

CASE NO.:2016-001159

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

WENDELL COOPER, Appellant,

V.

Tom Berry and Kwik Kerb, Defendants,
Of whom Tom Berry is the Respondents.

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

BRIEF OF APPELLANT

June 5, 2017,

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

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SC Court of Appeals

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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 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 linear 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 without an order of explanation.

SUMMARY OF THE ARGUMENT

Kwik Kirby provided both an 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 breached their warranty 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 THEY FAILED TO CURE THE PROBLEM.

As stated in Kwik Kerb contract on page 2 paragraph, "*Efflorescence is a white powdery substance that sometimes forms on concrete during the first few weeks after being installed, it is caused by evaporation of water from the surface of the concrete which leaves behind the mineral as a salt deposit. It causes white stains, which can be unsightly on colored concrete.*

If this does happen, please call our office and we will come to clean and re-seal your 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 Correct kwik kerb failed to send representative out to re-inspect the kerbing.

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

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 have 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 Transcript Pages 4 to 10): In Berry's testimony she agreed that Cooper possessed the original copy of the contract (See Transcript Page 10 (5-15)). On January 25, 2016, Magistrate Court dismissed Cooper's complaint based on a preponderance of the evidence that was based on false testimony. Therefore, the testimony by Berry should be stricken from the record.

KIM BERRY LIST BY THE COURT AS PRO SE DEFENDANT WAS NOT THE ATTORNEY OF RECORD AND WAS PRACTICING LAW WITHOUT A BECAUSE WAS NOT NAME IN THE COMPLAINT AND A PRO SE LICENSE ATTORNEY CAN NOT REPRESENT A CORPORATION IN A COURTS OF RECORD.

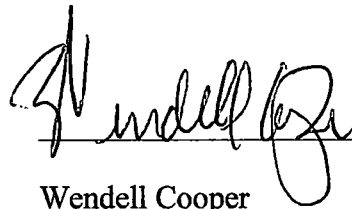
A non-lawyer (officer, agent or employee) can only represent a corporation in civil magistrate's court. Because a corporation is an artificial entity created by law, it cannot represent itself. A corporation must be represented by a licensed attorney in circuit and appellate courts. *Renaissance Enterprises, 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, June 5, 2017

A handwritten signature in black ink, appearing to read "Wendell Cooper", written over a horizontal line.

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
Leitita H. Verdin, Circuit Court Judge

Case # 2016-001159

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Of whom Tom Berry is Respondent

CETIFICATE OF SERVICE

I certify that I have served Appellant brief, copied of the inabove said case by depositing a copy of it in the United States Mail, postage prepaid, on June 5, 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.

June 5, 2017



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SC Court of Appeals

South Carolina Court of Appeals
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