

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wendell Cooper
PLAINTIFF

VS.

Tom Berry d/b/a Kwik Kerb
DEFENDANT

2015CV2310800916

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.

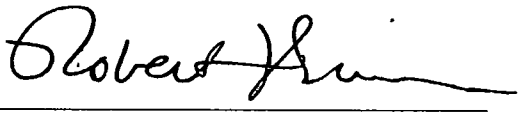
Defendant, however, introduced into evidence his original, yellow second sheet, a carbonless copy of the proffered 15-Year Limited Warranty, which showed that while he had signed and dated his side of the Warranty/Contract when offering it to Cooper, Plaintiff Cooper had not signed and dated his side. 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, 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	4/27/2016
	Judge Code	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

ATTORNEY(S) FOR THE PLAINTIFF(S)

Tom Berry 2131 Woodruff Road #364 Greenville, SC 29607

Kwik Kerb 2131 Woodruff Road #364 Greenville, SC 29607

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.

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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

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

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE) Case No(s) : 2016CP2300733
)
Wendell Cooper,)
)
) Plaintiff,)
)
) -VS-) TRANSCRIPT OF RECORD
)
Tom Berry, et al,)
)
) Defendant.)
)

April 26, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

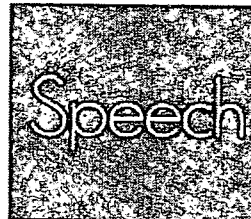
A P P E A R A N C E S:

WENDELL COOPER, Pro Se
Plaintiff

KIM BERRY, Pro Se
Defendant

Teresa B. Johnson, CVR-M, CM
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

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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

(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 warrant,
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

50

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

Wendell Cooper, Appellant

v.

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

RECEIVED
JAN 16 2018
SC Court of Appeals

AFFIDAVIT OF ATTORNEY'S FEES

Personally appeared before me, William Brandon Bell, who being duly sworn, swears and deposes that if he was called as a witness he would truthfully and accurately testify as follows:

1. My name is William Brandon Bell. I am the attorney representing the Respondent in the above-captioned case. I have been a member in good standing with the South Carolina Bar since 2013.
2. My customary hourly rate for cases of this kind is \$250.00 per hour.
3. That I have expended the following amount of time handling this matter:
1/6/18- Initial contact and case discussion: 0.25 hrs
1/8/18- File review and start draft of brief: 2.25 hrs
1/11/18- Complete draft of brief: 0.75 hrs

1/12/18- Package and mail to Appellant and Court of Appeals: 0.25 hrs

The total time spent on this matter is 3.5 hrs. The total amount charged is \$875.00.

Greenville, SC

Dated: 1/12/18



William Brandon Bell
Attorney at Law
710 Hunts Bridge Rd, #8
Greenville, SC 29617
864-906-7992
attorneybrandonbell@gmail.com

FURTHER THE AFFIANT SAITH NAUGHT.

SWORN to before me this 12 day

of January, 2018

NOTARY PUBLIC FOR S.C.

My Commission Expires:

9-9-26