

CASE NO.: 00-00-00000-DR

**IN THE
FIRST DISTRICT COURT OF APPEALS
FOR THE CIRCUIT**

WENDELL COO9PER

Plaintiff-Appellant

v.

KWIK KERB

Defendant-Appellee

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MAY 04 2017

SC Court of Appeals

**ON APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS**

BRIEF OF APPELLANT

May 1, 2017

Wendell Cooper, Pro Se
117 Palm Springs Way
Simpsonville Sc 29681

Oral Argument Requested

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TABLE OF AUTHORITIES

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Renaissance Enterprises, Inc. v. Summit Teleservices, Inc., 515 S.E. 2d (S.C. 1999).5

STATEMENT OF ISSUES PRESENTED

- I. DID THE TRIAL COURT ERR IN ALLOWING A NON LICENSED ATTORNEY REPRESENT THE KWIK KERB COOPERATION IN COURT AND TOM BERRY?
- II. DID THE TRAIL COURT ERR IN NOT DISMISS ALL OF TOM BERRY PRO SE TESTIMONY FROM THE RECORD FOR LYING TO THE COURT ABOUT THE ORIGINAL COPY OF THE WARRANTY CONTRACT.
- III. DID THE TRAIL COURT ERR IN ENTERING A JUDGEMENT AGAINST THE FOR WHEN DEFENDANT FAILED TO APPEARING COURT?

STATEMENT OF THE CASE

On May 22, 2015 Wendell Cooper brought claims against Tom Berry doing business a Kwik Kerb for failing to correct the white spots in the curbing.

Factual Background

On May 16, 2013 Cooper entered into contract with Kwik Kerb to install about 230 linier feet of kerbing.

On September 30, 2013, Kwik Kerb return to Cooper's residence to reseal the Kerbing to remove the white spots.

On April 21, 2014, Cooper sent Kwik Kerb a letter stating that the white spots had returned and that he was not satisfied with the finish on the kerbing.

Procedural History

On January 25, 2016, Magistrate Court dismissed Cooper's complaint based on a preponderance of the evidence.

On April 27, 2016, the Court of Common Pleas dismissed Cooper with out and order of explanation.

SUMMARY OF THE ARGUMENT

Kwik Kirby provided both and express and implied warranty and the law states that this is a promise that the good would conform to the affirmation or promise. Kwik Kirby breach their when failed to cure the problem S.C. UCC 36.2-313

Kwik Kirby gave false testimony to the Magistrate Court therefore the testimony should be stricken from the record.

Kim Berry, is not the attorney of record and Cooper received no notice that she would be appearing on behalf of the company as well as representing Tom Berry in the matter.

ARGUMENT

I. KWIK KERB BREACHED THEIR WARRANTY WHEN THE FAILED TO CURE THE PROBLEM.

As state in Kwik Kerb contract on page 2 paragraph, "*Efflorescence if a white powdery substance that sometimes forms on concrete during the first few weeks after being installed, it is caused by evaporation of water for the surface of the concrete which leaves behind the mineral as a salt deposit. It cause white stains, which can be unsightly on colored concrete. If this does happen, please call our office and we will come to clean and reseal you edging. Kwik Kerb was aware that there was a problem with the kerbing.*"

When Cooper re-contacted the company to inform them that the problem was not corrected. Kwik Kerb failed to send representative out to re-inspect the kerbing.

II. KWIK KERB GAVE FALSE TESTIMONY TO THE COURT AND HIS TESTIMONY SHOULD BE STRICKEN FROM THE RECORD.

In the Courts order in (page 1 paragraph 4) it reads as follows:

Defendant, however, introduced into evidence his original, yellow second sheet, a carbonless copy of the proffered 15 year Limited Warranty, which should showed that while he had signed and dated his side of the Warranty/Contract when offering it to Cooper, Plaintiff Cooper had not signed and dated his side.

Plaintiff Cooper presented the “authentic” copy of the contact signed by both Berry and Cooper and the Court agreed with Cooper that this was the original copy of the document. (See Dep. Pages 4 to 10). In Berry’s testimony she agreed that Cooper possessed the original copy of the contract. (See Dep. Page 10 (5-15). On January 25, 2016, Magistrate Court dismissed Cooper’s complaint based on of a preponderance of the evidence that was based on false testimony. Therefore, the testimony by Berry should be stricken from the record.

III. KIM BERRY LIST BY THE COURT AS PRO SE DEFENDANT WAS NOT THE ATTORNEY OF RECORD AND WAS PRACTICING LAW WITH OUT A LICENSE BECAUSE WAS NOT NAME IN THE COMPLAINT AND A PRO SE ATTORNEY CAN NOT REPRESENT A COOPERATION IN A COURTS OF RECORD.

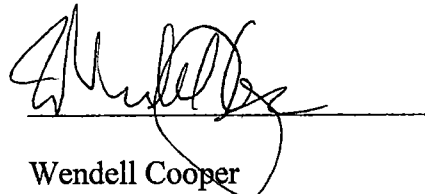
A non – lawyers (officer, agent or employee) can only represent a corporation in civil magistrate’s court. Because a corporation is an artificial entity created by law, it cannot represent itself. A corporation must be represented by a licensed attorney in circuit and appellate courts. Renaissance Enterprises, Inc. v. Summit Teleservices, Inc., 515 S.E. 2d (S.C. 1999).

The Defendant failed to show up to court and Kim Berry illegally represent both the Kwik Kerb and Tom Berry. The Court does not have the legal authority to grant Berry permission to practice law in this Court without a license.

CONCLUSION

Accordingly, the court of common pleas judgement against Cooper's should be denied for the foregoing reasons.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Wendell Cooper", is written over a horizontal line. The signature is stylized and cursive.

Wendell Cooper
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Simpsonville, Sc 29681

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2016-001159

Tom Berry, Pro Se
Kwik Kerb

Respondent,

V.

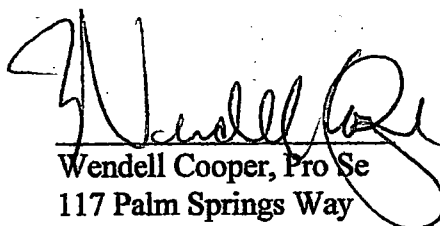
Wendell Cooper, Pro Se

Appellant.

PROOF OF SERVICE

I certify that I have served Appellant brief in above said case by depositing a copy of it in the United States Mail, postage prepaid, on May 1, 2017 a copy was mailed to the address of the attorney of record at and on the attorney of record at, 2131 Woodruff Road, # 314, Greenville, South Carolina 29607.

May 1, 2017


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EXHIBITS PAGE

NO.

DESCRIPTION

ID EV

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(Proceedings begin on the 26th day of April,
2016 at approximately 9:52 a.m.)

THE COURT:

MR. COOPER: This is the other copy that
the judge is referring to.

THE COURT: Okay. So that was handed up at
the magistrate hearing or trial?

MR. COOPER: This was.

THE COURT: Okay. All right. Okay.

MR. COOPER: So these two documents, I'm
just trying to show ---

THE COURT: Okay. I got it.

MR. COOPER: --- the authenticity of that,
okay?

THE COURT: Okay. Yes, sir.

MR. COOPER: My point being, Your Honor,
that -- I think it's Judge Simmons. In his --
in his ruling for the defendants, there was
some question about the authenticity of that.

THE COURT: I got you.

MR. COOPER: Dealing with -- dealing with
the yellow copy. Okay. And what -- so what I'm
saying -- you know, this is my point with that
document, okay, is is that that document right

1 there is the original document and that the
2 copy was pulled from the back of that before I
3 even had a chance to sign it.

4 **THE COURT:** Okay.

5 **MR. COOPER:** Okay. My concern is is that
6 Mr. Berry knew that at the time that he
7 testified that he didn't know where I got the
8 -- he didn't know where I had got the contract
9 from.

10 **THE COURT:** Okay.

11 **MR. COOPER:** And this is his original
12 signature.

13 **THE COURT:** I gotcha.

14 **MR. COOPER:** This is his original
15 document. And so I was a little bit perplexed
16 that he didn't realize that he gave me this
17 warranty.

18 **THE COURT:** I got you.

19 **MR. COOPER:** Okay. So this is the original
20 warranty.

21 **THE COURT:** Uh-huh.

22 **MR. COOPER:** He took the -- he took the
23 yellow copy of it before I signed it and that's
24 why he was able to present an unsigned copy of
25 this document.

1 **THE COURT:** I understand.

2 **MR. COOPER:** Okay.

3 **THE COURT:** Okay.

4 **MR. COOPER:** Second point that I'm trying
5 to make here is I think they were talking about
6 the warranty itself. This is my interpretation
7 of the warranty. It reads, as follows: the
8 warranty renews annually with the purpose of
9 resale from Kwik Kerb. That implies to me is
10 that from 6/25 to -- from 6/25/13, I have one
11 year, so that would be 6/25/14, that this
12 warranty would be in effect.

13 **THE COURT:** I gotcha.

14 **MR. COOPER:** If I wanted to continue this
15 warranty, it means that -- to me, that I would
16 have to pay in order to continue this warranty.
17 Okay. As the record would show, I sent them a
18 check to continue my warranty. Okay. I believe
19 it was his testimony that he declined to accept
20 my money because he said I had threatened to
21 take him to court. That's neither here nor
22 there, I guess. But anyway, that's that
23 document. Okay. I think there was some concerns
24 about the warranty. Can I approach again?

25 **THE COURT:** Certainly.

1 **MR. COOPER:** I'm talking about this part
2 right there. I think those documents are in the
3 file. Okay. It's my understanding -- the way
4 that I understand it is that I would consider
5 this document an implied warranty. Okay. The
6 defendants are saying that -- that, you know,
7 if I have those white spots in my concrete,
8 that they would come and address those
9 concerns.

10 **THE COURT:** Okay.

11 **MR. COOPER:** So I think that it falls
12 within the implied warranty, even though
13 there's not no specific written warranty ---

14 **THE COURT:** Right.

15 **MR. COOPER:** --- but I think that it would
16 be considered the implied --

17 **THE COURT:** If you -- and I'm trying to
18 pull up the record appeal on the computer. It's
19 just not pulling up right now. I'm sorry. You
20 handed this up during the magistrate's trial?

21 **MR. COOPER:** Yeah. All of that was up
22 during the magistrate's trial.

23 **THE COURT:** Okay.

24 **MR. COOPER:** The only document that I did
25 not hand up, Your Honor, was the original copy.

1 **THE COURT:** With the yellow top.

2 **MR. COOPER:** Yes, sir. All of this was
3 already in the --

4 **THE COURT:** Gotcha.

5 **MR. COOPER:** -- in the -- in the document.

6 **THE COURT:** All right.

7 **MR. COOPER:** Okay. So my point -- my point
8 being again that I think that it falls within
9 the implied warranty. I think that they -- I
10 think the defendants understand that. May I
11 approach again?

12 **THE COURT:** Sure. Yeah.

13 **MR. COOPER:** Okay.

14 **THE COURT:** Again, is this something that
15 was handed up?

16 **MR. COOPER:** Yes, ma'am.

17 **THE COURT:** Okay.

18 **MR. COOPER:** If you look at that document
19 right there ---

20 **THE COURT:** All right.

21 **MR. COOPER:** --- they repaired the white
22 -- they repaired the white spot once before.
23 Then they came back, you know, within the time
24 frame that I mentioned here regarding, uh, --

25 **THE COURT:** Okay.

1 **MR. COOPER:** -- regarding the warranty,
2 the implied warranty. I don't, uh, -- the
3 implied warranty. Okay?

4 **THE COURT:** Okay.

5 **MR. COOPER:** And my last part of this is
6 just to give Your Honor -- these are just
7 duplicates of the pictures, and I don't know if
8 they would be in color.

9 **THE COURT:** Okay.

10 **MR. COOPER:** Okay. The white spots that
11 I'm referring to, Your Honor, is on that
12 document.

13 **THE COURT:** Okay.

14 **MR. COOPER:** It's on that curb.

15 **THE COURT:** I gotcha.

16 **MR. COOPER:** Which from an aesthetic
17 standpoint of view and the amount of money that
18 was paid for these services, it looks horrific.

19 **THE COURT:** Okay.

20 **MR. COOPER:** And I don't think that I paid
21 for a finished product to look like that.

22 **THE COURT:** All right.

23 **MR. COOPER:** So again, let me finish this,
24 I do think the implied warranty under the
25 Customer Protection Act does apply here.

1 **THE COURT:** All right. All right.

2 **MR. COOPER:** And that's about all.

3 **THE COURT:** Thank you, sir. No, I
4 appreciate it.

5 Steve, will you hand this back to him?

6 All right. Yes, ma'am. I need you to stand
7 up for me please.

8 **MS. BERRY:** Okay. I don't know what I need
9 to say in this situation. That was our argument
10 that he didn't sign the warranty. He signed it
11 later, and we don't know how much later. We
12 just don't have a copy of the original. He,
13 obviously, has a copy of the original warranty.
14 But on our yellow copy, it's not signed.

15 **THE COURT:** All right.

16 **MS. BERRY:** And according to his original
17 contract when we sold him the curb, there is no
18 warranty or implied warranty. And we did come
19 out once as a courtesy, and then didn't hear
20 from him about any other problems until he
21 started threatening us.

22 **THE COURT:** Okay. All right. Well, I will
23 need to take this matter under advisement. I
24 want to return this to you because it is -- it
25 is on the computer. I want to take a look at

1 the documents that are ---

2 **MR. COOPER:** Okay.

3 **THE COURT:** --- sent from the magistrate,
4 and I'll issue a decision shortly.

5 Yes, sir.

6 **MR. COOPER:** Just to redirect a minute. An
7 implied warranty is not something that's in
8 original form. It means just what it means. It
9 means that it is implied. So the defendants
10 would not have -- could not write up a contract
11 with an implied warranty.

12 **THE COURT:** I understand. I understand. I
13 understand where you're going with it. I do.
14 All right. As I said, let me take a look at
15 what I've got here and I'll issue a decision.

16 **MR. COOPER:** And my latter point is -- and
17 I don't know if this is possible, but as I said
18 earlier in my presentation, I felt that they
19 knew -- that Mr. Berry knew that he had left
20 that contract on my -- on my -- on my
21 countertop.

22 **THE COURT:** Right.

23 **MR. COOPER:** So I'm considering that as
24 something that's unfair and deceptive trade
25 practice because he presented that information

1 as though it was the truth when he knew that it
2 was not true. So, you know, I'm asking the
3 court to -- to -- if they do rule in my favor,
4 to take that under consideration ---

5 **THE COURT:** Okay.

6 **MR. COOPER:** --- you know, when you're
7 making that ruling.

8 **THE COURT:** All right. Thank you very
9 much.

10 **MS. BERRY:** Thank you.

11 **THE COURT:** Thank you.

12

13 (Proceedings conclude at approximately
14 10:01 a.m.)

15

16

17

18

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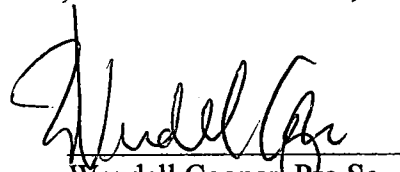
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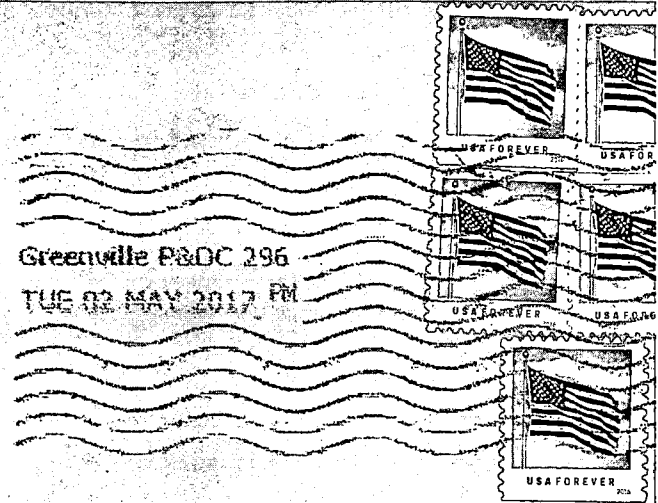
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