order. Rather, I find and conclude that Plaintiffs' objections can be asserted pursuant to S.C. Code Ann. § 15-48-130 (1976, as amended).

Therefore, based on the record before me, Plaintiffs' motion to vacate the consent order to arbitrate is denied, without prejudice to Plaintiffs' right to assert their objections to the arbitration award in accordance with § 15-48-130 on the same grounds presented in this motion.

AND IT IS SO ORDERED.

DM

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ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

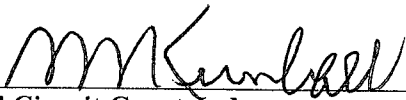
INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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


Special Circuit Court Judge

3063

Judge Code

4/5/2013

Date

Clerk of Court Office Use Only

4-23-13

4-23-13

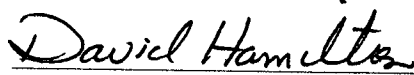
This judgment was entered on 4-23-13 and a copy mailed first class or placed in the appropriate attorney's box on 4-23-13 to attorneys of record or to parties (when appearing pro se) as follows:

David B. Sample 2424 India Hook Road Suite 160 Rock Hill,
SC 29732

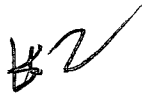
F. Craig Wilkerson Jr. 1050 College Ave. Ext. Rock Hill,
SC 29732

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



David Hamilton - Clerk of Court



Court Reporter: Aminah Hardy

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Phil Vasey and Pamela Vasey,)
)
Plaintiffs,)

Case No.: 09-CP-46-01244

vs)

**AWARD
UPON BINDING ARBITRATION**

Colton Builders, LLC and)
Collinswood Cabinetry, LLC,)
)
Defendants.)

This contract and building defect dispute is in arbitration by Consent Order dated December 18, 2012, filed December 20, 2012, and signed by the Court and counsel for both Plaintiff and Defendant Colton Builders, LLC. A copy of the Consent Order is attached hereto as Exhibit "A".

This matter was scheduled by agreement for a hearing January 22, 2013 at 10:00 a.m. The Arbitrator was advised that the Defendant Collinswood Cabinetry had never been served and was not a party to the arbitration.

Pursuant to the terms of the Consent Order and the Agreement to Arbitrate attached hereto as Exhibit "B", all witness lists, exhibits, etc. were to be exchanged between the parties and provided to the Arbitrator ten (10) days prior to arbitration. The Consent Order further provided that all South Carolina Rules of Evidence would be followed. Counsel for the Defendant timely provided Plaintiffs' counsel and the Arbitrator with a list of witnesses and proposed exhibits. Nothing was received from Plaintiffs or their counsel.

On Friday, January 18, 2013, at 4:54 p.m. Plaintiffs' counsel, by e-mail, raised an issue of the Defendant's designation with the

South Carolina Secretary of State as being that of Colton Builders, Inc. and not Colton Builders, LLC as captioned in this case. Plaintiff's Counsel indicated he would be filing a motion the next week to have the Consent Order for Arbitration set aside as "illusory." Counsel for the Defendant responded to the Plaintiffs' counsel's 4:54 p.m. e-mail at 5:28 p.m. on Friday, January 18, 2013 indicating that under Rule 15 (c) of the SCRCF and the applicable case law, that should Plaintiffs recover damages, Defense Counsel would consent to substitution of Colton Builders, Inc. for Colton Builders, LLC and as such there would be no prejudice to either side. Defense Counsel stated in part:

Changing a complaint to correct the name of a party relates back to the original filing.

S.C. R. Civ. P. 15© requires that (1) the basic claim must have arisen out of the conduct set forth in the original pleading; (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense; (3) that party must or should have known that, but for a mistake concerning identity, the action would have been brought against it; and (4) the second and third requirements must have been fulfilled within the prescribed limitations period.

Hughes v. Water World Water Slide, 314 S.C. 211 (S.C. 1994)

The undersigned was copied with the e-mails. Plaintiffs' counsel's email was treated as a motion for a continuance which defense counsel opposed. Therefore, the matter was addressed via phone conference with the Arbitrator and counsel at 11:00 a.m. on Monday, January 21, 2013. Defense counsel again stipulated that substitution of the entities would be made, that any recovery by

the Plaintiffs could be entered against Colton Builder, Inc. or Colton Builder, LLC, and explained that the dissolution of the LLC was believed to be an administrative action by the Secretary of State. Given the stipulation by Defendant to allow any award to Plaintiffs to be entered as a judgment against the LLC and/or the corporation (Inc.), no prejudice to the Plaintiffs was evident. Other than the entity status as being "illusory", no other reason for a continuance was raised by Plaintiffs' counsel. Counsel was advised that the arbitration would go forward on January 22, 2013, as scheduled. However, as an accommodation, the Arbitrator delayed the hearing start of 10:00 a.m. until 11:00 a.m. to allow the Plaintiffs' attorney to seek an Order of the Court staying the arbitration.

Later that same day, On Monday, January 21, 2013, at 3:30 p.m., Plaintiffs' counsel sent an e-mail to Defendant's attorney and the Arbitrator advising that he would be filing a motion to set aside the Consent Arbitration Order and that neither he nor the Plaintiffs' would be present for the arbitration. Counsel for Defendant objected and the undersigned advised counsel for both parties that the arbitration hearing would go forward as scheduled, that Plaintiffs' counsel could seek a Court order delaying the hearing, and that the Plaintiffs could appear or not appear at their own risk.

On the morning of January 22, 2013, at 10:45 a.m. Plaintiffs' Counsel sent an email stating:

I have filed my motion and will serve it today by mail, and also by email as soon as possible. The Vaseys and I will not be in attendance as it is their position that there is no valid agreement to submit the case to mediation.

This Arbitrator was advised by Defense counsel that the Law Clerk for Judge John C. Hayes had advised there had been no contact other than Defendant's counsel Wilkerson's e-mails to chambers advising of the Motion, that no Order had been issued, and that Judge Hayes was out of town.

Although the arbitration was postponed until 11:00 a.m., the actual hearing did not begin until approximately 11:30 a.m. in order to allow time for Plaintiffs' counsel to contact the Court with his motion to set aside the Arbitration Order and to appear or contact the Arbitrator concerning any problem. The Plaintiffs nor the Plaintiffs' attorney appeared for the arbitration hearing.

At the commencement of the hearing, Defendant made a motion that the Plaintiffs' case be dismissed for failure to prosecute and failing to produce a witness list and exhibits, as provided in the Consent Order and Agreement for Arbitration. Defense counsel advised that he had made two prior motions to compel and a motion for sanctions, and that the Plaintiffs had previously agreed to participate in Voluntary Mediation, at which the Plaintiffs failed to appear, that Plaintiffs had failed to list or exchange any evidence or exhibits of any kind, prior to raising the objection as to the designation of Colton Builders on the Friday before the Tuesday scheduled Arbitration hearing.

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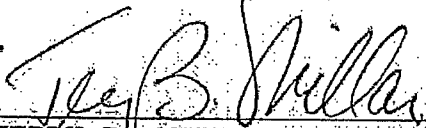
Whereupon, Defendant's motion to dismiss Plaintiffs' complaint for failure to prosecute and failure to produce evidence was granted.

In support of its counterclaim, Defendant Colton then called two witnesses, Scott Price, Owner of Colton Builders, and Missy Snipes Thurm, Office Manager for Colton Builders, who testified under oath that, although Colton's counterclaim initially sought \$22,565.11 as past due for work performed at the Plaintiffs' home under the contract and the added work done at Plaintiffs' request, they had discovered there were credits of approximately \$15,000.00 due to the Plaintiffs for materials purchased by the Plaintiffs. The unpaid balance was actually \$8,758.11, the amount Colton sought to recover. Their testimony was not disputed.

Wherefore, the Plaintiffs' case was, and is, dismissed for failure to prosecute and failure to produce any evidence. The Defendant Colton Builders, LLC and/or Colton Builders, Inc. is awarded \$8,751.11 on its counterclaim.

The Arbitrator understands that a hearing on Plaintiffs' counsel's motion to set aside the Consent Order for Arbitration is pending. The Arbitrator will make himself available for any information the Court requests.

AND IT IS SO ORDERED.


TERRY B. MILLAR
Arbitrator
Terry B. Millar, LLC
PO Box 10590
Rock Hill, SC 29731
(803) 324-3196
tbmillar@tbmllc.com

February 5, 2013

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Phil Vasey and Pamela Vasey,

Plaintiffs,

v.

Colton Builders, LLC and
Collinswood Cabinetry, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2009-CP-46-01244

**CONSENT ORDER FOR
ARBITRATION**

DAVID HAMILTON
C.C.P. & S.
YORK COUNTY, SC

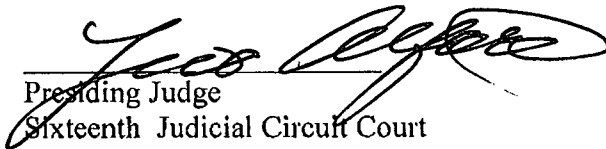
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2012 DEC 20 AM 9:32

This matter comes before the Court, pursuant to an agreement between the parties for binding Arbitration of this matter. The parties agree to the following:

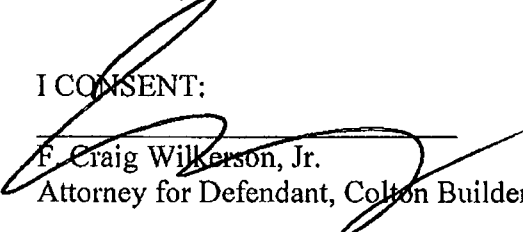
- a. That Terry Millar shall be appointed Arbitrator in this matter.
- b. Arbitration shall be scheduled within 30 days of the date of this Order.
- c. Arbitration shall be binding upon all parties in this matter.
- d. The parties agree that all South Carolina Rules of Evidence shall be followed.
- e. That all witness lists exhibits, etc. shall be exchanged between the parties 10 business days prior to arbitration.

AND IT IS ORDERED.

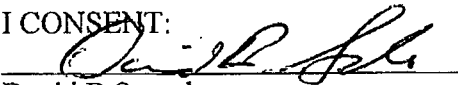
December 18, 2012


Presiding Judge
Sixteenth Judicial Circuit Court

I CONSENT:


F. Craig Wilkerson, Jr.
Attorney for Defendant, Colton Builders

I CONSENT:


David B. Sample
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Phil Vasey and Pamela Vasey,
Plaintiffs,

vs.

Colton Builders, LLC, a South Carolina
Limited Liability Company and
Collinswood Cabinetry, LLC, a South
Carolina Limited Liability Company,
Defendants.

IN COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2009-CP-46-01244

COMPLAINT
(Jury Trial Requested)

FILED
2009 MAR 20 PM 1:06
YORK COUNTY, SC

The Plaintiffs, complaining of the above-named Defendants, come before this Court and allege as follows:

1. The Plaintiffs are residents and citizens of York County, South Carolina and are the owners of a house located at 609 Deberry Hollow, Rock Hill, South Carolina 29732.

2. Upon information and belief, the Defendants are limited liability companies with their principal places of business in York County, South Carolina. Colton Builders, LLC (hereinafter "Colton") is located at 2468 W. McConnells Highway, Sharon, South Carolina and Collinswood Cabinetry, LLC (hereinafter "Collinswood") is located at 1474 Hensley Road, Fort Mill, South Carolina.

3. On April 20, 2005, the Plaintiffs and Defendant Colton entered into a contract for that Defendant to construct a house on the Plaintiffs' property.

4. During the construction of said house on the Plaintiffs' property, Defendant Colton contracted with Defendant Collinswood to provide and install custom cabinets in the house. The Plaintiffs are third party beneficiaries of said contract.

5. The contract between the parties included detailed specifications for the design and materials to be used in the house to be constructed for the Plaintiffs.

6. The contract originally included a start date of June 1, 2005 and a completion date of November 9, 2005. Mitigating circumstances, through no fault of either party, resulted in contractual start date of July 27, 2005 and a contractual completion date of January 4, 2006. The actual occupancy date was March 27th, 2006.

7. The contract calls for the Defendant to cure all defects and items that do not conform with the terms of the document within one year of substantial completion of the construction of the house.

**FOR A FIRST CAUSE OF ACTION
Breach of Contract**

8. The allegations of paragraphs 1-6 are incorporated herein as if repeated verbatim.

9. The Defendant breached the terms of the contract between the parties, including the following items that do not comply with the terms of the document and have not been corrected or have been corrected at the expense of the Plaintiffs:

- a. 2" X 4" framing was used in the garage area. The contract provides for 2" X 6" framing.
- b. A single HVAC system was installed despite the contract providing for two units.
- c. Steel doors were installed leading to the rear exterior of the house. The contract provides for fiberglass doors.
- d. The contract provides for completion on or before January 4, 2006. The work actually ended on March 27, 2006.
- e. Leaf guards were not installed on gutters as required by the

contract.

- f. Humidifiers were not installed as required by the contract.
- g. The cabinets installed by Defendant Collinswood do not comply with the contract specifications.
- h. Several items specified in the contract were not provided or were cancelled by agreement of the parties, and no change order was provided as required by the contract. These items include the following:
 - 1) Lights at the driveway entrance.
 - 2) A brick mailbox.
 - 3) Picture frame moldings.
 - 4) Fireplace granite surround and hearth.
 - 5) Ceiling fan in the great room.
 - 6) Six yards of concrete.
 - 7) Powder room vanity cabinet.
 - 8) Stamped concrete on the driveway as required by subdivision covenants.
 - 9) Steps and railing at Master Bedroom exterior door.
- i. The contract requires the Defendant to repair any defects within one year of substantial completion of the house. Many components are defective and have not been repaired including:
 - 1) Three missing and one broken window screens
 - 2) Sub-flooring is loose from floor joists.
 - 4) Replacing dead trees and bushes.

- 5) Several doors are out of vertical level, swing in the direction of the tilt and will not latch. Double doors are warped as much as $\frac{3}{4}$ inch from top to bottom and will not close properly
- 6) Weather stripping is damaged on exterior doors.
- 7) The fireplace fan thermostat in the master bedroom is defective and the fan is improperly installed and rattles.
- 8) There is a cracked granite sink backsplash.
- 9) There are machine marks from drilling faucet holes on one bathroom counter top.
- 10) There are various chips on the edges of granite and sink cut-outs.
- 11) Silvering coming off vanity mirror.
- 12) The granite surfaces were never sealed.
- 13) Sinks were improperly mounted to granite countertops.
- 14) The ground is sinking in utility and drain trenches.
- 15) The grade slopes toward the house in front causing water accumulation and seepage into the crawl space.
- 16) The attic insulation is compacted and is inadequate.
- 17) Several bricks on the east end of the house are leaching rust and are discolored.
- 18) Several bricks on the west end of the house are unfinished or improperly laid.
- 19) Some bricks are chipped or broken.

- 20) Some bricks have been bleached from cleaning acid and pressure washing.
- 21) Interior woodwork has large areas of stain leaching through the paint and the nail holes were improperly filled and sanded prior to painting.
- 22) Laundry room floor out of level in excess of allowable amount specified by SC Residential Construction Standards.
- 23) The roof leaks and there are exposed nails.
- 24) Water drains behind the fascia on the dormers.
- 25) Shingles were installed incorrectly on the dormers.
- 26) The gutters are undersized causing overflow and accumulation of water around the foundation and seepage into the crawl space.
- 27) Some of the windows are defective and require a prop in order to latch.
- 28) Moldings around front entrance door never installed and nail holes not filled.
- 29) Floor system not properly supported causing excessive noise and furniture movement.
- 30) Two different colors of grout were used on portions of the tile floor.
- 31) Lights flicker when appliances start.
- 32) Incorrect finish, finish coming off, incorrect drawer slides

and defective wood on custom cabinetry.

- 33) Replace incorrect handles on plumbing fixtures.
- 34) Re-install broken crawl space vents.
- 35) Condensate pump drain seeping into crawl space.
- 36) Chipped tile in Master Bath
- 37) Discolored grout in guest room shower floor.
- 38) Re-key front entry door same as other exterior doors.
- 39) Repair bent electrical conduit in shop floor.
- 40) Repair and repaint nail holes in woodwork.
- 41) Grout hand held shower coupling, niches and floor in front of shower.
- 42) The kitchen cabinets had defects that required repairs.

10. As a result of the Defendant's breach of the contract between the parties, the Plaintiff has suffered damages in the form of repairs made to the house and repairs that are needed and have not yet been completed. The Plaintiffs withheld \$4,000.00 from the contract price to complete unfinished items and make repairs, however, the remaining damages are in excess of \$10,000.00.

11. The Plaintiffs are informed and believe that they are entitled to actual damages in excess of \$10,000.00, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

FOR A SECOND CAUSE OF ACTION
Breach of Implied Warranty of Workmanlike Service

12. The allegations of paragraphs 1-10 are incorporated herein as if repeated verbatim.

13. The Defendant had a legal duty to undertake construction of the Plaintiffs'

home commensurate with industry standards.

14. By failing to properly construct the Plaintiffs' home as set forth in paragraph 8 above, the Defendant breached the implied warranty of workmanlike service imposed by the common law of the State of South Carolina.

15. As a result of the Defendant's breach of this implied warranty, the Plaintiffs have suffered damages in excess of \$10,000.00.

WHEREFORE, Plaintiffs pray for the following relief:

A. For the First Cause of Action:

1. For actual damages in excess of \$10,000.00;
2. For the costs of this action;
3. For such other and further relief as this Court may deem just and proper;

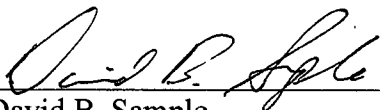
B. For the Second Cause of Action:

1. For actual damages in excess of \$10,000;
2. For the costs of this action;
3. For such other and further relief as this Court may deem just and proper;

Respectfully submitted,

BURRIS & SAMPLE, LLC

Rock Hill, South Carolina
March 20, 2009



David B. Sample
Attorney for Plaintiffs
P.O. Box 10311
Rock Hill, SC 29731
(803) 980-0100
(803) 980-0888 (facsimile)

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED - RECEIVED
2009 MAY 28 PM 3:29

IN THE COMMON PLEAS
SIXTEEN JUDICIAL CIRCUIT

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Phil Vasey and Pamela Vasey,

Plaintiff,

vs.

Colton Builders, LLC and
Collinswood Cabinetry, LLC.

ANSWER AND COUNTERCLAIM
Case No.: 2009-CP-46-01244
Jury Trial Requested

COMES NOW, the Defendant, Colton Builders by and through counsel, F. Craig Wilkerson, Jr., and hereby submits their Answer and Counterclaim as follows:

ANSWER

1. That all matters and things alleged in the Complaint not hereinafter specifically admitted are denied.
2. That the Defendant admits the allegations contained in Paragraph 2 of the Complaint.
3. That Colton asserts that it has completed all conditions precedent of its contract with the Plaintiffs for their home and that the Plaintiff's owe Colton Builders \$22,565.11 and attorney fees and costs.
4. That Colton denies Paragraphs 9, 10, 11, 12, 13, 14, and 15.

AFFIRMATIVE DEFENSES

1. Colton would show, upon information and belief, that Vaseys claims are barred by the economic loss rule.

2. The Vaseys have failed to mitigate his damages as required by law.
3. Colton would show that it acted in accordance with and complied with industry and governmental standards and in accordance with the state of the art at the time of the work performed by Colton and, therefore, Vaseys claims are barred.
4. Colton would show that the claim for punitive damages could not be had because any award of punitive damages would violate Colton's equal protection and due process rights as guaranteed by the United States and South Carolina Constitutions.
5. Colton would allege and show that any injuries and damages claimed by Vaseys was directly and proximately caused by the intervening and superseding acts of negligence, willfulness and gross negligence of parties and/or non-parties other than Colton and over whom Colton did not have any control and, therefore, Vaseys cause of action should be dismissed.
6. Colton would show, upon information and belief, that the initiation of this action by Vasey(s) was after an unreasonable delay. Colton claims the doctrines of laches, wavier and/or estoppel as a complete defense to the claim.
7. Colton would show, upon information and belief, that any injuries or damages sustained by Vasey(s) was a result of acts or omissions of others, not within the employ or control of Colton. Therefore, Vasey(s) cannot recover from Colton in any sum whatsoever.
8. Colton would show, upon information and belief, that any work it performed or material it supplied was fully accepted by Vasey(s). Colton, therefore, pleads such acceptance as a complete defense to the Complaint.

9. Vasey(s) failed to provide Colton with adequate notice and opportunity to cure pursuant to South Carolina Code Annotated § 40-59-810 et seq., and Vasey(s) claims should be dismissed or, in the alternative, stayed until such time as Vasey(s) has satisfied the statutory requirements and for 90 days thereafter.

10. Vaseys claims are barred by the statute of frauds.

11. Colton pleads set-off as an affirmative defense.

12. Colton asserts that they were kicked off the job by Vasey(s) and thus the work they performed on the job was not complete. As such, Vaseys claims for improper work should be dismissed.

13. Any damage recovery by Vasey(s) in his Complaint is limited by the limitations of liability contained in the contract between the parties.

14. Colton reserves the right to plead or otherwise assert any additional defenses that become known during the course of discovery or otherwise.

BY WAY OF COUNTERCLAIM

AND BY WAY OF A COUNTERCLAIM

The Defendant, complaining of the Plaintiffs, would respectfully show unto the Court and alleges, incorporating his answer herein above:

1. That the Defendant Colton Builders, LLC, declares that the subject property of this action is located in York County, South Carolina.

2. That the Plaintiffs in this matter contracted with the Defendant for the sale/construction of the home.

3. That the parties entered into multiple change orders..

4. That the Plaintiffs asked for numerous custom design changes to the real estate, which were complied with.

5. That the Plaintiffs have not exhausted their administrative remedies under the terms of the contract.

First Cause of Action

BREACH OF CONTRACT

6. That the real property which is subject to this action is situated in York County, State of South Carolina, located at 609 Deberry Hollow, Rock Hill, South Carolina, and this court has jurisdiction of the parties and the subject matter herein set forth.

7. That the Plaintiff entered into a contract with the Defendant to purchase said property and several modifications of the contract both verbal and written of real property located in York County, South Carolina, which is the subject of this action.

8. That the Plaintiff asked to make in excess of \$10,000.00 worth of custom changes to the construction of the home, which was done.

9. That all conditions precedent to the contract which were performed, or if any condition precedent was not satisfactorily performed, it has been timely cured.

10. That the Plaintiff has wrongly declared the contract breached and has thereby indicated his refusal to accept the terms of the contract and pay Colton or other subcontractors.

11. That the terms of the land contract were not influenced by bad faith, unconscionability, or undue influence on the Defendant's Colton Builders, LLC, Builder's behalf.

12. That Colton Builders, LLC, Builders has relied upon the executed contract.

13. The Defendant Colton Builders, LLC, Builders has suffered damages as a direct and proximate result of Plaintiff's breach of the contract, to include reasonable attorney fees and costs as provided in said contract.

14. Defendant is entitled to a judgment against the Plaintiff for such an amount of the purchase price of the home of \$22,565.11, plus interest, prejudgement interest, attorney fees and costs, and punitive damages as the jury may find, and for other such relief as the court may Order.

For A Second Cause of Action.

FOR A SECOND CAUSE OF ACTION

Quantum Meruit

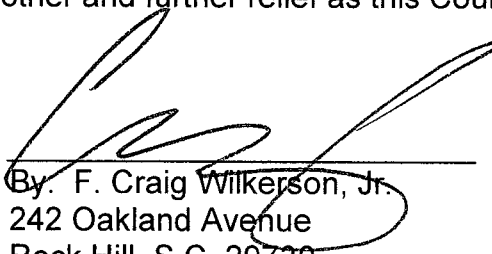
15. Defendant incorporates by reference the foregoing allegations as if set forth here in full.

16. Defendant's efforts conferred benefits upon Plaintiff.

17. Plaintiff realized the benefits conferred upon them, or had the opportunity to do so, and retention of those benefits under the circumstances is unjust as Plaintiff should pay for the value of the services provided by Defendant.

18. Plaintiff has not paid for the value of the benefits conferred upon it by Colton Builders.

WHEREFORE, the Defendant prays for a jury trial and that the Plaintiffs' complaint be dismissed with costs awarded to the Defendant, and Defendant prays for judgment against the Plaintiffs, jointly and individually, in an amount of actual damages and for punitive damages in an appropriate amount, for the costs of this action, including reasonable attorney fees, and for such other and further relief as this Court might deem just and proper.



By: F. Craig Wilkerson, Jr.
242 Oakland Avenue
Rock Hill, S.C. 29730
(803) 324-7200
ATTORNEY FOR DEFENDANTS
COLTON BUILDERS

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED
2013 JUL 15 AM 9:34
DAVID HAMBITION
C.C.C.P. & S.
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Phil Vasey and Pamela Vasey,

C.A. No.: 2009-CP-46-01244

Plaintiffs,

vs.

Colton Builders, LLC and Collinswood
Cabinetry, LLC

Defendants.

**MOTION TO VACATE
ARBITRATION AWARD**

The Plaintiffs, by and through their undersigned attorney, on the tenth day hereafter or at such time as directed by the Court, shall move to vacate the arbitration award entered in the above-captioned case on the following grounds:

1. Pursuant to South Carolina Code §15-48-130 (a)(1), the arbitration award was procured by fraudulent means, since the Defendant Colton Builders, LLC and its related entities had been dissolved by the State of South Carolina and did not exist at the time the purported arbitration agreement was signed. The Plaintiffs believed they were dealing with a viable entity and they in fact were not.
2. Pursuant to South Carolina Code §15-48-130 (a)(5), there was no valid arbitration agreement, since the Defendant Colton Builders, LLC and its related entities had been dissolved by the State of South Carolina and did not exist at the time the purported arbitration agreement was signed. The Plaintiff asserts there can be no

valid arbitration agreement where one party to the purported agreement has
legally ceased to exist at the time it is signed.

Respectfully submitted,

Rock Hill, South Carolina

July 14, 2013



David B. Sample
Attorney for the Plaintiff
2424 India Hook Road
Suite 160
Rock Hill, SC 29732
(803) 981-9900
(803) 981-9909 facsimile

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Phil Vasey and Pamela Vasey,

Plaintiffs,

vs

Colton Builders, LLC and Collinswood
Cabinetry, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

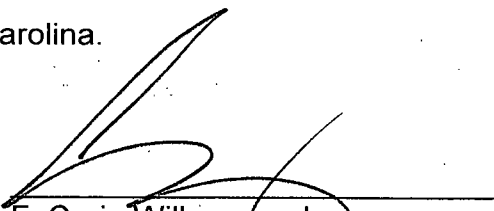
Civil Action No.: 09-CP-46-01244

NOTICE OF MOTION AND MOTION TO
CONFIRM ARBITRATION AWARD

TO: THE PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEY.

YOU WILL PLEASE TAKE NOTICE that the Defendant, Colton Builders, by and through its undersigned attorney will move before the Honorable John C. Hayes, III, the issuing Judge on a date and time convenient to the Court and the parties, to confirm the Order Upon Binding Arbitration, a copy of which is attached hereto and incorporated herein by reference, and to have same recorded as a judgment in the Office of the Clerk of Court for York County, South Carolina.

Rock Hill, South Carolina
April 15, 2013


F. Craig Wilkerson, Jr.
1050 College Avenue Ext.
Rock Hill, SC 29732
Attorney for Defendant, Colton Builders

FILED-RECEIVED
2013 APR 17 AM 8:21
DAVID J. JARVIS
C.C.P. & J.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Phil Vasey and Pamela Vasey,)

Plaintiffs,)

v.)

Colton Builders, LLC and)
Collinswood Cabinetry, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2009-CP-46-01244

**MOTION TO SET ASIDE
CONSENT ORDER**

DAVID B. SAMPLE
C.O.C.P. #205
YORK COUNTY, SC

2013 JAN 22 AM 10:31

FILED-RECEIVED

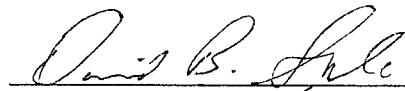
28

The Plaintiffs, by and through their undersigned attorney, shall move on the tenth day hereafter or at such time as directed by the Court, shall move to set aside the Consent Order for Arbitration signed by Judge Lee S. Alford on December 18, 2012 and filed by the court on December 20, 2012 on the grounds that it has since been discovered that the Defendant Colton Builders, LLC has been dissolved by the State of South Carolina and is no longer a viable corporation or company. The Plaintiffs assert that due to this fact, there was never any valid agreement or meeting of the minds between the parties as to the submission of the case to binding arbitration.

Respectfully submitted,

Rock Hill, South Carolina

January 22, 2013



David B. Sample
Attorney for the Plaintiffs
2424 India Hook Road, Suite 160
Rock Hill, SC 29732
(803) 981-9900
(803) 981-9909 (facsimile)

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Phil Vasey and Pamela Vasey,

Plaintiffs,

vs

Colton Builders, LLC and Collinswood
Cabinetry, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 09-CP-46-01244

AFFIDAVIT OF SCOTT PRICE AND
MISSY PRICE

Comes now the undersigned issuing his affidavit under oath as follows:

1. My name is Scott Price I am an licensed contractor and have been the owner/operator along with my wife Missy Price of Colton Builders LLC and Colton Builders, Inc. from 2002 to present. The Vassey house was completed in 2005.
2. At the time of the incident, which is the subject of this action, Colton Builders was an Limited Liability Corporation in 2007, in March of 2007, we changed from an LLC to a Incorporation. Through a mis-communication with our lawyer at that time, Hugh Harrelson, we did not realize the INC status had been recorded for Colton Builders and we continued to file taxes as an LLC under Colton Builders, LLC. All of these entities, Colton Builders, Inc. and Colton Builders, LLC were the same entity, had the same federal tax ID number ending in 9278. That since 2002 Colton Builders has filed all of its corporate documents, taxes, and maintained the same Federal ID number, making the correction to Colton Builders, Inc, only in the recent quarter for 2013.
3. That unknown to us or Colton Builders the South Carolina Secretary of State administratively dissolved the INC corporation for Colton Builders, Inc. in December of 2010 for failure to file tax returns—said tax returns having been filed under the proper tax ID number, but with the designation LLC rather than INC. No notice was given to Colton Builders, their Accountant or their attorneys, and twice they renewed the Contractors License for Colton Builders LLC. That the SC Department of Revenue has issued the attached certificate of compliance for Colton Builders Inc. That the certificate of compliance has been filed and that the Secretary of State for South Carolina has indicated

that Dissolution should be withdrawn and Colton Builders, Inc. would be re-registered or re-instated on or about August 15, 2013.

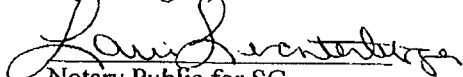
4. That at no time during the litigation has Colton Builders made a distinction between Colton Builders, LLC and/or Colton Builders, Inc.

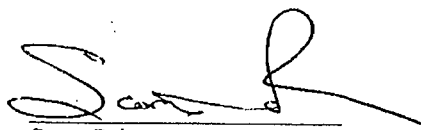
5. That neither I nor Missy Price were aware that the Colton Builders Inc. had been erroneously dissolved by the Secretary of State, and that we never received any notice of same by mail, or from any other administrative agency such as the LLR, South Carolina Department of Revenue, etc..

6. That once this matter was discovered, we offered the Plaintiff the opportunity to go forward against Colton Builders as the LLC or the INC.

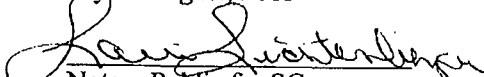
7. It is of great importance to note that the Plaintiff, who failed to show for mediation after agreeing to same, did not raise the issue of the existence of the LLC or the INC until after the Plaintiff had missed the deadline to submit its materials for the Arbitration. At that point the Plaintiff raised the objection, or by the Plaintiffs' own admission realized there was less than 10 days before the mediation, that the Plaintiff was already barred from presenting witnesses or evidence from failing to meet the scheduling Order of the Arbitration. Furthermore, the Plaintiff failed to even appear at the arbitration, to object to same, or to cross examine witnesses. That the Plaintiff served no discovery on the Defendants. Defendants acted in no way dishonest, or fraudulent, nor made in false representations to anyone.

Sworn to before me this 15th
day of August, 2013


Notary Public for SC
My Commission Expires: 10-8-2018


Scott Price

Sworn to before me this 15th
day of August, 2013


Notary Public for SC
My Commission Expires: 10-8-2018


Missy Price

State of South Carolina
Department of Revenue
300A Outlet Pointe Boulevard, Columbia SC 29210

Telephone (803) 898-5381 Fax (803) 898-5484

August 7, 2013

Melissa Thurm
COLTON BUILDERS INC
PO Box 310
McConnells SC 29726

Re: Federal Identification Number: xx-xxx9278

Certificate of Tax Compliance

Pursuant to South Carolina Code of Laws §12-6-5510, this certifies that COLTON BUILDERS INC has filed all returns required to be filed with the South Carolina Department of Revenue (SCDOR) for the tax types and periods listed below. All returns and taxes required to be filed and payable to the South Carolina Department of Revenue are current.

This letter does not include taxes that may become due if the taxpayer is issued a proposed assessment, selected for audit, currently under audit, in appeals or litigation with the South Carolina Department of Revenue, or tax liens that may not be collected by levy or proceedings in court. The South Carolina Department of Revenue provides this Certificate of Compliance only for returns required to be filed and only for payments made directly to SCDOR.

<u>Taxes</u>	<u>File Number</u>	<u>Period Covered</u>
Corporate	20422467-8	12/31/2012
Withholding	25442017-6	03/31/2013
Sales	04680529-7	Closed 09/30/2010
Property	54633570-3	Closed 09/30/2010

If this certificate is required due to an administrative dissolution, a copy of this certificate and an "Application for Reinstatement of a Corporation Dissolved by Administrative Action" (for domestic corporations) or "Application for Reinstatement of a Corporation When Certificate of Authority Has Been Revoked" (for foreign corporations) must be mailed within 30 days of the date of this letter to the Secretary of State's Office. This application can be obtained from the Secretary of State's website at www.scsos.com.

Sincerely,

Jennifer Boston

Jennifer Boston
Tax Compliance Officer

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

APPLICATION FOR REINSTATEMENT OF
A CORPORATION DISSOLVED
BY ADMINISTRATIVE ACTION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Section 33-14-220 of the 1976 South Carolina Code of Laws, as amended, the undersigned hereby applies to the Secretary of State for reinstatement of a corporation dissolved by administrative action and for that purpose, submits the following information:

1. The name of the corporation is COLTON BUILDERS, INC.
Date of incorporation 3/26/2007 Date of dissolution 12/9/2010
2. Complete either "a" or "b", whichever is applicable.
 - a. ☐ Grounds for administrative dissolution did not exist.
 - b. ☒ The grounds for administrative dissolution, which were: MISSING CORPORATE

RETURNS

_____ have now been eliminated.

3. The corporation's name satisfies the requirements of Section 33-4-101 of the 1976 South Carolina Code of Laws, as amended.

Date 8/13/13

COLTON BUILDERS, INC
Name of Corporation

J. Scott Price
Signature

J. SCOTT PRICE, PRESIDENT
Type or Print Name and Office

FILING INSTRUCTIONS

1. Two copies of this form, one of which can be either a duplicate original or a conformed copy must be filed.
2. Filing fee (Payable to the Secretary of State at the time of filing this application) - \$25.00
3. THIS APPLICATION CAN BE FILED ANYTIME AFTER THE EFFECTIVE DATE OF THE CORPORATION'S DISSOLUTION BY ADMINISTRATIVE ACTION AND MUST BE ACCOMPANIED BY A CERTIFICATE FROM THE SOUTH CAROLINA DEPARTMENT OF REVENUE RECITING THAT ALL STATE TAXES, PENALTIES AND INTEREST OWED BY THE CORPORATION HAVE BEEN PAID.

Return to: Secretary of State
1205 Pendleton Street, Suite 525
Columbia, SC 29201

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Phil Vasey and Pamela Vasey,

Plaintiffs,

vs

Colton Builders, LLC and
Collinswood Cabinetry, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action Number: 2009-CP-46-01244

AFFIDAVIT OF F. CRAIG WILKERSON, JR.

1.) I am a licensed member of the South Carolina Bar and at all times relevant hereto have been the lawyer representing Colton Builders, LLC in this matter. I do not practice in the area of corporations or tax law. I have not been involved in the corporate formations or tax preparations of Colton Builders LLC or Colton Builders, Inc.

2.) This action arises from a 2005 Contract, a 2009 suit, a designation that was matter of public record that was changed in 2010. The Plaintiffs have not prosecuted this case. Motions to compel answering Defendant's discovery have been filed. The Plaintiffs conducted no discovery, no depositions. The Plaintiffs failed to show at mediation. The Plaintiffs failed to timely submit its evidence packages and would have been excluded from presenting evidence at the Arbitration, instead, the Plaintiffs raised this objection to the Arbitration as "illusory" after it missed its deadlines. Then, the Plaintiffs skipped the Arbitration.

3.) That I signed the Consent Agreement to Mediate and the Consent Order for Arbitration on behalf of Colton Builders. That the Plaintiffs agreed to both Mediation and to Binding Arbitration and that the Plaintiffs failed to show for either Mediation or Arbitration. That both of these agreements were for the Defendant, Colton Builders, LLC.

4.) That the Consent Order for Arbitration was signed by both Plaintiffs' counsel and Defendant's Counsel.

5.) That the Plaintiffs named Colton Builders, LLC as the Defendant at the time of the 2009 filing of the lawsuit for a 2005 contract for a house that was completed in 2006. Although the Defendant, Colton Builders, LLC, did raise affirmative defenses, at no time did the Defendant raise any objection to the designation Colton Builders, LLC, or raise the objection as to its designation as an LLC. At the time of the filing, Colton Builders had changed its designation in 2007, from LLC to Inc.

6.) That the Plaintiffs signed an agreement to mediate the case but did not show, nor did he notify the parties timely. Both the mediator and the Defendant showed for mediation, but the Plaintiffs and the Plaintiffs' counsel failed to show.

7.) Pursuant to the Arbitrator, Mr. Terry B. Millar's, written instructions, and the Consent Order, all evidence, witness lists, exhibits and documents were to be exchanged on or before January 12, 2013. That the Defendant timely complied. The Plaintiffs did not. Plaintiffs acknowledged that his submissions were tardy on January 14, 2013, and raised the issue of Colton Builders being an Inc and not an LLC for the first time. The Plaintiffs never made any submissions of materials and admitted that his materials were late when he learned of the designation issue as to Colton.

8.) That the Defendant, Colton Builders, LLC, offered the Plaintiffs the option of going forward against either Colton Builders, LLC or Colton Builders, Inc. In 2007, the registration at the Secretary of State was changed from Colton Builders, LLC to Colton Builders, Inc.

9.) That prior to January 14, 2013, there were no discussions of whether Colton Builders was a Incorporation or a Limited Liability Corporation between any of the parties.

10.) That the Plaintiffs filed a motion to Vacate the morning of the Arbitration. That motion was heard before Judge Kimball on March 14, 2013, whereupon Judge Kimball suggested that 15-48-130 A was the proper motion to set aside for "Fraud"--but there has been no misrepresentation by Colton Builders or its attorney. Colton Builders was not aware of its change in designation and continued to maintain all corporate formalities, maintain its continuous Tax Identification number, maintain its vehicles, signs and advertisements as Colton Builders, LLC, as well as its licensing with the LLR. Please see the attached South Carolina Department of Revenue Certificate of Compliance.

11.) That the Defendant promptly filed a motion to confirm the award once the matter of the Motion to Vacate was determined.

12.) That as appears from the Affidavit of Colton Builders, LLC now d/b/a Colton Builders, Inc. by and through its owner Scott Price, Colton Builders has only been dissolved administratively and at all times relevant hereto, Colton Builders, LLC has been maintaining its same Federal ID Tax number, its licensing with the LLR, and has conducted business under the designation Colton Builders, LLC. For all intents and purposes, Colton Builders has continued to do business as Colton Builders, LLC.

13.) That the Master made much of Colton Builder's obligation to maintain its designation. In 2009, at the time of the law suit, Colton Builders, LLC had ceased to exist and was Colton Builders, Inc. d/b/a Colton Builders, LLC. Colton Builders, LLC has not raised a defense of improper party named but instead has offered to substitute Colton Builders, LLC or Colton Builders, Inc. per the Plaintiffs' choice. Not only was Colton Builders, LLC unaware of the designation, even had it been aware, it was under no duty to inform the Plaintiffs as Plaintiffs had filed no discovery to include interrogatories and/or request to produce requiring any response other than the Answer in this matter. At the time of the filing of the Complaint and Answer, Colton Builders was in good standing and properly registered with the South Carolina Secretary of State.

14.) That Defense Counsel has been unable to locate any case law indicating that Colton Builders, LLC had a duty to the Plaintiffs to maintain its corporate identity or to maintain its business during the lawsuit. As the Plaintiffs had conducted no discovery, there have been no assertions of any corporate identity by Colton Builders.

15.) That on or about January 18, 2013, that the Defendant replied to Plaintiffs' counsel stating:

Changing a complaint to the correct name of the party relates back to the original filing.

S.C.R.C.R. 15 © requires that (1) the basic claim must have arisen out of the conduct set forth in the original pleading; (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense; (3) that the party must or should have known that, but for the mistake concerning identity, the action would have been brought against it; and (4) the second and third requirements must have been fulfilled within the prescribed limitations period. See the standard in Hughes and subsequent case law. Hughes v. Water World Water Slide, 314 S.C. 211 (S.C. 1994)

16.) Plaintiffs maintained that the arbitration was "illusory."

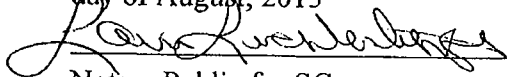
17.) The Defendant, Colton Builders, LLC showed up at the Arbitration. The same witnesses gave testimony for Colton Builders, LLC as Colton Builders, Inc. The corporate officers are the same, and all of the contracts and work was done while Colton Builders was properly and duly registered as Colton Builders, LLC. Plaintiffs have filed no motion to Amend the Pleadings. The issue of Colton Builders Inc. and/or Colton Builders, LLC or Colton Builders, Inc. d/b/a Colton Builders, LLC could have been addressed in deposition, through discovery, or at cross examination at the arbitration--but the Plaintiffs elected to not show.

18.) That there has been no prejudice to the Plaintiffs. Defendant has pointed out that the pleadings could have been changed to reflect back and that we would not oppose same. The only thing that may have changed is whether Colton Builders would have been sued as an LLC or an Inc.. Plaintiffs' rejected Defendant's contentions and chose NOT to appear at arbitration and Not to cross examine witnesses. Plaintiffs have already lost its right to present its case by failing to timely file its exhibits, etc 10 days before the Arbitration as required by Order and subsequent written instructions from the Arbitrator.

19.) That as soon as Colton Builders was made aware of the designation issue, it promptly contacted its accountant, the LLR, and South Carolina Secretary of State and the South Carolina Department of Revenue to have this designation fixed and anticipates that the company will be re-instated as of on or about August 15, 2013. That at all times Colton Builders has acted in good faith. That the designation LLC or INC would have made no difference in Colton Builders Defense, witnesses, or preparation or presentation of its case.

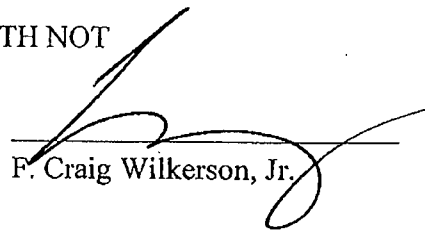
AND FURTHER THE DEPONENT SAYETH NOT

Sworn to before me this 14
day of August, 2013



Notary Public for SC

My Commission Expires: 10-8-2018


F. Craig Wilkerson, Jr.

State of South Carolina
Department of Revenue
300A Outlet Pointe Boulevard, Columbia SC 29210

Telephone (803) 898-5381 Fax (803) 898-5484

August 7, 2013

Melissa Thurm
COLTON BUILDERS INC
PO Box 310
McConnells SC 29726

Re: Federal Identification Number: xx-xxx9278

Certificate of Tax Compliance

Pursuant to South Carolina Code of Laws §12-6-5510, this certifies that **COLTON BUILDERS INC** has filed all returns required to be filed with the South Carolina Department of Revenue (SCDOR) for the tax types and periods listed below. All returns and taxes required to be filed and payable to the South Carolina Department of Revenue are current.

This letter does not include taxes that may become due if the taxpayer is issued a proposed assessment, selected for audit, currently under audit, in appeals or litigation with the South Carolina Department of Revenue, or tax liens that may not be collected by levy or proceedings in court. The South Carolina Department of Revenue provides this Certificate of Compliance only for returns required to be filed and only for payments made directly to SCDOR.

<u>Taxes</u>	<u>File Number</u>	<u>Period Covered</u>
Corporate	20422467-8	12/31/2012
Withholding	25442017-6	03/31/2013
Sales	04680529-7	Closed 09/30/2010
Property	54633570-3	Closed 09/30/2010

If this certificate is required due to an administrative dissolution, a copy of this certificate and an "Application for Reinstatement of a Corporation Dissolved by Administrative Action" (for domestic corporations) or "Application for Reinstatement of a Corporation When Certificate of Authority Has Been Revoked" (for foreign corporations) must be mailed within 30 days of the date of this letter to the Secretary of State's Office. This application can be obtained from the Secretary of State's website at www.scsos.com.

Sincerely,

Jennifer Boston

Jennifer Boston
Tax Compliance Officer

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

APPLICATION FOR REINSTATEMENT OF
A CORPORATION DISSOLVED
BY ADMINISTRATIVE ACTION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Section 33-14-220 of the 1976 South Carolina Code of Laws, as amended, the undersigned hereby applies to the Secretary of State for reinstatement of a corporation dissolved by administrative action and for that purpose, submits the following information:

1. The name of the corporation is COLTON BUILDERS, INC.
Date of incorporation 3/26/2007 Date of dissolution 12/9/2010
2. Complete either "a" or "b", whichever is applicable.

- a. ☐ Grounds for administrative dissolution did not exist.
b. ☒ The grounds for administrative dissolution, which were: MISSING CORPORATE

RETURNS

_____ have now been eliminated.

3. The corporation's name satisfies the requirements of Section 33-4-101 of the 1976 South Carolina Code of Laws, as amended.

Date 8/13/13

COLTON BUILDERS, INC
Name of Corporation

J. Scott Price
Signature

J. SCOTT PRICE, PRESIDENT
Type or Print Name and Office

FILING INSTRUCTIONS

- Two copies of this form, one of which can be either a duplicate original or a conformed copy must be filed.
- Filing fee (Payable to the Secretary of State at the time of filing this application) - \$25.00
- THIS APPLICATION CAN BE FILED ANYTIME AFTER THE EFFECTIVE DATE OF THE CORPORATION'S DISSOLUTION BY ADMINISTRATIVE ACTION AND MUST BE ACCOMPANIED BY A CERTIFICATE FROM THE SOUTH CAROLINA DEPARTMENT OF REVENUE RECITING THAT ALL STATE TAXES, PENALTIES AND INTEREST OWED BY THE CORPORATION HAVE BEEN PAID.

Return to: Secretary of State
1205 Pendleton Street, Suite 526
Columbia, SC 29201

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Phil Vasey and Pamela Vasey,
Plaintiffs,

v.

Colton Builders, LLC and
Collinswood Cabinetry, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2009-CP-46-01244

CONSENT ORDER FOR
ARBITRATION

DAVID HAMILTON
D.C. P. & S.
YORK COUNTY, SC

FILED-RECEIVED
2012 DEC 20 AM 9:32

This matter comes before the Court, pursuant to an agreement between the parties for binding Arbitration of this matter. The parties agree to the following:

- a. That Terry Millar shall be appointed Arbitrator in this matter.
- b. Arbitration shall be scheduled within 30 days of the date of this Order.
- c. Arbitration shall be binding upon all parties in this matter.
- d. The parties agree that all South Carolina Rules of Evidence shall be followed.
- e. That all witness lists exhibits, etc. shall be exchanged between the parties 10 business days prior to arbitration.

AND IT IS ORDERED.

December 18, 2012

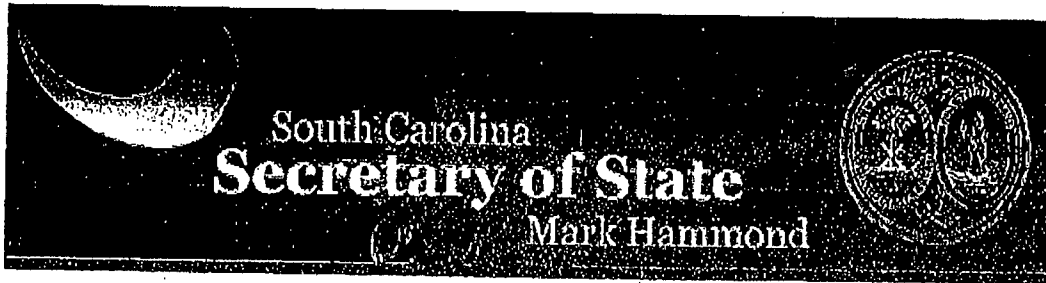
I CONSENT:

F. Craig Wilkerson, Jr.
Attorney for Defendant, Colton Builders

Jessie Rogers
Presiding Judge
Sixteenth Judicial Circuit Court

I CONSENT:

David B. Sample
Attorney for Plaintiffs

**COLTON BUILDERS, INC.**

*Note: This online database was last updated on 1/20/2013 6:01:31 PM.
See our Disclaimer.*

DOMESTIC / FOREIGN:	Domestic
STATUS:	Forfeiture
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	JEFFREY S PRICE
ADDRESS:	212 S WHITE ST
CITY:	FORT MILL
STATE:	SC
ZIP:	29715
SECOND ADDRESS:	

FILE DATE:	12/06/2002
EFFECTIVE DATE:	12/06/2002
DISSOLVED DATE:	12/09/2010

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Forfeiture	12/09/2010	SCBOS Filing: ADMINISTRATIVE DISSOLUTION #2	
Amendment	03/26/2007	CONVERTED FROM COLTON BUILDERS INC.	
LLC Annual Report	04/02/2004	LLC ANNUAL REPORT-2004	
LLC Annual Report	03/31/2003	LLC ANNUAL REPORT-2003/CH AGT/ADD	Image
Domestic LLC	12/06/2002	DOMESTIC LIMITED LIABILITY CO(AT WILL)	Image

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

40

TERRY B. MILLAR, L.L.C.

309 Saluda Street
Rock Hill, SC 29730

ATTORNEY AT LAW
P.O. BOX 10590 Phone: (803) 324-3196
ROCK HILL, SC 29731-0590 Fax: (803) 328-6105
tbmillar@tbmlle.com

December 13, 2012

David B. Sample, Esquire

david@dblegal.com

F. Craig Wilkerson, Jr., Esquire

F. Craig Wilkerson, Jr. LLC

fcwilkerson@aol.com

RE: Phil & Pamela Vasey vs Colton Builders LLC, et al
Case No. 2009-CP-46-01244 (Breach of Contract)
TBM File No. 12-118
BINDING ARBITRATION - 10:00, TUESDAY, JANUARY 22, 2013

Counsel:

Thank you for asking me to serve as Arbitrator in the above referenced case. I look forward to working with you and your clients to help them achieve an amicable resolution of this matter. The Binding Arbitration has been set for Tuesday, January 22, 2013, beginning at 10:00 a.m. at the office of F. Craig Wilkerson, Jr., LLC, 1050 College Avenue Extension, Rock Hill, SC. My rate for this arbitration is \$300 per hour (2 hours minimum - see Terms and Conditions attached to Agreement). Unless other arrangements are made prior to or at the conclusion of the arbitration, I will be submitting my statement for professional services, in equal shares, to counsel for the parties in this case.

Pat Clark will be the administrator for this Binding Arbitration. All communications (e-mails, phone calls, etc.) are to go through her. Her e-mail is prelark@tbmlle.com. You may copy me with e-mails.

Attached is the Agreement For Binding Arbitration. Please note that you, the attorneys in this case, are solely responsible for payment of any invoice as a result of this arbitration. Matters of costs or expense to be reimbursed to you by your clients are between you and your clients. *Please execute and return the signature page of the Agreement (scan/e-mail preferred) at your earliest opportunity.*

Both counsel for the Plaintiffs and Defendant will deposit with the Arbitrator the sum of \$650 (\$1,300 total) on or before the submission deadline of January 12, 2013. Said funds will be placed in Arbitrator's escrow account and credited to the final billing.

All parties must be in attendance at this Arbitration. Please e-mail (to Pat) or fax a list of witnesses, exhibits, and copies of any documents and other material that will be presented at the arbitration hearing by the submission deadline of January 12, 2013. You must serve the other party with same. I have already received copies of the pleadings.

I look forward to seeing you at the arbitration. Please call if you have any questions.

Yours very truly,

Terry B. Millar

TBM:pre

Attachment: Agreement to Arbitrate

EXHIBIT B, PAGE 1 OF 4

41

Subj: **Mediation**
Date: 6/21/2012 9:30:06 A.M. Eastern Daylight Time
From: david@dblegal.com
To: fcwilkerson@aol.com

Craig,

In speaking with my client yesterday evening, he is adamantly refusing to participate in mediation. He has stated that he is open to an offer.

I am deeply sorry for this situation. I will gladly come myself and can reach my client by phone, but I understand if that is not agreeable. I am in a 9:00 hearing that should be done in a few minutes. I will call you shortly.

David

SCANNED

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Phil & Pamela Vasey,)

Plaintiffs)

vs.)

Colton Builders, LLC, et al.,)

Defendants)

COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

CASE NUMBER 2009-CP-46-01244

AGREEMENT TO MEDIATE

E-MAILED
4.24-12

**I. PARTIES:
PLAINTIFF:**

Phil & Pamela Vasey

ATTORNEYS FOR PLAINTIFF:

David B. Sample, Esquire
104 Stone Village Dr.
Fort Mill SC 29708
(803) 396-9696
david@dblegal.com

DEFENDANT:

Colton Builders, LLC

ATTORNEYS FOR DEFENDANT

F. Craig Wilkerson, Jr., Esquire
F Craig Wilkerson, Jr LLC
1050 College Avenue Ext.
Rock Hill SC 29730
324-7200
(803) 627-3037 - cell
fcwilkerson@aol.com

II. DATE & LOCATION OF MEDIATION:

DATE:

TIME:

LOCATION:

Thursday, June 21, 2012
10:00 a.m.

F. Craig Wilkerson, Jr., LLC,
1050 College Avenue Extension
Rock Hill, SC 29731

MEDIATOR:

TELEPHONE:

FAX:

E-MAIL:

ADMINISTRATOR - Pat Clark

Terry B. Millar
(803) 324-3196
(803) 328-6105
tbmillar@tbmlc.com
prclark@tbmlc.com

III. MEDIATOR'S FEE:

ADMINISTRATIVE FEE

CANCELLATION FEE:

TRAVEL RATE:

MILEAGE RATE:

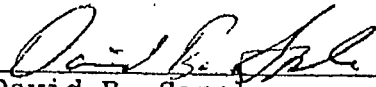
\$300 PER HOUR (2 hr. minimum)
\$100.00 (non-refundable)
Per Item #10 - Terms and
Conditions
\$75 PER HOUR
\$.60 PER MILE

**IV. ACKNOWLEDGMENTS &
AGREEMENT**

The attached one (1) page "TERMS
AND CONDITIONS OF MEDIATION" is a
part of this Agreement.

43

ATTORNEY FOR PLAINTIFFS:

BY: 
David B. Sample

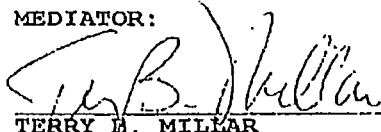
Date: 6/20, 2012

ATTORNEYS FOR DEFENDANT

BY: _____
F. Craig Wilkerson, Jr.

Date: _____, 2012

MEDIATOR:


TERRY H. MILLAR

April 24, 2012

ATTORNEY FOR PLAINTIFFS:

BY: David B. Sample

Date: _____, 2012

ATTORNEYS FOR DEFENDANT

BY: F. Craig Wilkerson, Jr.

Date: _____, 2012

MEDIATOR:

Terry B. Millar
TERRY B. MILLAR

April 24, 2012

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Phil Vasey and Pamela Vasey,

Plaintiffs,

vs

Colton Builders, LLC and Collinswood
Cabinetry, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 09-CP-46-01244

NOTICE OF MOTION AND MOTION
TO DISMISS, SUMMARY
JUDGEMENT, and for
SANCTIONS

FILED-RECEIVED
2012 JUL 30 PM 2:35
DAVID HAMILTON
C.C.P. & S.
YORK COUNTY, SC

TO: THE PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEY:

YOU WILL PLEASE TAKE NOTICE that the Defendant Colton Builders (Colton), above named through its undersigned attorney will move before the Presiding Judge of the Sixteenth Judicial Circuit, York, South Carolina, on a date and time convenient to the Court and the parties, for an Order compelling Plaintiff to respond to Plaintiff's Interrogatories and Requests for Production fully in writing under oath as previous filed in 2010; these Interrogatories and Requests for Production were properly served upon Defendant on March 1, 2012. Plaintiff will also move for an Order requiring Defendant to pay a reasonable amount in way of attorney fees and costs for the necessity of this Motion, as well as that the undersigned as attorney for the Defendant, Colton Builders, does hereby move pursuant to Rule 37(b)(2) and 37(d) as well as Rule 56 of the South Carolina Rules of Civil Procedure for such sanctions as this court deems appropriate, including relief granted under 37(b)(2), costs and attorney fees, based upon Plaintiffs' failure to participate in mandatory mediation which was scheduled for June 21, 2012; at 10:00 a.m. and which counsel for the Plaintiff advised Defendants' counsel at approximately 10:25 a.m. that the Plaintiffs had no intentions of attending the mediation, although they had previously agreed to same. Furthermore, Defendant Colton seeks dismissal of Plaintiffs claims on the ground

that no discovery has been conducted, that they have failed to pursue their claims, and that no evidence exists of the Plaintiff's claims and they should be dismissed as trial is set for August 13, 2012.

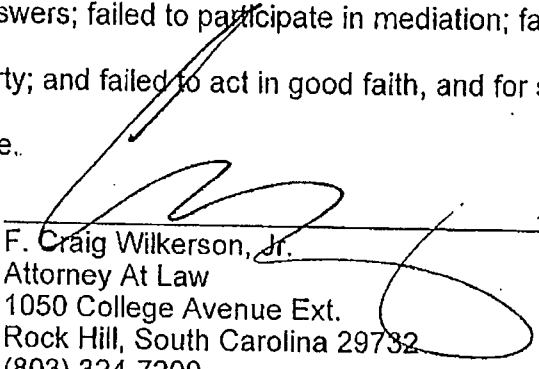
This matter was filed in March, 2009. Defendant, Colton Builders, timely filed and served an Answer. Counter Claim, Interrogatories and Requests to Produce in 2009. Plaintiffs have failed to answer the Defendants' discovery requests. A Notice of Motion and Motion to Compel was filed in November, 2010, however the motion has not been heard. Counsel for the Defendant, Colton Builders, was under the impression that this case had been dismissed, however when the case resurfaced, the parties agreed to mediate the case in April, 2012 on information and belief, at Plaintiffs' counsel's request. Mediation was scheduled for June 21, 2012 at 10:00 a.m. The parties agreed for Terry Millar to serve as Mediator. A copy of the Mediation Agreement signed by all parties and an e-mail dated April 19, 2012, confirming the mediation, is attached hereto and incorporated herein by reference as well as Counsel's affidavit.

On information and belief, counsel for Vasey was scheduled to be before the Honorable S. Jackson Kimball the morning of June 21, 2012, beginning at 9:00 a.m. Counsel for Colton also had hearings that morning before the Master in Equity, but the Counsel for the Defendant rearranged his hearings before Judge Kimball in order to accommodate the mediation that was scheduled including rescheduling out of town attendance at the Motion to allow attendance at mediation. At 9:30 a.m. on June 21, 2012, counsel for the Plaintiffs forwarded an e-mail to Wilkerson indicating that the previous day his clients advised that they refused to participate in mediation. No phone calls were made to the Mediator, nor counsel for the Defendant, to advise them of this that evening nor that morning. The mediation e-mail was not seen, as defense counsel was meeting with the clients preparing Defendants for the mediation. Counsel for the Plaintiffs called at approximately 10:25 a.m. on June 21, 2012, to indicate that he and his client were not coming to the mediation.

To date, defense counsel has been provided with no discovery answers, no expert witnesses, no damage amounts, no itemization, no pictures, no inspections. Counsel for the Defendant, Colton Builders, moves for sanctions against the Plaintiffs, including reasonable attorney's fees and costs for the motion to compel, attorney's fees and costs for the mediation and preparation for the mediation. Counsel further seeks to have the Plaintiffs be responsible for the full amount of the Mediator's fees, as well as to be responsible for the lost wages of Scott Price and Missy Snipes, both of whom took the day off to attend the mediation.

Counsel for Defendant, Colton Builders, seeks to have the Plaintiffs' claims against the Defendant, Colton Builders, dismissed for lack of prosecution, dismissed as a sanction, or dismissed pursuant to Rule 56 as there is no material issue of fact as Plaintiff as failed to present its case or allow inspection under 40-59-810 et al raised in Defendants Answer. Plaintiff has failed to provide discovery answers; failed to participate in mediation; failed to allow Colton Builders to inspect the property; and failed to act in good faith, and for such other relief as the Court deems appropriate.

Rock Hill, SC
July 30, 2012


F. Craig Wilkerson, Jr.
Attorney At Law
1050 College Avenue Ext.
Rock Hill, South Carolina 29732
(803) 324-7200
ATTORNEY FOR COLTON BUILDERS

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Phil Vasey and Pamela Vasey,)
Plaintiffs,)

AFFIDAVIT

vs.)

CASE NO.: 2009-CP-46-01244

Colton Builders, LLC and)
Collinswood Cabintry, LLC)

FILED-RECEIVED
2012 JUL 30 PM 2:35
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

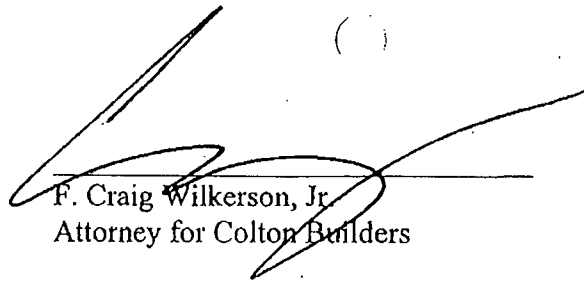
The undersigned, who first being duly sworn, deposes and states:

1. My name is F. Craig Wilkerson, Jr. I have been practicing law since approximately 1991. I charge \$250.00 per hour and \$75.00 per hour for Paralegal time.
2. I am the attorney for Defendant, Colton Builders, LLC. Colton previously agreed, with counsel for the Plaintiff for voluntary mediation. A copy of the contract is attached hereto as Exhibit A. Prior to the scheduled mediation on June 21, 2012, the Plaintiff threatened not to attend unless certain demands were met. The Defendant, Colton Builders, refused to meet those demands, however, the Plaintiff agreed, in spite of the refusal, to attend the mediation.
3. Both Plaintiff and Defendant signed a Contract agreeing to participate in Mediation.
4. Approximately thirty minutes prior to the beginning of the mediation, Plaintiff e-mailed defense counsel, Craig Wilkerson, to inform him that he was not going to appear at mediation. Apparently, Plaintiff's counsel had a 9:00 a.m. hearing before Judge Kimble the same day, which defense counsel was not advised of, however, that was not the reason for his not attending the mediation. Plaintiff's counsel did not attend mediation because his client refused to come. According to the e-mail and conversations with Plaintiff's counsel, the Plaintiffs refused to come the day before. Unfortunately, the defense counsel's client, Colton Builders appeared at his office at approximately 8:30 a.m. on the day of the scheduled mediation and had begun preparing for the mediation. Terry Millar, the Mediator had come early to have discussions. It was during

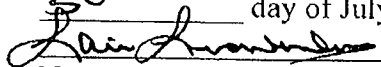
these discussions that the e-mail arrived to Defendant's counsel. Therefore, I was not aware of the e-mail. Plaintiff's counsel called at approximately 25 minutes after the proposed start time of the mediation to inform that he was not coming. The Mediation began at 10:00 a.m. and the call came approximately 10:25 a.m.

5. This is a construction case and that although no discovery has taken place, counsel for Colton Builders had a prepared mediation exhibits and had spent approximately 4 hours reviewing documents, preparing exhibits, and preparing for the mediation. Approximately 2.5 hours of Paralegal time was spent in scheduling the mediation and preparing for the mediation. On the date of the mediation, Scott Price, of Colton Builders, took the entire day off from work to attend the mediation, losing approximately \$800.00. Missy Snipes, the Manager for Colton Builders, and Scott Price's wife took the day off from her job at the Post Office to attend and lost approximately \$200.00 in wages. Plaintiff has not served discovery on Defendant, and Defendant was prepared to share what documents he had with Plaintiff at that time.

6. When notified of the trial date of August 13 on Thursday July 26, 2012, I was out of the office as my wife had some surgery. Colton was holding this motion as a bill has not yet been received from the mediator Terry Millar, however, when we contacted the mediator on July 27, 2012, we learned that the Plaintiff had paid the mediators bill in full. The Defendant, Colton Builders, is informed and believes that the Plaintiff should be required to pay his attorney's fees and paralegal fees, plus costs, as well as pay the full cost of mediation and to reimburse Scott Price \$800.00 for his lost wages, and to reimburse Missy Snipes \$200.00 for her lost wages. It appearing that both Scott Price and Missy Snipes took the full day off to attend the mediation.


F. Craig Wilkerson, Jr.
Attorney for Colton Builders

SWORN to before me this
30 day of July, 2012.


Notary Public for South Carolina
My Commission Expires: 10-8-2018

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Phil Vasey and Pamela Vasey,

Plaintiffs,

vs

Colton Builders, LLC and Collinswood
Cabinetry, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 09-CP-46-01244

AFFIDAVIT OF ATTORNEY'S FEES

FILED-RECEIVED
2012 JUL 30 PM 2:36
DAVID HAMILTON
C.C. CP & G.S.
YORK COUNTY, SC

The undersigned, who first being duly sworn, deposes and states:

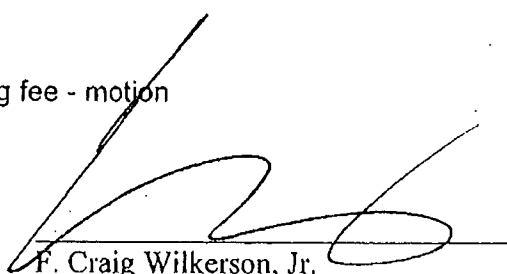
I am the attorney for Defendant, Colton Builders, LLC and I have performed legal
services in the above-captioned case with respect to the mediation as follows:

SERVICES RENDERED

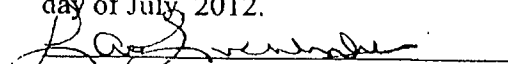
April 17, 2012 - April 19, 2012	Coordinate mediation	1.0 @ 75.00 = \$ 75.00
June 21, 2012	Prepare for mediation Meeting with clients Reschedule motions	5.5 @ 250.00 = \$1,375.00
June 21, 2012	Prepare motion for sanctions, Motion to compel and Motion to Dismiss	2.0 @ 250.00 = \$500.00

COSTS

June 21, 2012	Filing fee - motion	\$25.00
---------------	---------------------	---------


F. Craig Wilkerson, Jr.
Attorney for Colton Builders

SWORN to before me this 30
day of July, 2012.


Notary Public for South Carolina

My Commission Expires: 10-8-2018

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP4601244

Phil Vasey	Pamela Vasey	Colton Builders LLC	Collinswood Cabinetry LLC
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before me on March 14, 2013, upon Plaintiffs' Motion to Set Aside Consent Order for arbitration. Representing the parties were: David B. Sample for Plaintiffs; and, F. Craig Wilkerson for Defendants.

Plaintiffs seek to have the court nullify the parties' consent order by which they agreed to arbitrate this dispute upon the grounds that the Defendant Colton Builders, LLC, ("Colton Builders") was non-existent due to an administrative dissolution by the Secretary of State. Plaintiffs assert that Colton Builders could not consent to arbitration, since it had no legal authority to make contracts. An arbitration was held, and a final award of the arbitrator is a part of the record in this matter. Colton Builders has not yet sought to have the arbitration award entered of record and confirmed as a judgment pursuant to statute.

Notwithstanding any merit of Plaintiffs' contention, I do not believe it is appropriate at this stage to vacate the consent order. Rather, I find and conclude that Plaintiffs' objections can be asserted pursuant to S.C. Code Ann. § 15-48-130 (1976, as amended).

Therefore, based on the record before me, Plaintiffs' motion to vacate the consent order to arbitrate is denied, without prejudice to Plaintiffs' right to assert their objections to the arbitration award in accordance with § 15-48-130 on the same grounds presented in this motion.

AND IT IS SO ORDERED.

nm
#1

CERTIFICATE OF SERVICE

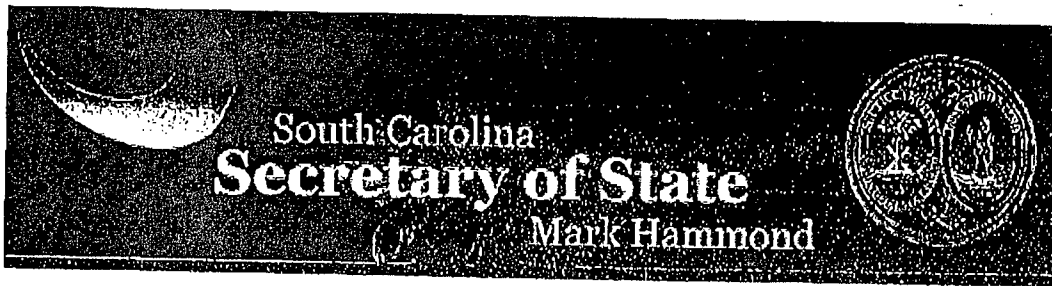
I, Laurie G. Lichtenberger, an employee of F. Craig Wilkerson, Jr., do hereby certify that the **Affidavit of Scott Price and Missy Price, and the Affidavit of F. Craig Wilkerson, Jr.**, was served on counsel for the Plaintiffs via fax, e-mail, and hand delivery this _____ day of August, 2013, as follows:

david@dbslegal.com

803-981-9909

David Sample
Attorney at Law
2424 India Hook Road, Suite 160
Rock Hill, South Carolina 29732

Laurie G. Lichtenberger
Paralegal to F. Craig Wilkerson, Jr.

**COLTON BUILDERS, INC.**

Note: This online database was last updated on 1/20/2013 6:01:31 PM.
See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Forfeiture
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	JEFFREY S PRICE
ADDRESS:	212 S WHITE ST
CITY:	FORT MILL
STATE:	SC
ZIP:	29715
SECOND ADDRESS:	

FILE DATE:	12/06/2002
EFFECTIVE DATE:	12/06/2002
DISSOLVED DATE:	12/09/2010

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Forfeiture	12/09/2010	SCBOS Filing: ADMINISTRATIVE DISSOLUTION #2	
Amendment	03/26/2007	CONVERTED FROM COLTON BUILDERS INC.	
LLC Annual Report	04/02/2004	LLC ANNUAL REPORT-2004	
LLC Annual Report	03/31/2003	LLC ANNUAL REPORT-2003/CH AGT/ADD	Image
Domestic LLC	12/06/2002	DOMESTIC LIMITED LIABILITY CO(AT WILL)	Image

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State of South Carolina.,)
)
)
County of York.,)

In the Common Pleas
Court of York

Case No. 2009-CP-46-01244

Phil Vasey, et al.,)
)
Plaintiff.,)
)
-vs.-)
)
Colton Builders, et al.,)
)
Defendant.)

Transcript of Record

August 27, 2013
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III, Judge.

A P P E A R A N C E S:

Mr. David B. Sample
Attorney at Law
2424 India Hook Road, Suite 160
Rock Hill, South Carolina 29732
803-981-9900
803-981-9909
David@dbslegal.com
For the Plaintiff

ORIGINAL

Mr. F. Craig Wilkerson, Junior
1050 College Avenue, Ext.
Rock Hill, South Carolina 29732
803-324-7200
Fcwilkerson@aol.com
For the Defendant

Wanda Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit
To the Honorable John C. Hayes, III

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No Witnesses were called.

Court Reporter's Certificate Page . . . P.21

I-N-D-E-X

E-X-H-I-B-I--T-S

NO.	DESCRIPTION	ID.	EVD.
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No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF PHIL VASEY VS.
2 COLTON BUILDERS, LLC AND COLLINGWOOD CABINETRY, LLC.,
3 TUESDAY, AUGUST 27, 2013 AT 12:32 P.M..)

4 THE COURT: Next is Vasey versus Colton Builders, Mr.
5 Sample and Mr. Wilkerson.

6 What do we have here? Motion for sanctions.

7 MR. WILKERSON: Actually, Your Honor, it's a motion
8 to confirm our award for arbitration and Mr. Sample's award
9 to - motion to vacate that award. I think that's what it
10 boils down to today.

11 Your Honor, I'm gonna hand up the current Secretary of
12 State's printout on Colton Builder's Inc., as well as my
13 affidavit and my client's affidavit which had previously
14 been provided to Mr. Sample.

15 THE COURT: This is - All right, so both of you have
16 cross motions. I'm gonna let the Plaintiff, Mr. Sample,
17 tell me where we're headed with this.

18 It's a motion to confirm by Mr. Wilkerson on behalf of
19 Colton Builders and Mr. Sample has a motion to vacate that
20 arbitration.

21 MR. SAMPLE: Yes, sir.

22 Your Honor, first of all let me tell you as a matter
23 of procedure, I also made a Motion to Set Aside the Consent
24 Order that we entered into to arbitrate this case which was
25 heard by Judge Kimball and Judge Kimball found that while

1 He was not willing to vacate the Consent Order which was
2 signed by you, that we could more appropriately seek relief
3 pursuant to South Carolina Code Section 15-48-130 which is
4 the Arbitration Act. So that's what we're doing here
5 today.

6 The gist of it, Your Honor, the gist of our reason
7 that we're asking to vacate this arbitration award is at
8 the time we entered into the Consent Order to arbitrate,
9 the Defendant Corporation Colton Builder's Inc., had been
10 administratively dissolved by the State and did not exist.

11 That was apparently due to some sort of missing tax
12 returns or something of that nature and that fact was not
13 discovered by us until after we entered into the Consent
14 Order to Arbitrate.

15 When we learned that actually my client learned that
16 and brought it to my attention some days after he
17 discovered it. I alerted Mr. Wilkerson to it as well as
18 the arbitrator and indicated we thought that was a big
19 issue.

20 I mean, Your Honor, essentially --

21 THE COURT: You said I had ordered the arbitration.

22 Actually Judge Alford is the one who signed the
23 Consent Order for Arbitration.

24 MR. SAMPLE: I was thinking it was you, Your Honor,
25 but I guess you're correct.

1 Never the less Judge Kimball declined to set aside
2 the Consent Order to Arbitrate but did indicate that the
3 more appropriate way to address it would be through the
4 Relief Provisions in the Arbitration Act.

5 Your Honor, I believe its undisputed that the
6 Corporation had been dissolved. Mr. Wilkerson certainly
7 admitted that in a prior hearing in front of Judge Kimbrell
8 and I believe by the documents that he filed with the court
9 for today's hearing that he continues to admit that they
10 had been administratively dissolved. I believe he comes
11 into court today to tell us that they have in the past week
12 or so applied for reinstatement and that the Corporation
13 now is again in existence as a legal South Carolina
14 Corporation.

15 However, our position as set forth in our motion is
16 that because it did not exist when we entered into the
17 Consent agreement to Arbitrate that we're entitled to
18 relief pursuant to either Section 15-48-130(a)(1) which
19 deals with an arbitration award secured by fraudulent means
20 or pursuant to Section 15-48-130(a)(5) which holds that
21 where there is no valid arbitration agreement the - that
22 party is entitled to relief from the arbitration award.

23 Further more than that I believe Mr. Wilkerson will
24 argue about the fact that we did not show up and
25 participate in the arbitration after entering into the

1 Consent agreement. But if you look at Section 15-48-
2 130(a)(5) that states in there that participation in the
3 arbitration without objection negates the right to relief
4 under that section, Your Honor, so we certainly if we'd
5 shown up and simply participated in the arbitration we
6 wouldn't be able to stand before you today and ask for this
7 relief.

8 The point we're making --

9 THE COURT: What - Where you and your client aware of
10 the problem - if it was a problem - before the actual
11 arbitration was held?

12 MR. SAMPLE: Yes, Your Honor.

13 THE COURT: Why didn't you do something then?

14 MR. SAMPLE: Well we did. We alerted the arbitrator
15 and Mr. Wilkerson to the fact that we thought there was a
16 problem. In other words that if we had taken the judgment
17 against the dissolved --

18 THE COURT: Tell me why didn't you come into court
19 before the arbitration and set aside the Consent Order
20 rather than wait to kind of eat your cake and - or having
21 your cake and eating it too, waiting and see what the
22 arbitration award. I mean arguably you can do this but you
23 could. If you didn't take action when you first had an
24 opportunity to do so you could wait, the arbitration went
25 in your client's favor, and you're happy with it, and you

1 could live with it. You're unhappy with it but you
2 apparently are then you could attack it. That's - That has
3 a little - It probably gives me a little concern.

4 MR. SAMPLE: Well we were certainly not expecting to
5 have any possibility of a favorable arbitration award given
6 the fact that there were cross claims against my client and
7 that we weren't even there to participate or defend the
8 fact that the defendant corporation was making assertions
9 that they were owed money by my client.

10 THE COURT: Well but your client knew or your client -
11 You client I presume made that decision knowingly and
12 intelligently. Anyway go ahead.

13 MR. SAMPLE: Well just so, Your Honor, as the
14 corporation didn't exist if we had gone to arbitration and
15 obtained ultimately obtained a judgment it would have been
16 useless. We wouldn't a been able to enforce a judgment
17 against a corporation that at that point in time didn't
18 exist. And if that had occurred, Your Honor, I would
19 suppose that they would not have taken the step that they
20 did sometime in the past several weeks and applied for
21 reinstatement because the fact that the corporation no
22 longer exist would protect them. There would be no valid
23 judgment, the would be no way to collect it because the
24 corporation didn't exist. But since they did obtain an
25 award in the arbitration they've now been reinstated which,

1 You know, may or may not allow them to collect that
2 judgment.

3 You know they simply certainly would not have to move
4 to be or applied to be reinstated if we had obtained a
5 judgment against them in arbitration.

6 THE COURT: Well your client brought the suit. They
7 sued these individuals as an LLC and I don't see the
8 answer. But you didn't know whether or not they really
9 were an LLC at the time?

10 MR. SAMPLE: Well at the time, Your Honor, they were.

11 At the time that we brought suit in 2009 they were an
12 LLC or there may be some confusion as to what point in time
13 they changed to a corporation. But there were absolutely a
14 viable entity at the time we brought suit. There is no
15 question about that.

16 They were dissolved administratively in 2010 after we
17 brought suit. We were not aware of that until right prior
18 to the arbitration. They were dissolved on December 9th of
19 2010. Let me find the --

20 MR. WILKERSON: The corporate history is on one of the
21 pages I handed up.

22 MR. SAMPLE: So you know the time line we filed in
23 2009 there was a viable corporation in place at that time.
24 We had done the research as to who to sue. They were
25 showing as a valid corporation in good standing on the

1 Secretary of State's web site and then on December 9th,
2 2010 during the pendency of the action they were dissolved
3 by the State unbeknownst to us. Apparently unbeknownst to
4 them according to what the presentation they presented to
5 the Court. Up to now they were not even aware of it until
6 we brought it up.

7 But when we did discovery they didn't exist. It just
8 seemed that there wasn't a whole lot of point in
9 negotiating in an arbitration with a corporation that
10 didn't exist, Your Honor.

11 THE COURT: All right. Mr. Wilkerson.

12 MR. WILKERSON: Your Honor, this all arises out of a
13 construction contract back in 2005 for the construction of
14 Mr. Vasey's house by Colton Builders who at that time was
15 an LLC. If you look at the Secretary of State's web site
16 in 2007 they converted from an LLC to Inc. Colton Builders
17 has been a continuous operation since it's inception in
18 2002. They've been continuously licensed with the LLR and
19 they continued to practice under the same federal tax ID
20 number and everything has been filed by the same federal
21 tax ID number.

22 I am not a corporation employer and don't really
23 practice in that area, but in talking with Secretary of
24 State's and the Department of Revenue about reinstatement,
25 it was their assertion to me that the important thing is

1 that the Federal tax ID number does not change and that
2 appears in their - in their affidavit.

3 Colton Builders was not aware that there had been a
4 change or dissolutionment by the South Carolina Secretary
5 of State's office. At this time we're still not sure why
6 there was a dissolution. The only reason I'm able to offer
7 the Court is because their tax return said Colton Builder's
8 LLC instead of Colton Builders Inc.

9 Attached to their affidavit is a certificate of
10 compliance from the Department of Revenue indicating that
11 they had been in business and had been conducting. And
12 down at the bottom of it it states if this certificate is
13 required due to an administrative dissolutionment a copy of
14 this certificate - it goes on - must be mailed within the
15 thirty days of the date of this letter to the Secretary of
16 State's office.

17 So obviously this is something that happens with some
18 degree of regularity. Colton Builders has continued to
19 exist and had been reinstated and, again, they're not sure
20 to this date why they were administratively dissolved.

21 This is a 2009 action. Plaintiff chose to sue Colton
22 Builders LLC., which at that time had already converted to
23 Colton Builder's Inc. The Plaintiff didn't conduct any
24 discovery; we had a mediation scheduled for this case
25 previously and Plaintiff did not show.

1 Colton Builders has - had the same parties, the same
2 owners as it were Scott Price and Missy Trung had
3 participated in all of this and have acted on behalf of
4 Colton Builders. When we were aware of this problem and
5 made aware of it, the Defense stated that under South
6 Carolina Rules of Civil Procedure 15(c) that they were free
7 to amend the pleadings to say either Colton Builders Inc.,
8 or Colton Builders LLC.

9 And we also cited the case of Hughes versus Water
10 world and part of our email is on Page 2 of Terry Malar's
11 order where we set out that we raise no affirmative
12 defenses under 12(b)(6). And we offered as it says in the
13 arbitrator's order to allow them a judgment against either
14 corporation should they desire.

15 The Defendants attended the arbitration. And it's
16 very important to know, Your Honor, that under the terms of
17 the arbitration agreement which is a consent order signed
18 by a Circuit Court Judge, all of the discovery for the
19 arbitration was to be exchanged between the parties ten
20 days before the arbitration and Terry Malar had sent out -
21 who was the arbitrator - sent out a similar award - order
22 saying this was how arbitration was gonna be conducted
23 saying everything had to be conducted ten days beforehand.

24 The Plaintiff did not raise the issue of the LLC or
25 the Inc., until they had already missed the ten days

1 submission deadline to submit their evidence so they never
2 submitted any evidence timely for the arbitration.

3 Therefore, the arbitration they were not gonna be allowed
4 to call witnesses' or to put on any evidence as to any
5 conduct that the Defendant's did or didn't do.

6 They hadn't produced any of the evidence, any of the
7 bills, any of the estimates, et cetera, as required by the
8 Order in Terry Malar's order. And he discusses that in the
9 - in his order as well.

10 The Defendant - Excuse me. The arbitrator delayed a
11 hearing a little bit to allow the Defendant to seek an
12 order to stay the arbitration if he so desired. He filed a
13 motion to Vacate, he did not attend the arbitration and the
14 Defendant prevailed on this matter.

15 When you look at the course of the hearing on this,
16 the Plaintiff has not acted to prosecute their case. There
17 were multiple motions to compel by 'em. There was an
18 agreement that the Plaintiff's signed to participate in
19 mediation and then simply didn't show for the mediation.
20 Then they had an arbitration where we agreed that I signed
21 for it on behalf of Colton Builders. Colton Builders
22 wasn't aware they were not an LLC or Inc at that time that
23 they had been administratively dissolved. And I
24 represented then to the Court that I had no knowledge that
25 they were administratively dissolved as it appears in my

1 affidavit as well. Went forward with it and we had the
2 arbitration award and at this time we'd ask the Court to
3 confirm the arbitration award and answer any questions the
4 Court may have.

5 I would also point out that 15-28-135 which Mr. Sample
6 represented to the Court states there was no arbitration
7 agreement and the issue is not adversely determined in
8 proceedings under 15-48-20 and the party did not
9 participate in the arbitration hearing without objection.

10 I would distinguish that from this particular
11 situation cause there was an agreement to arbitrate. There
12 was a consent order between the parties with the rules for
13 the arbitration set forth further with Terry Malar. So the
14 Defendant was not free simply not to show up as he elected
15 to do. And again in the arbitrators order it stated that
16 he advised that he did not show up at his own peril.

17 Thank you.

18 MR. SAMPLE: Your Honor, what I meant to say by
19 quoting the section 15-48-130 subsection V is that there
20 was no valid agreement to arbitrate because the corporation
21 didn't exist when the agreement was entered into so that's
22 why I cited that code section.

23 Your Honor, we did comply with discovery. We provided
24 Mr. Wilkerson with discovery way back in 2010 with answers
25 to his discovery. He filed a Motion to Compel Discovery I

1 believe in 2012 alleging that we hadn't complied with his
2 earlier discovery request and that simply was not the case.
3 I went into my file and I made copies of what we previously
4 provided him and I faxed them to him the day that we first
5 spoke about the more recent motion to Compel.

6 We gave depositions, my client was deposed by Mr.
7 Wilkerson. Ms. Vasey was deposed by Mr. Wilkerson. We
8 made efforts to schedule depositions of representatives of
9 Colton Builders but for whatever reason that seemed to fall
10 through.

11 Your Honor, I take issue with the fact that we failed
12 to prosecute the case. Mr. Wilkerson makes extensive
13 reference to some discussions that went back and forth as
14 to whether or not we sued the wrong party in that we filed
15 the case against Colton Builders LLC which I do now believe
16 had already been switched over to Colton Builders Inc.

17 Mr. Wilkerson is correct that he indicated that he
18 would be willing to let us obtain a judgment against either
19 the LLC or the Incorporation at our choice. However the
20 problem that came up was neither one existed so it's not -
21 it's not as if by choosing one over the other we were gonna
22 be able to obtain a valid judgment against any entity cause
23 at the time we entered into the agreement to arbitrate
24 there was no valid entity. So I stand on what I said
25 previously, Your Honor, and ask you to vacate the

1 arbitration award pursuant to Section 15-48-130 and restore
2 the case to the jury trial roster and we would be prepared
3 to go forward as soon as possible with a jury trial in this
4 case.

5 THE COURT: All right. Well I'm still trying to get a
6 little bit of the procedure. Mr. Malar's award is dated
7 February 5th, 2013 and at that time Mr. Sample you'd
8 already made a motion to set aside a Consent Order.

9 MR. SAMPLE: Yes, sir, it was pretty contemporaneous
10 right there in that same time frame when we made that
11 motion.

12 MR. WILKERSON: Your Honor, again its addressed in
13 Mr. Malar's order the motion to Vacate was filed the
14 morning of the date of the hearing and subsequently served
15 and this was addressed again by Mr. Malar. The under side
16 was copied with emails and I'm reading from Page 2 of the
17 order. "Plaintiff's counsel email was treated as a motion
18 for a continuance which Defense counsel opposed therefore
19 the matter was addressed via phone conference with the
20 arbitrator and counsel at 11:00 a.m., on Monday, January
21 21st, 2013.

22 The Defense counsel again stipulated a substitution of
23 entities would be made and any recovery the plaintiffs
24 could be entered against Colton Builder's Inc or Colton
25 Builders LLC and provided that the dissolution of the LLC

1 was believed to be an administrative action by the
2 Secretary of State. Given the stipulation by the
3 Defendant's allowing the award to plaintiff's to be entered
4 into a judgment against the LLC and or the Corporation
5 Inc., no prejudice to the Plaintiff was evident other than
6 the entity status as being illusory. No other reason for
7 a continuance was raised by the Defense counsel."

8 Counsel was advised arbitration would go forward on
9 January 22nd, 2013 as scheduled. However as an
10 accommodation the arbitrator delayed the hearing start of
11 10:00 a.m. until 11:00 a.m. to allow the Plaintiff's
12 attorney to seek an order of the court staying the
13 arbitration. Later the same day on Monday, January 21st,
14 2013 at 3:30 p.m., plaintiff's counsel sent an email to
15 Defendant's attorney and the arbitrator advising that he
16 would be filing a motion to set aside the consent order and
17 that neither he nor the plaintiff's would be present for
18 the arbitration.

19 Counsel for the Defendant objected and the undersigned
20 advised counsel for both parties that the arbitration
21 hearing would go forward as scheduled. The Plaintiff's
22 counsel can seek a court order delaying the hearing and
23 that the plaintiff's could appear or not appear at their
24 own risk. On the morning of January 22nd, 2013 at 10:45
25 a.m. Plaintiff counsel sent an email stating I have filed

1 my motion and will serve it today by mail and also by email
2 as soon as possible. The Vasey's and I will not be in
3 attendance and it is their position that there is no valid
4 agreement to submit the case to mediation.

5 I think that's a typo. It should be arbitration.

6 The arbitrator was advised by defense counsel but the
7 law clerk for John C. Hayes advised there had been no
8 contact other than the Defendant's counsel Wilkerson's
9 emails to chambers advising of the motion that no order had
10 been issued and that Judge Hayes was out of town.

11 Although the arbitration was postponed until 11:00
12 a.m., the actual hearing did not begin until approximately
13 11:30 a.m., in order to allow for the Plaintiff's counsel
14 to contact the Court with this motion to Set Aside the
15 Arbitration Order and to appear before a contract
16 arbitrator concerning any problems. The plaintiff's - nor
17 the plaintiff's attorney appeared for the arbitration
18 hearing.

19 MR. SAMPLE: So, Your Honor, I stand corrected on
20 what we talked about earlier. I did actually file the
21 Motion to Set Aside the consent order to arbitrate prior to
22 the actual arbitration going forward so we're not seeking
23 to wait and see what happens with the arbitration before we
24 decided what to do.

25 THE COURT: All right. When did your client become

1 aware - you or your client - become aware of the problem
2 with the Secretary of State and the status of the
3 Defendant?

4 MR. SAMPLE: It was a couple of weeks before the
5 arbitration was to take place, Your Honor. My client was
6 actually aware of it before I was but --

7 THE COURT: Well when? That's - I mean --

8 MR. SAMPLE: I don't have the exact date as to when
9 that took place, Your Honor. I just - My client is my next
10 door neighbor and he came over one day and told me that he
11 had realized that the corporation didn't exist.

12 In discussing it with him today he's not sure if it
13 was anywhere between five or six or fourteen days prior to
14 the arbitration. I just - I don't have an answer to that,
15 Your Honor. It was a period of days.

16 THE COURT: Well I'll take this under advisement.

17 MR. WILKERSON: Your Honor, if I may, I can - I have
18 the email that was originally.--

19 THE COURT: Yeah, I thought I saw one in here.

20 MR. WILKERSON: Well that's the email that it was
21 responded to.

22 THE COURT: But I can't find it.

23 MR. WILKERSON: But my objection to this whole matter
24 being raised was that once it was raised we were within the
25 ten day period to exchange the documents and the witnesses.

1 So we were prejudiced because we had along this time frame
2 it was important to us that we have ten days. We agreed to
3 it in the order and we further agreed to it with an order
4 by Terry Malar. But there was no raising of this issue
5 until within the ten days. I believe that date was January
6 18, 2013 with the hearing being on January 22nd. And again
7 I have the actual email but it's a lot of information in
8 that email that wouldn't be appropriate for the Court.

9 MR. SAMPLE: Well I'm quite certain that I didn't
10 alert Mr. Wilkerson, or Mr. Malar, to the issue as soon as
11 I learned of it from my client. What I can tell you, Your
12 Honor, is the reason that I didn't submit anything as
13 evidence to the arbitrator was because Mr. Vasey had
14 already alerted me that he had discovered this issue with
15 the corporation being dissolved. That's why we didn't
16 submit anything for the arbitration itself.

17 THE COURT: And you advised the arbitrator and the
18 Defendant that that was the reason?

19 MR. SAMPLE: Yes, sir. That we had discovered the
20 corporation had been dissolved yes, sir.

21 THE COURT: All right. Well I'm gonna take it under
22 advisement.

23 MR. WILKERSON: Thank you, Your Honor.

24 MR. SAMPLE: Thank you.

25 - END OF TRANSCRIPT OF RECORD.-

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 York County, South Carolina, on the 27th day of August 2014.

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

Wanda Nelson
Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: September 26 2014

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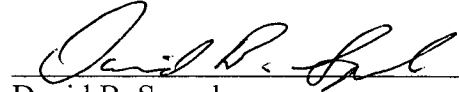
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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 16, 2015



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