

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**

FINAL BRIEF OF APPELLANT

May 24, 2018

Wendell Cooper, ProSe
117 Palm Springs Way
Simpsonville SC 29681

RECEIVED

MAY 29 2018

SC Court of Appeals

TABLE OF CONTENTS

COURT OF COMMON PLEA

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUES PRESENTED..... 2

STATEMENT OF THE CASE..... 2

SUMMARY OF THE ARGUMENT 3

ARGUMENT 3

I. KWIK KERB BREACHED THEIR WARRANTY WHEN THE FAILED TO
CURE THE PROBLEM 3

II. KWIK KERB GAVE FALSE TESTIMONY TO THE COURT AND THE
TESTIMONY SHOULD BE STRICKEN FROM THE RECORD 4

III. KIM BERRY PRO SE DEFENDANT WAS NOT THE ATTORNEY OF RECORD
AND WAS PRACTICING LAW WITHOUT A LICENSE BECAUSE SHE WAS
NOT NAME IN THE COMPLAINT AND A PRO SE ATTORNEY CAN NOT
REPRESENT THE COOPERATION IN A COURT OF RECORD OR PARTNER 4

CONCLUSION by 5

TABLE OF AUTHORITIES

Cases

Federal Cases

Renaissance Enterprises, Inc. v. Summit Teleservices, Inc., 515 S.E. 2d (S.C. 1999).....5

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, Wendell Cooper brought a claim against, Tom Berry doing business as Kwik Kerb for white spots in his curbing.

Factual Background

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

On September 30, 2013, Kwik: Kerb returned to the Cooper’s residence to reseal the curbing and to remove the white spots.

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

Procedural History

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

On April 27, 2016, the Court of Common Pleas dismissed Cooper’s complaint without an order of explanation.

SUMMARY OF THE ARGUMENT

Kwik Kerb provided the Cooper with both an express and implied warranty and the law states that this is a promise that the goods would conform to the affirmation or promise. Kwik Kerb breached their contract when they did not cure the problem (*See S.C. UCC 36.2-313*).

Kwik Kerb gave false testimony to the Magistrates Court, therefore the should be stricken from the record.

Mrs. Kim Berry was not listed as an attorney of record, and Cooper did not receive notice that she would be appearing on behalf of the company as well as standing in for Mr. Tom Berry in this matter.

I. ARGUMENT

KWIK KERB BREACHED THEIR WARRANTY WHEN THEY FAILED TO CURE THE PROBLEM

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.

RECEIVED

When Cooper re-contacted the company to informed that the problem was not corrected Kwik Kerb did not send a representative out to the Respondent

MAY 29 2016
SC Court of Appeals

was aware the above condition might have occurred on colored concrete and did not guarantee

II. ARGUMENT

KWIK KERB GAVE FALSE TESTIMONY OT THE COURT AND THE 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.”

Plaintiff Cooper present the “authentic” copy of the warranty contract signed by Cooper and Berry. (See Transcript Pages 4, 1 - 10). In Berry’s testimony, she agreed that Cooper had on the contract. (See Transcript Pages 10, 5 – 15). On January 26, 2016. The Magistrate Court dismissed Cooper complaint base on a preponderance of the evidence that was based on the false testimony. Therefore, the testimony by Berry should be stricken from the record.

III. ARGUMENT

KIM BERRY LIST BY THE COUR AS A PRO SE ATTORNEY WAS NOT THE ATTORNEY OF RECORD AND WAS PRACTING LAW WITHOUT A LICENSE AND PRO SE ATTORNEY CAN OT REPRESENT A COOPERATION IN A COURT OF RECORD

A non – lawyers (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).

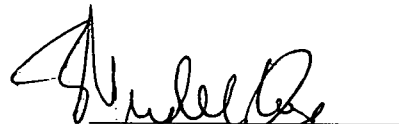
The Respondent, Tom Berry did not show up to court, and Kim Berry is not allowed to represent Kwik Kerb or Tom Berry in a court of record. The Court does not have the legal

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 preceding reasons.

Respectfully Submitted, May 24, 2018,


Wendell Copper
117 Palm Springs Way
Simpsonville, SC 29681

RECEIVED
MAY 29 2018
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case # 2016-001159

Wendell Cooper, Appellant

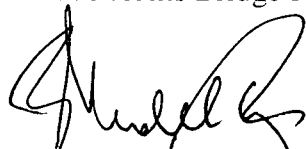
v.

Tom Berry and Kwik Kerb, Respondents
Of Whom Tom Berry Is Respondent

CERTIFICATE OF SERVICE

I certify that I have served Appellant final brief, copied off the in the above said case by depositing a copy of it in the United States Mail, postage prepaid, and a copy was mailed on May 24, 2018 to the address of the attorney of record at .710 Hunts Bridge Rd. #8, Greenville, SC 29617

May 24 2018,



Wendell Cooper
117 Palm Springs Way
Simpsonville, SC 29681
864 230-7049

RECEIVED

MAY 29 2018

SC Court of Appeals