

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
Leitita H. Verdin, Circuit Court Judge

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Case # 2016-001159

Wendell Cooper, Appellant

v.

Tom Berry and Kwik Kerb, Defendants  
Of whom Tom Berry is Respondent

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JAN 16 2018  
SC Court of Appeals

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD OF APPEAL

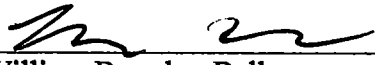
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Respondent proposes the following be included in the Record on Appeal:

1. Order of Judgment from the Trial Court (Judge Simms Opinion)
2. Order of Judgment from the Court of Common Pleas (Judge Verdin)
3. Transcript of Court of Common Pleas proceedings

I certify that this Designation contains no matter which is irrelevant to this Appeal.

January 12, 2018

  
\_\_\_\_\_  
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THE STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wendell Cooper  
PLAINTIFF

VS.

Tom Berry d/b/a Kwik Kerb  
DEFENDANT

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

ORDER OF JUDGMENT

The issues in this action were tried in the Magistrate's Court before Judge Robert F. Simms in a non-jury proceeding on 21 January 2016.

Plaintiff Complained of Defendant that Defendant had installed colored concrete curbing in Plaintiff's yard which then developed light and dark spots and that Defendant would not put sealant on the curbing to prevent discoloration. Defendant Answered with a general denial.

Plaintiff and Defendant signed a contract in June 2013 for Defendant to supply color tinted concrete curbing for Plaintiff's yard. Subsequent to the job and Plaintiff's payment, Plaintiff noticed some color and spotting issues with the curbing and consulted with Defendant. About ninety days after Defendant completed the contracted work, which is the extent of the warranty on the work included in the purchase price, he returned to treat several eight-inch sections of curbing for excessive spotting and to reapply sealant to the curbing. He stated under oath that he was able to resolve the problem as it appeared at that time. Plaintiff gave no indication to Defendant that such was not the case; however, six months later he wrote a letter complaining of a further problem. Defendant was resistant to the suggestion that he provide further services to Plaintiff for free.

About ten months after the execution of the contract Plaintiff submitted a check to Defendant for \$185.00 to "renew" a 15-Year Limited Warranty on the concrete. Plaintiff submitted his Exhibit 10 which includes a photocopy of the Warranty, which says, "This warranty renews annually with the purchase of a reseal from Kwik Kerb." On the bottom left appear the signature of Tom Berry and the date of his signature, "6-25-13." On the right, somewhat lighter, is the signature of Wendell Cooper and the date "6-25-13." Defendant returned Plaintiff's check, refusing further service to Plaintiff.

Defendant, however, introduced into evidence his original, yellow second sheet, a carbonless copy of the proffered 15-Year Limited Warranty, which 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. Defendant showed this exhibit to the Court to prove that Plaintiff had never accepted the offer of the 15-Year Limited Warranty. A comparison of the two documents convinced the Court that Defendant's signature was the same on the original yellow sheet and the Plaintiff's photocopy, but that Plaintiff had signed and dated his side of the Warrantee at some subsequent time, and had not signed the original, which was Kwik Kerb's copy, since the second, yellow sheet was not underneath whatever the Plaintiff signed. The Court's exhibit was a photocopy. If Plaintiff had signed and accepted the Warranty, the original, yellow second sheet would have contained Cooper's signature, and it didn't.

In consequence, the Court finds that the Plaintiff was no longer covered under any warranty for the concrete, the Defendant had performed all his obligations under the contract, Plaintiff's proffered check for \$185.00 was not a renewal of anything since he did not have a Warranty with Defendant, and Defendant was well within his right to refuse the check and refuse to provide further services to Plaintiff.

Based on these findings, which the Court makes upon the preponderance of the evidence, the Court renders Judgment for the Defendant and Dismisses the Complaint of Plaintiff in its entirety.

IT IS SO ORDERED AND ADJUDGED.

25 Jan 2016  
Date

Robert F. Simms  
Robert F. Simms, Magistrate

ORIGINAL

Circuit Court

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2016CP2300733

ELECTRONICALLY FILED - 2016 APR 27 4:45 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP2300733

Wendell Cooper

Tom Berry                      Kwik Kerb

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.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**       Rule 12(b), SCRPC;                       Rule 41(a), SCRPC (Vol. Nonsuit)  
 Rule 43(k), SCRPC (Settled);                       Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**       Rule 40(j) SCRPC;       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:

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.

Circuit Court Judge

2162  
Judge Code

4/27/2016  
Date

For Clerk of Court Office Use Only

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

**Wendell Cooper** 117 Palm Springs Drive Simpsonville, SC 29681

**Tom Berry** 2131 Woodruff Road #364 Greenville, SC 29607

**Kwik Kerb** 2131 Woodruff Road #364 Greenville, SC 29607

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter**

\_\_\_\_\_  
**Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court**

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Greenville Common Pleas

**Case Caption:** Wendell Cooper, appellant VS Tom Berry, respondent, et al  
**Case Number:** 2016CP2300733  
**Type:** Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2016-04-27 14:27:53 page 3 of 3



I N D E X

DIRECT    CROSS    REDIRECT    RECROSS

Motions	4			
Certificate of Reporter	13			

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**

1  
2 (Proceedings begin on the 26th day of April,  
3 2016 at approximately 9:52 a.m.)

4 **THE COURT:**

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

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

9 **MR. COOPER:** This was.

10 **THE COURT:** Okay. All right. Okay.

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

13 **THE COURT:** Okay. I got it.

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

16 **THE COURT:** Okay. Yes, sir.

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

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

22 **MR. COOPER:** Dealing with -- dealing with  
23 the yellow copy. Okay. And what -- so what I'm  
24 saying -- you know, this is my point with that  
25 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



STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
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Leitita H. Verdin, Circuit Court Judge

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Case # 2016-001159

Wendell Cooper, Appellant

v.

Tom Berry and Kwik Kerb, Defendants  
Of whom Tom Berry is Respondent

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JAN 16 2018

SC Court of Appeals


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CERTIFICATE OF SERVICE

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I certify that I have served Respondent's Appeal (pgs. 1-7) and attachments (Respondent's proposed record on Appeal, affidavit of attorney's fees, and certification of service) in the above-styled case by depositing of copy in the United States Mail, postage paid on January 12, 2018 addressed to the Appellant at 117 Palm Springs Way, Simpsonville, SC 29681.

January 12, 2018

  
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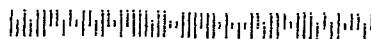


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