



- B. Prior to the trial of this matter, Defendants' counsel moved to dismiss Ronnie Wilkes as a Defendant in this action based on the fact that at all times he had acted in his corporate capacity as President and owner of Wilkes Builders, Inc. It appears from the pleadings that Mr. Wilkes did nothing outside his corporation which would warrant his remaining as a party to this action and Defendant's motion was granted.
- C. It appears that Plaintiff owned a lot at 1290 Summit Drive, Sumter, South Carolina and contracted with Wilkes Builders, Inc., to construct a home on said lot at a certain price.
- D. Numerous witnesses were called by both sides including the parties. The house was placed into evidence and viewed by this Special Arbitrator.
- E. Based on the testimony of the Plaintiff and his witnesses the biggest issue was the floating floor. There was testimony that the floor should have never been placed in the home to begin with, was improperly installed and caused a loud creaking and popping sound when walked upon. This was observed by the arbitrator. The home owner insisted that he relied upon the experience and expertise of the builder in placing this type of floor in his home. The builder testified that it was the home owner who selected this type of flooring and insisted that it be installed in spite of the builders recommendation not to use the related flooring as it would not work properly.

4. I find that the home owner's testimony credible that he relied on the experience and expertise of the home builder and allowed the flooring to be installed after being told by the builder that it would work. It is obvious that the floor needs to be replaced. Testimony was that it would cost \$25,600.00 for material and labor.

5. I find that the Plaintiff has proven that the Defendant owed a duty of care, the Defendant breach of duty by negligently installing the floor system, that the Defendant's breach was the actual and proximate cause of Plaintiff's damages and that the home owner suffered actual damages in the failure of the floor system. Either the floor system failed

because it was the wrong floor system for the Plaintiff's house or it was installed improperly. Either way the floor system has failed and I find the homebuilder liable for its replacement.

6. The Plaintiff further testified about mismatched hardware, kitchen cabinets in need of an additional coat of paint, front column needing additional coat of paint, and brick knee wall at the screened porch need additional bracing. All of the problems were observed by the arbitrator and should be fixed and should be the responsibility of the builder. I find that it will take \$5,000.00 to make these repairs.

7. The Defendant made a claim against the Plaintiff for breach of contract and unjust enrichment in the amount of \$123,000.00 taking into consideration all of the testimony of both parties and the witnesses. I find no merit to either of the Defendant's causes of action and they are denied.

8. The Defendant also claimed that it was entitled to judgment against Plaintiff in the amount of \$130,000.00 as the other cause of action for quantum meruit and equitable estoppels. As to their second cause of action, based on all of the testimony and evidence, I find no merit and these cause of action are denied.

#### Conclusions of Law

1. Plaintiff's first cause of action in this case is for breach of contract. "This being an action for the breach of contract, the burden was upon the Plaintiff to prove the contract, its breach, and the damages caused by such breach. *Fuller v E. Fire & Casualty Ins., Co.* 240 S.C. 75, 89; 124 S.E.2nd 602, 610 (1961).

2. The general rule is that for a breach of contract the Defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." "The purpose of an award of damages for breach of contract is to put the Plaintiff in as good a position as he would have been in if the contract had been performed. *Minter v GOCT Ins.* 322 S.C. 525,

473 S.E.2<sup>nd</sup> 67 (Ct App 1946). The proper measure of compensation is the loss actually suffered by the Plaintiff as a result of the breach.

3. The Plaintiff's second cause of actions was for negligence. The Plaintiff must show (1) the Defendant owes a duty of care to the Plaintiff; (2) the Defendant breached the duty by a negligent act or omission; (3) the Defendant's breach was the actual and proximate cause of Plaintiff's injury; and (4) the Plaintiff suffered an injury or damages. *Doe vs. Marion* 373 S.C. 390, 645; S.E.2<sup>nd</sup> 245 (2007).

4. Based on the above, the Plaintiff has proven his breach of contract and negligence cause of action against the Defendant.

**NOW, THEREFORE**, based upon the foregoing, it is hereby

1. **ORDERED**, that the Plaintiff, Jesse Powell, is awarded judgment against the Defendant, Wilkes Builders, Inc., in the amount of \$25,60.00 for the floor, and \$5,000.00 for general damages for fixtures, paint, and repairs for a total judgment of \$30,600.00; It is further
2. **ORDERED**, that the Defendant's counterclaims are denied; It is further
3. **ORDERED**, that each party pay their own attorney fees and costs; It is further
4. **ORDERED**, that each party pay one-half (1/2) of the arbitrator's fees.

**AND IT IS SO ORDERED.**

  
KENNETH R. YOUNG, JR.

**SPECIAL REFEREE/ARBITRATOR**

Sumter, South Carolina

December 18, 2017.

AGREEMENT TO ARBITRATE

**RE: Jesse Powell vs. Ronnie Wilkes and Wilkes Builders, Inc.**  
**Attorneys: Michael Jordan, Esquire & Allen Jackson Barnes, Esquire**

1. THIS AGREEMENT is entered into by Kenneth R. Young, Jr., Esquire of Young, & Associates, P.A. (hereinafter "Referee"), and the undersigned parties, persons, and entities.

2. This agreement is being made by the Parties and their respective representatives to a certain controversy entitled Jesse Powell vs. Ronnie Wilkes and Wilkes Builders, Inc. The Referee has heretofore been selected by the Parties to act as a neutral third party to facilitate settlement negotiations and attempt to resolve this dispute.

3. It is agreed and understood that the Referee is not an advocate, representative, fiduciary or counsel for any Party, that the Referee does not provide any form of legal, financial or tax advice, and that the Referee has no authority to make any binding decisions or recommendations or to compel the making of any agreement or the granting of any concession.

4. It is agreed and understood that each Party will have in attendance at the arbitration such person(s) (including insurance carrier representative(s), if applicable) with full authority to settle the dispute.

5. It is agreed and understood that the mediation is private and confidential. Persons other than the Parties and their representatives may attend only with the permission of all of the Parties and with the consent of the Referee.

6. To facilitate a resolution, the Referee and the Parties and their counsel will work to ensure that each Party appreciates the strengths and weakness of each side's factual and legal contentions. Both in the exchange of information and opinions and in the evaluation of that information, each Party will have the opportunity and responsibility candidly to disclose to the Referee the facts, theories and opinions on which it intends to rely with regard to the matters in the dispute. In addition, the mediation process will focus on the interests and objectives of the

Parties and possible solutions that the Parties believe would be fair, equitable and mutually beneficial. Accordingly, each Party will be asked to work with the Referee in considering and evaluating solutions that would satisfy its own interests and those of the Party.

7. It is agreed and understood that the Mediator may meet and/or consult privately with any Party or Parties or their counsel before, during and after the mediation. Confidential information disclosed to the Referee by the Parties, their counsel, or by any witness in the course of mediation shall not be divulged by the Referee without consent.

8. It is further agreed and understood that the entire arbitration process is a compromise negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the arbitration by any of the Parties, their agents, employees, experts and attorneys, are confidential. Such offers, promises, conduct, and statements will not be disclosed to third Parties and are privileged and inadmissible.

9. It is further agreed and understood that the Referee shall not be liable to any Party or person for any act or omission in connection with any arbitration conducted under this Agreement and no Party or other signatory to this Agreement will call or subpoena the Referee to produce any notes or documents related to the arbitration or to testify regarding any notes or documents or the Referee's thoughts or impressions.

10. It is agreed and understood that each Party may provide the Referee, in advance of the mediation, with a statement setting forth its position with regard to the issues that need to be resolved, and the present status of settlement negotiations. Each Party may also attach such exhibits and/or other documentary information, as they deem appropriate. Any statements of position provided to the Referee shall remain confidential unless all Parties consent to the mutual exchange of statements.

11. The Parties and their attorneys agree that they will be billed for the services of the Referee at the rate of \$200.00 per hour and \$55.00 per hour for the paralegal, plus any out-of-pocket expenses incurred by the Referee. Travel time incurred by the Referee will be billed at the

rate of \$100.00 per hour and mileage will be billed at the IRS 2014 Standard Mileage Rate of \$0.56 per mile (IR-2013-95). If the arbitration is cancelled or postponed with less than ten working days' notice, a \$200.00 cancellation fee will be charged, equally divided among the parties. Billing will be made by, and payment made to, Young, Keffer, & Associates, P.A., unless otherwise agreed by the Parties and the Referee each Party will be responsible for an equal pro-rata share of the cost of the Referee's Fees. Payment of Referee's fees and costs are due within thirty (30) days following the conclusion of the arbitration.

12. The Parties and their representatives shall cooperate with the Referee and shall participate in good faith in the entire arbitration.

13. The Parties and their representatives acknowledge, understand and agree that at the conclusion of the arbitration, any materials provided to the Referee by a Party will be made available to that Party to retrieve for a period of ten (10) days following the conclusion of the arbitration, but that if the Party that produced such materials does not retrieve those materials within that time period, the Referee has authorization from the Parties to destroy such materials. The Parties further acknowledge, understand and agree that the Referee has no obligation to retain those materials.

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Date

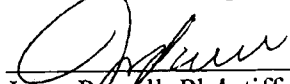
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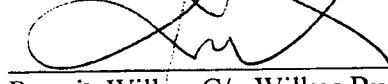
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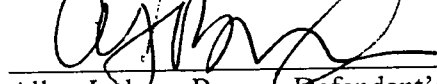
6-2-17  
Date

  
Kenneth R. Young, Jr., Special Referee

  
Jesse Powell, Plaintiff

  
Michael Jordan, Plaintiff's Attorney

  
Ronnie Wilkes C/o Wilkes Builders, Defendant

  
Allen Jackson Barnes, Defendant's Attorney