

CASE NO.:2016-001159

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IN THE  
FIRST DISTRICT COURT OF APPEALS  
FOR THE COURT

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RECEIVED  
MAY 08 2018  
SC COURT OF APPEALS

WENDELL COOPER, Appellant,

v.

Tom Berry and Kwik Kerb, Defendants,  
Of Whom Tom Berry Is The Respondents.

RECEIVED  
MAY 08 2018  
SC Court of Appeals

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ON APPEAL FROM GREENVILLE COUNTY COURT  
OF COMMON PLEAS

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FINAL BRIEF OF APPELLANT

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May 3, 2018

Wendell Cooper, ProSe  
117 Palm Springs Way  
Simpsonville SC 29681

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COURT OF COMMON PLEA

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### STATEMENT OF ISSUES PRESENTED

- I. DID THE TRIAL COURT ERR IN ALLOWING A NON-LICENSED ATTORNEY AND ONE WHO WAS NOT THE ATTORNEY OF RECORD REPRESENT THE KWIK KERB COOPERATION IN COURT AND RESPONDENT TOM BERRY?
- II. DID THE TRIAL 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 TRIAL COURT ERR IN ENTERING A JUDGEMENT AGAINST THE APPELLANT WHEN THE RESPONDENT FAILED TO APPEARING COURT?

### STATEMENT OF THE CASE

On May 22, 2015, the Appellant brought a claim against the Respondent, Tom Berry doing business as Kwik Kerb for white spots in his curbing that was not correct by previous repairs.

#### Factual Background

On May 16, 2013, the Appellant entered into a contract with Kwik Kerb to install about 230 linear feet of curbing.

On September 30, 2013, Kwik Kerb returns to the Appellant's residence to reseal the curbing to remove the white spots. However, the white spots returned several months later.

On April 21, 2014, appellant sent Kwik Kerb a letter informing them that the white spots had returned and that he was not satisfied with the finishing of the curbing.

**Procedural History**

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

On April 27, 2016, the Court of Common Pleas dismissed appellant's complaint absent any written order explaining the legal foundation for the Court's decision.

**SUMMARY OF THE ARGUMENT**

Respondent provided the Appellant with both an express and implied warranty. The law states that this is a promise that the goods would conform to the affirmation or promise. Respondent failed to cure the problem after giving ample time to do so. (*See S.C. UCC 36.2-313.*)

Respondent gave false testimony to the Magistrates Court by alleging that he had the original copy of the warranty contract and that the Appellant did not sign it. Appellant present Judge Verdin with a copy of the original warranty contract signed by all parties to the transaction and Respondent did not dispute these facts. Thus, verifying that appellant had a valid warranty. Therefore, the Respondent's testimony in Magistrate Court should be stricken from the record and receive consequences for making false statements to the Court.

Respondent, Kim Berry was not listed as an attorney of record, and the Appellant did not receive notice that she would be appearing on behalf of the company or standing in for Respondent, Tom Berry who was the pro-se attorney of record in this case. Consequently, in the absence of the attorney of record and given the evidence that was presented by the Appellant the Court's should reverse its decision and a ruling made in favor of the Appellant.

**I. ARGUMENT**

**RESPONDENT HAD VIOLATED THEIR WARRANTY WHEN THE FAILED TO CURE THE PROBLEM AFTER BEING GIVEN THE OPPORTUNITY**

In the Respondent's contract on page 2 paragraph 2, it says the following

*“Efflorescence in a white powdery substance that sometimes forms concrete during the first few weeks after being install, it is caused by evaporation of water for 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 reseal your edging.”*

The Respondent was aware the above condition might have occurred on colored concrete and did not guarantee that cleaning and resealing the concrete would correct the problem. Nevertheless, respondent did not offer a resolution if this procedure did not correct the problem.

When the Appellant re-contacted Kwick Kerb to inform them that the problem was not corrected; the Respondent failed to a send a representative to re-inspect the curbing.

## **II. ARGUMENT**

### **RESPONDENT GAVE FALSE TESTIMONY TO THE COURT, AND HIS TESTIMONY SHOULD BE STRICKEN FROM THE RECORD**

The Magistrate Courts order (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 the Appellant, The Appellant had not signed and dated his side.”*

The Appellant, present the “authentic” copy of the warranty contract signed by both the Appellant and Respondent to Judge Verdin (See Transcript Pages 4, 1 - 10). In the Respondent’s testimony, she agreed that appellant had the original copy of the warranty contract. (See Transcript Pages 10, 5 – 15). According to the Magistrate’s Judge ruling, which he ruled that there not be a sign warranty contract between the two parties ruled in favor of the Respondent on January 26, 2016. Considering the new facts that there was a signed warranty and the Respondent knowingly mislead the Court about the signed warranty contract that he entered with the

Appellant. The Magistrate's decision should be reversed, and a ruling should be entered into the record in favor of the Appellant for the damages sought.

### III. ARGUMENT

#### **RESPONDENT KIM BERRY DOES NOT HAVE A LICENSE TO PRACTICE LAW IN THE STATE OF SOUTH CAROLINA AND CAN NOT REPRESENT KWICK KERB IN A COURT OF RECORD OR REPRESENT RESPONDENT TOM BERRY**

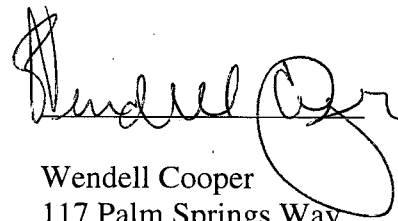
A non-lawyer (officer, agent, or employee) can only represent a corporation in civil magistrate's court. Because a corporation is an artificial entity created by law, it cannot represent itself. A corporation must be represented by a licensed attorney in circuit and appellate courts. *Renaissance Enterprises,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

The Respondent, Tom Berry did not show up to court, and Kim Berry is not permitted to represent Kwik Kerb or Tom Berry in a court of record. The Court does not have the legal authority to grant Kim Berry permission to practice law in her court without a license.

### CONCLUSION

Accordingly, the Court of Common Pleas judgment against the Appellant should be reversed for the foregoing reasons.

Respectfully Submitted, May 3, 2018,



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