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ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2011-CP-10-3367

RECEIVED
AUG 13 2012
SC Court of Appeals

Elinor Cohen,

Respondent,

v.

Tripp Creech d/b/a Atlantic
Lawn Service, Inc.,

Appellants.

RECORD ON APPEAL

Ellis R. Lesemann
Harvey & Vallini, LLC
497 Bramson Court, Suite 201
Mt. Pleasant, SC 29464
(843) 388-8883
Attorney for Appellants

Daniel M. Bradley
Post Office Box 2061
Mt. Pleasant, South Carolina 29465
(843) 834-0178
Attorney for Respondent

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE MAGISTRATE'S COURT
THE HONORABLE JUDGE TURNER

ELINOR COHEN,)
)
Plaintiff,)

Civil Action No. 2010-SC-87-002526

vs.)

ATLANTIC LAWN SERVICE, INC.)
)
Defendant.)

**DEFENDANTS' MOTION TO AMEND
ANSWER**

COMES NOW, the Defendant Atlantic Lawn Service, Inc.,¹ files this Motion to Amend Answer, pursuant to Rules 13 and 14 of the South Carolina Rules of Magistrates Court and Article I, Section 14 of the South Carolina Constitution.

I. LEGAL STANDARD

The South Carolina Rules of Magistrates Court state that "the [C]ourt shall be lenient in the allowance of changes or amendments to complaints, answers, and counterclaims[.]" S.C. R. Magis. Ct. 14. Similarly, the South Carolina Rules of Civil Procedure provide that leave to amend shall be "freely" granted and that the "right of trial by jury . . . shall be preserved inviolate." S.C. R. Civ. P. 15(a) and 38(a).

II. AMENDMENTS REQUESTED

Defendant requests leave to make the following amendments to its answer:

- (1) to request a jury trial;
 - (2) to delete any partial admission of liability contained in the initial Answer;
 - (3) to deny liability for the claims and damages asserted by Plaintiff;
- and

FILED IN CHARLESTON COUNTY
APR 29 2011
SMALL CLAIMS COURT

¹ As noted at the prior hearing, this action has been improperly pursued against Tripp Creech in his individual capacity. The proper defendant is Atlantic Lawn Service, Inc.

- (4) to assert the affirmative defenses of settlement, payment, and accord and satisfaction.

There is no prejudice to Plaintiff as a result of these amendments, which are necessitated by circumstances arising after Defendant filed its initial response *pro se*, which circumstances are well known to Plaintiff. These amendments are made in good faith, without undue delay, and without any intention of delaying these proceedings in any way.

III. CONCLUSION

For the reasons set forth above, the Court should allow Defendant to amend its Answer as is consistent with the interests of justice and the applicable rules of procedure.



Ellis R. Lesemann
Email: ellislesemann@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
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Fax: 843-727-2680

Charleston, South Carolina

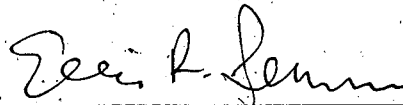
ATTORNEY FOR DEFENDANT

April 27, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April 2011, I did serve the foregoing **DEFENDANT'S MOTION TO AMEND ANSWER** upon the opposing party by U.S. Mail, postage prepaid at the following address:

**Elinor Cohen
1658 Omni Boulevard
Mount Pleasant, SC 29466**



**PARKER POE ADAMS & BERNSTEIN, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401**

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

ELINOR COHEN,)
)
Plaintiff/Respondent,)

Civil Action No. 2011-CP-10-33107

vs.)

TRIPP CREECH d/b/a ATLANTIC LAWN)
SERVICE, INC.)

NOTICE OF CIVIL APPEAL

Defendant/Appellant.)

FILED
2011 MAY 10 PM 3:50
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendant Atlantic Lawn Service, Inc., improperly identified in the caption as Tripp Creech d/b/a Atlantic Lawn Service, Inc., hereby gives notice of appeal from judgments of the Magistrate's Court in Case No. 2010-SC-87-002526 to the Circuit Court for Charleston County, South Carolina. This Notice of Appeal is made subsequent to notice of judgments received on April 13, 2011 and May 9, 2011. The appellant's exceptions include:

1. The denial of Defendant's Motion for New Trial on the issue on liability due to the fact that Defendant demonstrated its own mistake, inadvertence, surprise, excusable neglect, and also showed misconduct and misrepresentations on the part of Plaintiff, which showings justified a new trial on liability. Specifically, Defendant and Plaintiff reached a settlement after the action was filed. Plaintiff promised to dismiss her lawsuit, but did not do so. Instead, after inducing Defendant to perform a settlement and therefore not appear before the Magistrate, Plaintiff unilaterally appeared before the Magistrate nonetheless and improperly obtained a judgment against Defendant *in absentia*.

2. Under the circumstances, Defendant requested a new trial on the basis of liability and damages. The Magistrate refused to grant a new trial on liability. Although the Magistrate

granted a new trial on damages and withdrew the prior award of damages that was improperly obtained by Plaintiff, the Magistrate never informed Defendant of the specific cause of action upon which the Court's finding of liability was based. During the damages proceeding, Defendant requested such clarification from the Magistrate but did not receive it. As a result, Defendant was deprived of due process during the new trial on damages, as it is prejudicial for Defendant to be forced to undergo a damages proceeding without being able to ascertain the applicable measure of damages or defenses thereto.

3. Defendant also appeals the Magistrate's denial of its Motion to Amend, which requested a jury trial and sought to make necessary changes to Defendant's Answer relating to circumstances that arose *after* Defendant filed its initial response. The Magistrate should have granted a jury trial, as Plaintiff would not have suffered any prejudice and, furthermore, had unclean hands relating to her prior conduct in the proceeding. The denial of a jury trial is immediately appealable under South Carolina law.

4. Additionally, Defendant appeals the Magistrate's denial of Defendant's Motion for Continuance. Defendant showed good cause as to why a continuance should be granted as two of Defendant's three witnesses were not available on the date selected by the Court for the damages proceeding. As a result of the refusal of the continuance, Defendant suffered a further denial of due process.

5. Finally, Defendant asks that the caption in this case be formally amended so that the proper defendant, Atlantic Lawn Service, Inc., is the sole defendant. The individual defendant, Tripp Creech, is improperly included in the caption as there is no conceivable basis for individual liability in this action.

WHEREFORE, having shown the grounds of this appeal, Defendant requests that the Court remand this case to the Magistrate for a new trial absolute between the proper parties to be

tried before a jury consistent with Article I, Section 14 of the South Carolina Constitution and the South Carolina Magistrate's Court Rules.



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Phone: 843-727-2650
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Charleston, South Carolina

ATTORNEY FOR DEFENDANT

May 10, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE SMALL CLAIMS COURT
CASE NO: 2010-SC-87-002526
COMMON PLEAS:

ELINOR COHEN)

2011-CP-10-3307

Plaintiff Respondent)

RETURN

-versus-

ATLANTIC LAWN SERVICE, INC)

Defendant - Appellant)
_____)

FILED
2011 JUL -7 PM 12:01
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER is an appeal from the Charleston County Small Claims Court, North Charleston Division.

EC
The Plaintiff Elinor Cohen filed a suit on November 29, 2010 seeking recovery for breach of contract for an agreement to replace and install lawn sod, and negligence in damage to personal property during that installation. The Defendant, Atlantic Lawn Service, Inc. (Atlantic Lawn), filed a timely answer admitting responsibility but not for the total amount claimed by the Plaintiff. The court ruled in favor of the Plaintiff at a hearing when the Defendant did not make an appearance and issued a transcript of judgment on March 21, 2011. Atlantic Lawn filed a Motion for New Trial on March 25, 2011 claiming there was an agreement by the Plaintiff to release the Defendant of all liability prior to the court date. The court granted the New Trial motion only on damages allowing both sides to present evidence as to damages.

Atlantic Lawn subsequently filed a Motion To Amend Answer on April 27, 2011 requesting: (1) a jury trial; (2) to delete any partial admission of liability contained in the initial answer; (3) to deny liability for the claims and damages asserted by the plaintiff; and (4) to assert the affirmative defenses of

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settlement, payment, and accord and satisfaction. The day of the damages hearing, the Defendant requested a continuance due to the unavailability of a witness. The court denied the request due to the amount of time the Defendant had to coordinate with witnesses to assure their availability and request a continuance prior to the eve of trial. The damages hearing proceeded on May 9, 2011. Atlantic Lawn filed this appeal before the court ruled which divested the trial court of further jurisdiction. This appeal was filed in the Court of Common Pleas on and served on the trial court on May 10, 2011.

FACTUAL BACKGROUND

May 1, 2008 Cohen entered a written contractual agreement with Atlantic Lawn to deliver and install 9 pallets of St. Augustine grass and 15 yards of topsoil, as well as to treat the existing grass for weeds. The contract guaranteed the sod by Atlantic Lawn for 1 year from date of installation provided it receives adequate water, herbicides, pesticides, etc.

The work was performed May 6 and 7, 2008. The installed sod developed problems within the first several months. Atlantic Lawn made attempts to remedy the situation using a chemical program and having the yard treated for a cinch bug infestation, neither of which remedied the issue.

The Plaintiff requested judgment for the full contract amount with Atlantic Lawn including the topsoil, the insect treatment, and damages to the Plaintiff's outdoor lighting system. The Defendant failed to appear for trial stating he believed the Plaintiff had orally relieved him of all liability if he remedied the problems. The Plaintiff denied reaching such an agreement. The exceptions are addressed herein:

EXCEPTION ONE – The court reviewed Magistrates Court Rule 19 and found a new trial may be granted to all or any parties on all or part of the issues for which new trials previously have been granted in the courts of this state. The Defendant admitted liability in his answer and only disputed the alleged damages. Therefore, the Motion for a New Trial was granted only on the issue of damages.

EXCEPTION TWO – The Appellant's exception states that the Magistrate was prejudicial by never informing the Defendant of the specific cause of action resulting in the Defendant's inability to ascertain applicable damages or defenses. The Plaintiff was pro se and their claim was construed as negligence and breach of contract. The Defendant answered and did not raise the issue in the answer or at the original trial.

EXCEPTION THREE – The court reviewed Magistrates Court Rule 13(c) stating that requests for a jury trial must be in writing at least five (5) working days prior to the original date set for trial. The original date set for trial was February 9, 2011; therefore, the Defendant's request for a jury trial on April 27, 2011 was not granted. Additionally, the motion was denied to amend the answer because it would have been prejudicial to the Plaintiff to do so after judgment for the Plaintiff was already issued.

BTM

EXCEPTION FOUR – The court denied the Motion for Continuance because the Defendant had ample time to produce the witnesses and the request was made the morning of the hearing. Whether to grant/deny a continuance rests with the sound discretion of the trial judge.

EXCEPTION FIVE – The caption was correct which is reflected in the judgment entered by this court.

Respectfully Submitted,

James A. Turner, Magistrate

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Judge James Turner
Magistrate

July 1, 2011

Elinor Cohen
1658 Omni Blvd.
Mt. Pleasant, SC 29466

Ellis R. Lesemann, Esquire
200 Meeting Street, Ste. 301
Charleston, SC 29401

**RE: ELINOR COHEN vs. TRIPP CREECH-d/b/a ATLANTIC LAWN SERVICE, INC.
CASE NO: 2010-SC-87-2526**

Notice to all Parties:

Please find enclosed your copy of the **Magistrates Return** filed by the Honorable James Turner in regards to an Appeal filed by the **Defendant** on the case referenced above on **May 10, 2011** with the North Area Small Claims Court.

If I can be of any further assistance, feel free to contact this office.

Sincerely,

Val B. Alston
Summary Court Specialist

Enclosure: Copy of Return

cc: File

Daniel Bradley, Esquire
Post Office Box 2061
Mt. Pleasant, SC 29465

843.202-6650
Fax: 843.202-6652
Lonnie Hamilton, III Public Services
Building
4045 Bridge View Drive
Post Office Box 70235
North Charleston, SC 29415-0235

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ELINOR COHEN)

Plaintiff/Respondent,)

vs.)

TRIPP CREECH d/b/a ATLANTIC LAWN)
SERVICE, INC.)

Defendant/Appellant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

_____ - CP - _____

(Please Print)

Submitted By: Ellis R. Lesemann

Address: Parker Poe Adams & Bernstein LLP
200 Meeting St., Ste. 301
Charleston, SC 29401

SC Bar #: 15315

Telephone #: (843) 727-2662

Fax #: (843) 727-2680

Other:

E-mail: ellislesemann@parkerpoe.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
- Constructions (100)
 - Debt Collection (110)
 - Employment (120)
 - General (130)
 - Breach of Contract (140)
 - Other (199)

- Torts - Professional Malpractice**
- Dental Malpractice (200)
 - Legal Malpractice (210)
 - Medical Malpractice (220)
 - Previous Notice of Intent Case #
20 - CP - _____
 - Notice / File Med Mal (230)
 - Other (299)

- Torts - Personal Injury**
- Assault/Slander/Label (300)
 - Conversion (310)
 - Motor Vehicle Accident (320)
 - Premises Liability (330)
 - Products Liability (340)
 - Personal Injury (350)
 - Wrongful Death (360)
 - Other (399)

- Real Property**
- Claim & Delivery (400)
 - Condemnation (410)
 - Foreclosure (420)
 - Mechanic's Lien (430)
 - Partition (440)
 - Possession (450)
 - Building Code Violation (460)
 - Other (499)

- Inmate Petitions**
- PCR (500)
 - Mandamus (520)
 - Habeas Corpus (530)
 - Other (599)

- Judgments/Settlements**
- Death Settlement (700)
 - Foreign Judgment (710)
 - Magistrate's Judgment (720)
 - Minor Settlement (730)
 - Transcript Judgment (740)
 - Lis Pendens (750)
 - Transfer of Structured

- Administrative Law/Relief**
- Reinstate Driver's License (800)
 - Judicial Review (810)
 - Relief (820)
 - Permanent Injunction (830)
 - Forfeiture-Petition (840)
 - Forfeiture-Consent Order (850)
 - Other (899)

- Appeals**
- Arbitration (900)
 - Magistrate-Civil (910)
 - Magistrate-Criminal (920)
 - Municipal (930)
 - Probate Court (940)
 - SCDOT (950)
 - Worker's Comp (960)
 - Zoning Board (970)
 - Public Service Commission (990)
 - Employment Security Comm (991)
 - Other (999)

- Settlement Payment Rights**
- Application (760)
 - Other (799)

- Special/Complex/Other**
- Environmental (600)
 - Automobile Arb. (610)
 - Medical (620)
 - Other (699)
 - Pharmaceuticals (630)
 - Unfair Trade Practices (640)
 - Out-of State Depositions (650)
 - Motion to Quash Subpoena in Out-of-County Action (660)
 - Sexual Predator (510)

Submitting Party Signature: Ellis R. Lesemann

Date: May 10, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) NINTH JUDICIAL CIRCUIT

ELINOR COHEN,
Plaintiff/Respondent,

) Civil Action No. _____
)

vs.

) **NOTICE OF CIVIL APPEAL**
)

(TRIPP CREECH d/b/a ATLANTIC LAWN
SERVICE, INC.
Defendant/Appellant.
_____)

The Defendant Atlantic Lawn Service, Inc., improperly identified in the caption as Tripp Creech d/b/a Atlantic Lawn Service, Inc., hereby gives notice of appeal from judgments of the Magistrate's Court in Case No. 2010-SC-87-002526 to the Circuit Court for Charleston County, South Carolina. This Notice of Appeal is made subsequent to notice of judgments received on April 13, 2011 and May 9, 2011. The appellant's exceptions include:

1. The denial of Defendant's Motion for New Trial on the issue on liability due to the fact that Defendant demonstrated its own mistake, inadvertence, surprise, excusable neglect, and also showed misconduct and misrepresentations on the part of Plaintiff, which showings justified a new trial on liability. Specifically, Defendant and Plaintiff reached a settlement after the action was filed. Plaintiff promised to dismiss her lawsuit, but did not do so. Instead, after inducing Defendant to perform a settlement and therefore not appear before the Magistrate,

Plaintiff unilaterally appeared before the Magistrate nonetheless and improperly obtained a judgment against Defendant *in absentia*.

2. Under the circumstances, Defendant requested a new trial on the basis of liability and damages. The Magistrate refused to grant a new trial on liability. Although the Magistrate

granted a new trial on damages and withdrew the prior award of damages that was improperly obtained by Plaintiff, the Magistrate never informed Defendant of the specific cause of action upon which the Court's finding of liability was based. During the damages proceeding, Defendant requested such clarification from the Magistrate but did not receive it. As a result, Defendant was deprived of due process during the new trial on damages, as it is prejudicial for Defendant to be forced to undergo a damages proceeding without being able to ascertain the applicable measure of damages or defenses thereto.

3. Defendant also appeals the Magistrate's denial of its Motion to Amend, which requested a jury trial and sought to make necessary changes to Defendant's Answer relating to circumstances that arose *after* Defendant filed its initial response. The Magistrate should have granted a jury trial, as Plaintiff would not have suffered any prejudice and, furthermore, had unclean hands relating to her prior conduct in the proceeding. The denial of a jury trial is immediately appealable under South Carolina law.

4. Additionally, Defendant appeals the Magistrate's denial of Defendant's Motion for Continuance. Defendant showed good cause as to why a continuance should be granted as two of Defendant's three witnesses were not available on the date selected by the Court for the damages proceeding. As a result of the refusal of the continuance, Defendant suffered a further denial of due process.

5. Finally, Defendant asks that the caption in this case be formally amended so that ~~the proper defendant, Atlantic Lawn Service, Inc., is the sole defendant.~~ The individual defendant, Tripp Creech, is improperly included in the caption as there is no conceivable basis for individual liability in this action.

WHEREFORE, having shown the grounds of this appeal, Defendant requests that the Court remand this case to the Magistrate for a new trial absolute between the proper parties to be

tried before a jury consistent with Article I, Section 14 of the South Carolina Constitution and the South Carolina Magistrate's Court Rules.



Ellis R. Lesemann
Email: ellislesemann@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
Phone: 843-727-2650
Fax: 843-727-2680

Charleston, South Carolina

ATTORNEY FOR DEFENDANT

May 10, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May 2011, I did serve the foregoing
DEFENDANT'S NOTICE OF APPEAL upon the opposing party by U.S. Mail, postage
prepaid at the following address:

Daniel Bradley, Esq.
Daniel M. Bradley Law Firm
P.O. Box 2061
Mount Pleasant, SC 29465

Attorney for Plaintiff Elinor Cohen



PARKER POE ADAMS & BERNSTEIN, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE
DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code § 15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

SC872010002526
CIVIL CASE NUMBER

COUNTY OF CHARLESTON)

IN THE MAGISTRATE'S COURT

TRANSCRIPT OF JUDGMENT
FIND FOR PLAINTIFF

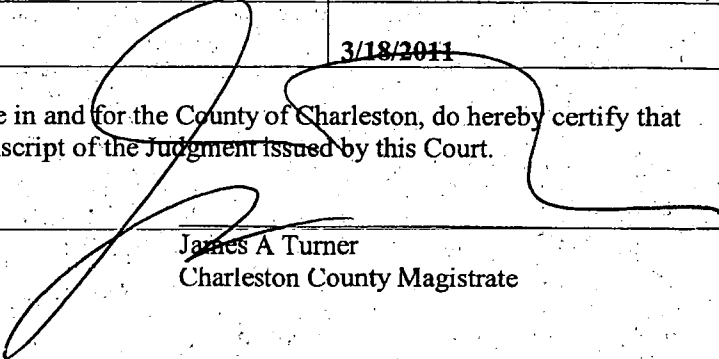
Names of Parties Against Whom Judgment is Granted	Attorneys
Atlantic Lawn Service, Inc. 4827 Seewee Road Awendaw, SC 29429-0000	

Names of Parties To Whom Judgment is Granted	Attorneys
Elinor Cohen 1658 Omni Blvd Mt. Pleasant, SC 29466-0000	

DAMAGES AND COSTS

Amount of Judgment:	\$7,137.97
Costs:	
Court Costs / Filing Fees	\$ 80.00
Attorney Fees	\$0.00
	\$0.00
Total Amount of Judgment:	\$7,217.97
Date of Judgment:	3/18/2011

I, James A Turner, Magistrate in and for the County of Charleston, do hereby certify that the foregoing is a correct transcript of the Judgment issued by this Court.



James A Turner
Charleston County Magistrate

March 21, 2011

RE: SC 872010002526

Atlantic Lawn Service Inc is making a Motion for a New Trial. Based on an agreement with the homeowner, Ms. Elinor Cohen, released us from any and all claims. But apparently that was not the case and we would like to be heard by the Judge so that we can state the facts of the case.

FILED IN CHARLESTON COUNTY
MAR 25 2011
SMALL CLAIMS COURT


PRESIDENT, ATLANTIC LAWN SERVICE INC
3/25/11

843-345-0847

000018



Ellis R. Lesemann
 Partner
 Telephone: 843.727.2682
 Direct Fax: 843.727.2680
 ellislesemann@parkerpoa.com

Charleston, SC
 Charlotte, NC
 Columbia, SC
 Myrtle Beach, SC
 Raleigh, NC
 Spartanburg, SC

May 09, 2011

VIA FACSIMILE

FILED IN CHARLESTON COUNTY

The Honorable James A. Turner
 Magistrate's Court
 P.O. Box 70235
 N. Charleston, SC 29415-0235

MAY 09 2011

Re: Elinor Cohen v. Atlantic Lawn Service, Inc.
 Case No. 2010-SC-87-002526

SMALL CLAIMS COURT

Dear Judge Turner:

I wanted to inform the Court in advance of the currently scheduled trial on damages that, in addition to Defendant's pending request for a jury trial, it is also necessary for Defendant to request a continuance due to the unavailability of a witness.

As the Court may recall, Defendant had two key witnesses in Court during the hearing on Defendant's Motion for New Trial. One of those witnesses is Ben Sumrell, owner of Sodbusters. Mr. Sumrell's company sold the sod in question, both the original installation in 2008 and the installation in 2011 as part of the settlement that was reached. His testimony is fundamental to the defense and the full understanding of the underlying facts. However, due to a family illness involving his parents, Mr. Sumrell is currently out-of-state and unavailable to appear today.

Therefore, pursuant to Rule 14 of the Magistrate Court Rules, Defendant respectfully requests a continuance to allow the presence of key witnesses. We will re-new this request at 1:00 p.m. today, but again wanted to provide prior notice of the need for a continuance.

With best regards, I am

Sincerely,

Ellis R. Lesemann

ERL:clv

cc: Ms. Elinor Cohen (by mail)
 Atlantic Lawn Service, Inc. (by mail)

PPAB 1822247v1

Parker Poe Adams & Bernstein LLP Attorneys and Counselors at Law 200 Meeting Street Suite 301 Charleston, SC 29401
 : 843.727.2650 f 843.727.2680 www.parkerpoe.com

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Charleston, SC
Charlotte, NC
Columbia, SC
Myrtle Beach, SC
Raleigh, NC

FILED IN CHARLESTON COUNTY

Facsimile Transmission Cover Sheet

MAY 09 2011

SMALL CLAIMS COURT

Category of Fax:

Confidential Secret

In case of difficulty in transmission of Facsimile, please call: 843.727.2650

To:	Company:	Fax No.	Recipient's Phone No.
The Honorable James A. Turner	Magistrate's Court	(843) 202-6652	(843) 202-6650

From: Ellis R. Lesemann Date: May 9, 2011

Client-Matter: PA001/90008

Re: Elinor Cohem v. Atlantic Lawn Service, Inc.; Case No.: 2010-SC-87-002526

Comments: Please see attached.

Total number of pages including cover: 2

Transmitted by _____

Time: _____

* *Notice* *

The information contained in this facsimile is privileged and/or confidential and is intended only for the use of the person to whom it is addressed. If the reader of this message is not the intended recipient (or such recipient's employee or agent), you are hereby notified not to read, distribute or copy the materials attached hereto without the prior written consent of the sender. If you have received this facsimile in error, please notify the sender by collect telephone call and return the original facsimile to us at the above address by U.S. postal service and we will reimburse you for the required postage.
Thank you.

Baron's Landscape & Design, LLC
1473 Kinloch Lane
Mount Pleasant, SC 29464

Date 2/8/2011
Invoice # 177

Bill To
E Cohen
Omni Blvd
Mt Pleasant, SC 29464

Ship To

P.O. #
Terms

Ship Date 2/8/2011
Due Date 2/8/2011
Other

Item	Description	Qty	Price	Amount
Turf	Remove any remaining grass, roots, or weeds from front yard. Regrade & add amendments to front yard. Sod front yard with Empire Zoysia.		5,800.00	5,800.00
Construction	Run new wire for lighting in front yard Replace 1 light set.		450.00	450.00
Guarantee	Turf guaranteed for a period of 1 year from date of install. Not including acts of nature or failure to fertilize, water & maintain material properly.		0.00	0.00

Baron's Landscape & Design, LLC
alexbdavis@gmail.com

843.696.4354

Subtotal \$6,250.00
Sales Tax (0.0%) \$0.00
Total \$6,250.00
Payments/Credits \$0.00
Balance Due \$6,250.00

000021



Ellis R. Lesemann
Partner
Telephone: 843.727.2662
Direct Fax: 843.727.2680
ellislesemann@parkerpoe.com

Charleston, SC
Charlotte, NC
Columbia, SC
Myrtle Beach, SC
Raleigh, NC
Spartanburg, SC

May 10, 2011

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

**Re: Elinor Cohen vs. Tripp Creech d/b/a Atlantic Lawn Service, Inc.
Charleston County Magistrate's Case No. 2010-SC-87-002526**

Dear Ms. Armstrong:

Please find enclosed the original and one copy of a Civil Cover Sheet, and Notice of Civil Appeal for the above-referenced matter. Also enclosed is a check in the amount of \$150.00 for filing fees.

Please file the original and return to me a file-stamped copy via courier. By copy of this letter, I am serving opposing counsel with same.

With best regards, I am

Sincerely,

Ellis R. Lesemann

ERL:clv
Enclosures

cc: The Honorable James A. Turner (via U.S. mail)
Daniel M. Bradley, Esq. (via U.S. mail)

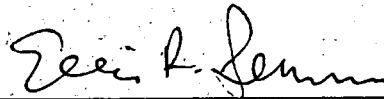
PPAB 1822954v1

000022

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April 2011, I did serve the foregoing **DEFENDANT'S MOTION TO AMEND ANSWER** upon the opposing party by U.S. Mail, postage prepaid at the following address:

**Elinor Cohen
1658 Omni Boulevard
Mount Pleasant, SC 29466**



**PARKER POE ADAMS & BERNSTEIN, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401**

2010-SC-87-2526

CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA)

COUNTY OF Charleston)

Cohen, Elinor)

PLAINTIFF)

1658 Omni Blvd)

STREET ADDRESS)

Mt. Pleasant, SC 29464)

CITY, STATE ZIP)

TELEPHONE)

VS.)

Atlantic Lawn Service Inc)

DEFENDANT(S))

4827 Seewee Rd)

STREET ADDRESS)

Awenda, SC 29429)

CITY, STATE ZIP)

TELEPHONE)

IN THE MAGISTRATE'S COURT

ANSWER

FILED IN CHARLESTON COUNTY

JAN 05 2011

SMALL CLAIMS COURT

On December I was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer, which is hereby filed with the Charleston County Magistrate Court, is as follows:

CHECK ONE:

A. I contest the jurisdiction of the court based on the following: (use additional pages if necessary)

B. I admit everything in the complaint and do not want a trial.

C. I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary) please see attached

D. I deny that I am responsible at all because: (use additional pages if necessary)

You must file this document with the Court within thirty days.

THE DEFENDANT STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE.

Dated: 12/27/2010

Atlantic Lawn Service Inc president: [Signature]
Signature of Defendant (or his attorney)

KEEP A COPY OF THIS ANSWER AND BRING IT TO COURT



Atlantic Lawn Service Inc.
4827 Seewee Road
Awendaw, SC 29429
(843)-884-8858

FILED IN CHARLESTON COUNTY

JAN 05 2011

SMALL CLAIMS COURT

To Whom It May Concern:

In response to court documents that I received....First of all, Atlantic Lawn Service, Inc. is a corporation. It is not Atlantic Lawn Service d/b/a Tripp Creech. I am the president of Atlantic Lawn Service Inc. and have been since it was incorporated back in 2005. In the signed contract with Ms. Elinor Cohen, it clearly states that the contract is between her and Atlantic Lawn Service Inc. Ms. Elinor Cohen should be filing a complaint against Atlantic Lawn Service Inc., not me personally.

Atlantic Lawn Service Inc. was contracted with Ms. Elinor Cohen to spray the existing lawn (\$27.00), install 15 yards of topsoil (\$600.00) and 9 pallets of sod (3,780.00), in her front yard. As stated in our contract, Atlantic Lawn Service Inc. guarantees all sod for 1 year from the date of installation provided it receives adequate water, herbicides, pesticides, etc. Because I maintained her lawn but not her chemicals, I saw the new turf continually getting worse. I suggested that the chemical guy I use spray the lawn because the company that Ms. Cohen was using was not fixing the problem with the lawn. Mr. Stuart Lane with Bugman Pest Control sprayed her lawn to try and revive it. He stated to both myself and Ms. Cohen that she had Cinch bugs and that he had never seen them that bad in one area. Ms. Cohen contacted me a few months ago about replacing the lawn. I contacted the sod company we purchase sod from and they agreed to replace the sod at no cost to either Atlantic Lawn Service Inc. or Ms. Cohen provided we could produce proof that the lawn had been maintained with the proper chemicals. Ms. Cohen provided us with the correct information and we are now in the process of re-installing new turf, which Ms. Cohen is well aware of. Having said all of that, in part of Ms. Cohens complaint, she is asking for the total contracted amount of \$4407.00. \$27.00 of that was to spray and kill the existing lawn. \$600.00 of that was topsoil which is still there. She is also asking me to pay \$175.00 to her that she paid to Bugman Pest Control. ????

In another part of Ms. Cohens complaint, she is asking for Atlantic Lawn Service Inc. to pay for her lighting system that she had installed. A few months ago, she sent me an invoice for \$3,330.97 for a lighting system for her yard. I spoke with her and she informed me that the gentleman that she had install it said a wire was cut and it destroyed her lighting system. I got the company's contact information and called them. I spoke with Coastal Turf and they said that they repaired a few breaks in the wiring, several of which we not even in the same area as we installed turf. He was to call Ms. Cohen and explain that a cut wire does not constitute an entire new lighting system. I spoke with

000025

Ms. Cohen several days later and she said that no one from Coastal Turf would return her phone call.

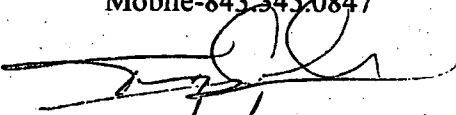
In the invoice that she sent me, Coastal Turf itemized what had been done. Line item #1, replace existing lights w/spotlights. \$959.42. Line item #2, replace existing lights w/area lights \$1,381.80. A broken wire does not constitute replacing existing lights with newer bigger lights. Line item #3, time to find/repair wire breaks. \$270.00. Line item #4/#5, 500 ft. of wire for new lights. \$229.75. A cut in a wire does not require 500 ft. of wire however the 18 new lights that she installed would. Line item #6, 600watt power transformer. \$490.00 A cut wire does not require a new power transformer however, 18 new lights that she installed would.

I as well as several other employees of Atlantic Lawn Service Inc. are certified by VISTA professional outdoor lighting systems. These lighting systems are low voltage, however, the power transformers do have a breaker on them that would trip if a wire had been cut or severed. I personally feel that Coastal Turf really either took advantage of a lady that had no idea about lighting or Ms. Cohen is trying to get someone else to pay for her new lighting system. In Ms. Cohens complaint she is asking for monies owed to her for a lighting repair, however, she is really asking for monies for a lighting install which Coastal Turf's invoice clearly states.

Ms. Cohen is falsely asking for Atlantic Lawn Service Inc. to pay for several items in this complaint. Atlantic Lawn Service Inc. will agree to install the new turf in the front lawn per contracted agreement but does not agree with paying for topsoil which is still in the lawn, the initial spraying of the lawn, the monies that she paid to Bugman Pest Control to revive lawn, or her new lighting install.

Thanks,

Atlantic Lawn Service Inc.
Tripp Creech-President
4827 Seewee Road
Awendaw, SC 29429
Mobile-843.345.0847



12/27/10

FILED IN CHARLESTON COUNTY

JAN 05 2011

SMALL CLAIMS COURT

000026

Atlantic Lawn Service
 P.O. Box 223
 Mt. Pleasant, SC 29465-0223

PROPOSAL

CUSTOMER COPY

Date
5/1/2008

Name / Address
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Description	Total
9 Pallets of Palmetto St. Augustine including delivery and installation	3,780.00
15 yards of topsoil including delivery and installation	600.00
Spraying Roundup & Scythe for Weeds to kill existing weeds, grass	27.00
1/2 of total contracted amount is due upon ordering the materials. The remaining portion will be upon completion of work to be performed.	
All sod is guaranteed by Atlantic Lawn Service Inc. for 1 year from the date of installation provided it receives adequate water, herbicides, pesticides, etc.	
Please review all terms, including those on the opposite page. If this agreement is acceptable, please sign on the opposite page and return this agreement to: Atlantic Lawn Service, P.O. Box 223, Mt. Pleasant, SC 29465-0223	
<p>Handwritten notes: (PD), # 4759, \$22.00, ALS, Jan 1/08, CK # 57-08, \$2,200.00, 10/1/4</p>	
Total	\$4,407.00

Tripp Creech 843-884-8858
 Fax: 843-884-2169

000027

ANNUAL LANDSCAPING AGREEMENT

This Agreement is hereby made and entered into this 1st day of May 2008, by and between Ms. Elinor Cohen and Atlantic Lawn Service, Inc. ("Landscaper").

These parties, for the considerations mentioned, hereby agree to the following:

1. **SCOPE OF WORK:** The Landscaper agrees to provide on a timely basis all of the material and labor required to perform the work proposed on the opposite page. Additionally, the Landscaper will provide all tools and equipment required for the completion of the work.
2. **PAYMENT:** The Owner hereby agrees to pay the Landscaper, for the aforesaid materials and labor, the "Total Amount" set forth on the opposite page. This amount is payable over the term of this Agreement in 2 equal installments that will be due per contract. Payments should be mailed to the following address: Atlantic Lawn Service, P.O. Box 223, Mount Pleasant, South Carolina, 29465-0223. Any payment(s) that are due but not made within thirty days of the due date will accrue interest at the monthly rate of 1.5%, compounded monthly. In the event that Landscaper is required to bring legal action in order to collect payment(s) under this Agreement, Owner agrees that Landscaper will be entitled to reimbursement of the expenses incurred to collect said payment(s) from Owner, including a reasonable attorney's fee.
3. **AMENDMENTS TO AGREEMENT:** All changes and deviations in the work ordered by the Owner or to any other provision of this Agreement must be made in writing. If changes to the work are ordered by Owner, the contract sum will be increased or decreased accordingly by the Landscaper, also in writing.
4. **CANCELLATION:** Owner or Landscaper may cancel this Agreement by written notice to the other party. Upon cancellation, Owner may receive a rebate or may have to make an additional payment to Landscaper depending on the actual number of service visits that occurred during the term of this Agreement prior to the cancellation.
5. **UNAVOIDABLE DELAY:** In the event the Landscaper is delayed in the prosecution of the work by acts of God, fire, flood or any other unavoidable casualties; or by labor strikes, late delivery of materials; or by neglect of the Owner, the time for completion of the work shall be extended for the same period as the delay occasioned by any of the aforementioned causes.
6. **INSURANCE:** The Landscaper agrees to obtain insurance to protect himself against claims for property damage, bodily injury or death due to its performance of this Agreement. The Owner affirms that the property where the work is performed is also insured.
7. **ASSIGNMENT:** Neither the Owner nor Landscaper shall have the right to assign any rights or interest occurring under this Agreement without the written consent of the other, nor shall the Landscaper assign any sums due, or to become due, to it under the provisions of this Agreement.
8. **APPLICABLE LAW:** This Agreement shall be interpreted under laws of the State of South Carolina.
9. **ENTIRE AGREEMENT:** This Agreement constitutes the complete understanding between the parties and supersedes any and all prior or contemporaneous representations, promises, inducements, understandings and agreements.

IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and year written above.

By: _____

Ms. Elinor Cohen

By:  ALS

LANDSCAPER, ATLANTIC LAWN SERVICE INC

000028



Ellis R. Lesemann
Partner
Telephone: 843.727.2662
Direct Fax: 843.727.2680
ellislesemann@parkerpoe.com

Charleston, SC
Charlotte, NC
Columbia, SC
Myrtle Beach, SC
Raleigh, NC
Spartanburg, SC

April 27, 2011

The Honorable James A. Turner
Magistrate's Court
P.O. Box 70235
N. Charleston, SC 29415-0235

Re: **Elinor Cohen v. Tripp Creech, d/b/a Atlantic Lawn Service, Inc.**
Case No.: **2010-SC-87-002526**

Dear Judge Turner:

Pursuant to Rules 13 and 14 of the South Carolina Magistrates Court Rules, and Article I, Section 14 of the South Carolina Constitution, Defendant Atlantic Lawn Service, Inc. requests to amend its answer as follows:

- (1) to request a jury trial;
- (2) to delete any partial admission of liability contained in the initial Answer;
- (3) to deny liability for the claims and damages asserted by Plaintiff; and
- (4) to assert the affirmative defenses of settlement, payment, and accord and satisfaction.

The bases for these amendments involve circumstances arising only after Defendant made its initial appearance in this action, such that leave to amend should be lenient in allowing these amendments. Enclosed is a motion formally requesting this relief.

With best regards, I am

Sincerely,

Ellis R. Lesemann

FILED IN CHARLESTON COUNTY

APR 29 2011

SMALL CLAIMS COURT

ERL:clv
Enclosure

cc: Ms. Elinor Cohen (by mail)
Atlantic Lawn Service, Inc. (by mail)

PPAB 1813080v1



Ellis R. Lesemann
Partner
Telephone: 843.727.2662
Direct Fax: 843.727.2680
ellislesemann@parkerpoe.com

Charleston, SC
Charlotte, NC
Columbia, SC
Myrtle Beach, SC
Raleigh, NC
Spartanburg, SC

April 15, 2011

VIA FACSIMILE

The Honorable James A. Turner
Magistrate's Court
P.O. Box 70235
N. Charleston, SC 294 5-0235

Re: Elinor Cohen v. Tripp Creech, d/b/a Atlantic Lawn Service, Inc.
Case No.: 2010-SC-87-002526

Dear Judge Turner:

The purpose of this letter is to provide the Court with my contact information so that I may receive any notifications with regard to the above-referenced matter, including notification at such time as the Court has made its ruling on the Defendant's Motion for New Trial.

If you have any questions or comments, please do not hesitate to contact me.

With best regards, I am

Sincerely,

* Ellis R. Lesemann

ERL:clv

cc: Elinor Cohen (ty mail)
Tripp Creech (ty mail)

FILED IN CHARLESTON COUNTY
APR 15 2011
SMALL CLAIMS COURT

Marked a copy of the M.H. letter for the 5/9 @ 1pm to Atty Lesemann

PPAB 1805996v1



200 Meeting Street (29401)
 Suite 301
 Post Office Box 180
 Charleston, SC 29402-0180
 Telephone: 843.727.2650
 Fax: 843.727.2680
 www.parkerpoe.com

Charleston, SC
 Charlotte, NC
 Columbia, SC
 Myrtle Beach, SC
 Raleigh, NC
 Spartanburg, SC

Facsimile Transmission Cover Sheet

Category of Fax:

Confidential Secret

In case of difficulty in transmission of Facsimile, please call: 843.727.2650

To:	Company:	Fax No	Recipient's Phone No.
The Honorable James A. Turner	Magistrate's Court	(843) 202-6652	(843) 202-6650

From: Ellis R. Lesemann Date: April 15, 2011
 Client-Matter: PA001/90008
 Re: Elinor Cohen v. Tripo Creech; Case No.: 2010-SC-87-002526
 Comments: Please see attached.

Total number of pages including cover: 2

Transmitted by:

Time:

****Notice****

The information contained in this facsimile is privileged and/or confidential and is intended only for the use of the person to whom it is addressed. If the reader of this message is not the intended recipient (or such recipient's employee or agent), you are hereby notified not to read, distribute or copy the materials attached hereto without the prior written consent of the sender. If you have received this facsimile in error, please notify the sender by collect telephone call and return the original facsimile to us at the above address by U.S. postal service and we will reimburse you for the required postage.
 Thank you.



Ellis R. Lesemann
Partner
Telephone: 843.727.2662
Direct Fax: 843 727 2680
ellislesemann@parkerpoe.com

Charleston, SC
Charlotte, NC
Columbia, SC
Myrtle Beach, SC
Raleigh, NC
Spartanburg, SC

April 15, 2011

FILED IN CHARLESTON COUNTY

APR 20 2011

VIA FACSIMILE

The Honorable James A. Turner
Magistrate's Court
P.O. Box 70235
N. Charleston, SC 29415-0235

SMALL CLAIMS COURT

Re: Elinor Cohen v. Tripp Creech, d/b/a Atlantic Lawn Service, Inc.
Case No.: 2010-SC-87-002526

Dear Judge Turner:

The purpose of this letter is to provide the Court with my contact information so that I may receive any notifications with regard to the above-referenced matter, including notification at such time as the Court has made its ruling on the Defendant's Motion for New Trial.

If you have any questions or comments, please do not hesitate to contact me.

With best regards, I am

Sincerely,

Ellis R. Lesemann

ERL:clv

cc: Elinor Cohen (by mail)
Tripp Creech (by mail)

PPAB 1805996v1

000033

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE MAGISTRATE'S COURT
THE HONORABLE JUDGE TURNER

ELINOR COHEN,)
)
Plaintiff,)

Civil Action No. 2010-SC-87-002526

vs.)

ATLANTIC LAWN SERVICE, INC.)
)
Defendant.)

**DEFENDANTS' MOTION TO AMEND
ANSWER**

COMES NOW, the Defendant Atlantic Lawn Service, Inc.,¹ files this Motion to Amend Answer, pursuant to Rules 13 and 14 of the South Carolina Rules of Magistrates Court and Article I, Section 14 of the South Carolina Constitution.

I. LEGAL STANDARD

The South Carolina Rules of Magistrates Court state that "the [C]ourt shall be lenient in the allowance of changes or amendments to complaints, answers, and counterclaims[.]" S.C. R. Magis. Ct. 14. Similarly, the South Carolina Rules of Civil Procedure provide that leave to amend shall be "freely" granted and that the "right of trial by jury . . . shall be preserved inviolate." S.C. R. Civ. P. 15(a) and 38(a).

II. AMENDMENTS REQUESTED

Defendant requests leave to make the following amendments to its answer:

- (1) to request a jury trial;
- (2) to delete any partial admission of liability contained in the initial Answer;
- (3) to deny liability for the claims and damages asserted by Plaintiff; and

¹ As noted at the prior hearing, this action has been improperly pursued against Tripp Creech in his individual capacity. The proper defendant is Atlantic Lawn Service, Inc.

FILED IN CHARLESTON COUNTY
APR 29 2011
SMALL CLAIMS COURT

- (4) to assert the affirmative defenses of settlement, payment, and accord and satisfaction.

There is no prejudice to Plaintiff as a result of these amendments, which are necessitated by circumstances arising after Defendant filed its initial response *pro se*, which circumstances are well known to Plaintiff. These amendments are made in good faith, without undue delay, and without any intention of delaying these proceedings in any way.

III. CONCLUSION

For the reasons set forth above, the Court should allow Defendant to amend its Answer as is consistent with the interests of justice and the applicable rules of procedure.



Ellis R. Leemann
Email: ellisleemann@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
Phone: 843-727-2650
Fax: 843-727-2680

Charleston, South Carolina

ATTORNEY FOR DEFENDANT

April 27, 2011



Judge James Turner
Magistrate

April 14, 2011

NORTH AREA SMALL CLAIMS
COURT

843.202-6650
Fax: 843.202-6652
Lonnie Hamilton, III Public Services
Building
4045 Bridge View Drive
Post Office Box 70235
North Charleston, SC 29415-0235

Elinor Cohen
1658 Omni Blvd.
Mt. Pleasant, SC 29466

Tripp Creech
d/b/a Atlantic Lawn Service, Inc.
4827 Seewee Road
Awendaw, SC 29429

CASE NO: 2010-SC-87-2526

RE: ELINOR COHEN vs. TRIPP CREECH d/b/a ATLANTIC LAWN SERVICE, INC.

Notice to all parties:

This letter is to advise that a new trial has been granted to determine the amount of Damages. This hearing will take place on:

MONDAY, MAY 9, 2011 AT 1:00 PM

If either party does not appear the case may be dismissed and a Judgment may be entered against the party who does not appear. A written out of court statement from a witness is not allowed. If you have witnesses, books or any evidence bearing on this claim, you should bring them with you at the time of the hearing. **Documents or photographs submitted as evidence will not be returned. Please make copies of all documentation that needs to be retained.** If you need to subpoena witnesses your request for subpoenas must be submitted to this Court, in writing prior to the hearing date and a fee of eight (\$8.00) Dollars will be charged for each subpoena. This fee must be remitted when the subpoena is requested, and your subpoenaed witness must have a Charleston County address. The Court does not provide a court reporter; you must make any appropriate arrangements.

Please check in with the Small Claims office prior to entering the courtroom and if you have any questions pertaining to this matter, please don't hesitate to contact this Court.

Sincerely,

Val B. Alston
Summary Court Specialist

JT/va
cc: file

000036



Judge James Turner
Magistrate

843.202-6650
Fax: 843.202-6652
Lonnie Hamilton, III Public Services
Building
4045 Bridge View Drive
Post Office Box 70235
North Charleston, SC 29415-0235

TO: BRITTANY
FROM: VAL
DATE: MAY 5, 2011

NUMBER OF PAGES INCLUDING COVER SHEET: 2 PAGES

PLEASE CONTACT VAL B. ALSTON AT (843) 202-6651 IF YOU HAVE A PROBLEM RECEIVING THIS FACSIMILE. HAVE A GOOD DAY!

The following page is a copy of the Motion for New Trial submitted by the Defendant on March 25, 2011.

Val
Val



CHARLESTON
COUNTY
SOUTH CAROLINA

843.202.6650
Fax: 843.202.6652
Lonnie Hamilton, III Public Services
Building
4045 Bridge View Drive
Post Office Box 70235
North Charleston, SC 29415-0235

Judge James Turner
Magistrate

NORTH AREA SMALL CLAIMS
COURT

January 13, 2011

Elinor Cohen
1658 Omni Blvd.
Mt. Pleasant, SC 29466

Tripp Creech
d/b/a Atlantic Lawn Service, Inc.
4827 Seewee Road
Awendaw, SC 29429

CASE NO: 2010-SC-87-2526
RE: ELINOR COHEN vs. TRIPP CREECH d/b/a ATLANTIC LAWN SERVICE, INC.

Notice to all parties:

Enclosed is the **Answer** filed by the Defendant in reference to the above captioned case. A **Bench Trial** has been scheduled in this court for:

WEDNESDAY, FEBRUARY 9, 2011 AT 3:30 PM

If any party does not appear the case may be dismissed and a Judgment may be entered against the party who does not appear. If this case is settled out of court, the Plaintiff must notify this Court in writing. **Please disregard any previous default date given for your appearance.** If you have witnesses, books or any evidence bearing on this claim, you should bring them with you at the time of the hearing. **Documents or photographs submitted as evidence will not be returned. Please make copies of all documentation that needs to be retained.** If you need to subpoena witnesses, your request for subpoenas must be submitted to this Court, in writing, as soon as possible prior to the hearing date and a fee of eight (\$8.00) Dollars will be charged for each subpoena. This fee must be remitted when the subpoena is requested. **A WRITTEN, NOTARIZED, OUT OF COURT STATEMENT FROM A WITNESS CANNOT BE USED AS EVIDENCE. A WITNESS MUST APPEAR IN PERSON IN COURT TO TESTIFY.**

Please check in with the Small Claims office prior to entering the courtroom and if you have any questions pertaining to this matter, please don't hesitate to contact this Court.

Sincerely,


Val B. Alston
Summary Court Specialist

cc: file
Enclosure: Defendant's Answer



**Judge James Turner
Magistrate**

843.202-6650
Fax: 843.202-6652
**Lonnie Hamilton, III Public Services
Building
4045 Bridge View Drive
Post Office Box 70235
North Charleston, SC 29415-0235**

March 25, 2011

Elinor Cohen
1658 Omni Blvd.
Mt. Pleasant SC 29466

Atlantic Lawn Service, Inc.
4827 Seewee Road
Awendaw SC 29429

**RE: ELINOR COHEN -VS- ATLANTIC LAWN SERVICE INC.
CASE NO: 2010-SC-87-2526**

Notice to all Parties:

This letter is to advise that a **Motion Hearing** has been scheduled regarding the above referenced case. This hearing has been scheduled for:

MONDAY, APRIL 11, 2011 AT 1:00 PM

Documents or photographs submitted as evidence will not be returned. Please make copies of all documentation that needs to be retained. Failure to appear may result in the motion being granted. Please check in at the Smalls Claims office prior to entering the court room. If I can be of any assistance, please do not hesitate to contact this office.

Sincerely,


Charlene Greer
Summary Court Clerk

cc: file

H

Court of Appeals of South Carolina.
Clotell BATEMAN, Respondent/Appellant,
v.
Helen V. ROUSE, Appellant/Respondent.

No. 3792.
Heard March 11, 2004.
Decided May 3, 2004.

Background: Widow brought action against purported wife, alleging conversion and wrongful withholding of certain funds and personal property due the widow of deceased husband. The Circuit Court, Charleston County, A. Victor Rawl, J., granted judgment for widow with respect to survivor's pension benefits, and worker's social security death benefit, but denied widow's claims for death benefit under pension and welfare fund, and survivor's insurance policy proceeds under welfare fund. Both parties appealed.

Holdings: The Court of Appeals, Hearn, C.J., held that:

- (1) purported wife was entitled to jury trial on widow's claim for conversion, and
- (2) purported wife did not waive her right to trial by jury on widow's conversion claim by failing to immediately appeal denial of her request for jury trial.

Reversed and remanded.

West Headnotes

[1] Jury 230 ⇨ 14.5(4)

230 Jury
230II Right to Trial by Jury
230k14.5 Multiple Parties or Issues
230k14.5(2) Joinder of Legal and Equitable Issues
230k14.5(4) k. Equitable defense, set-off, or counterclaim. Most Cited Cases

Jury 230 ⇨ 25(8)

230 Jury
230II Right to Trial by Jury
230k25 Demand for Jury
230k25(8) k. Form and sufficiency of demand. Most Cited Cases

Purported wife was entitled to jury trial on widow's claim for conversion, in action brought by widow against purported wife alleging conversion and wrongful withholding of certain funds and personal property due the widow of deceased husband; purported wife properly endorsed upon her answer a demand for jury trial, and purported wife's assertion of equitable defenses did not change nature of widow's conversion claim from action at law to one in equity, as equitable defenses were equitable issues for determination by trial court. Rules Civ.Proc., Rule 38(b).

[2] Jury 230 ⇨ 12(1)

230 Jury
230II Right to Trial by Jury
230k12 Nature of Cause of Action or Issue in General

230k12(1) k. In general. Most Cited Cases
State Constitution preserves the right of trial by jury only in those cases in which parties would have been entitled to it at the time of its adoption. Rules Civ.Proc., Rule 38(a).

[3] Jury 230 ⇨ 13(1)

230 Jury
230II Right to Trial by Jury
230k13 Legal or Equitable Actions or Issues
230k13(1) k. In general. Most Cited Cases
Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions.

[4] Jury 230 ⇨ 13(1)

230 Jury

230II Right to Trial by Jury

230k13 Legal or Equitable Actions or Issues

230k13(1) k. In general. Most Cited Cases

Determination of whether an action is legal or equitable, for purposes of determining whether defendant is entitled to trial by jury, is primarily determined by the allegations in the complaint.

[5] Jury 230 ⇨ 14.5(2.1)

230 Jury

230II Right to Trial by Jury

230k14.5 Multiple Parties or Issues

230k14.5(2) Joinder of Legal and Equitable Issues

230k14.5(2.1) k. In general. Most Cited Cases

Where legal and equitable issues or rights are raised in the same complaint, the legal issues are for determination by a jury and the equitable issues are for determination by the court.

[6] Jury 230 ⇨ 25(1)

230 Jury

230II Right to Trial by Jury

230k25 Demand for Jury

230k25(1) k. Right to demand jury trial in general. Most Cited Cases

Either party may demand a trial by jury of any issue triable by jury. Rules Civ.Proc., Rule 38(b).

[7] Conversion and Civil Theft 97C ⇨ 120

97C Conversion and Civil Theft

97CII Actions

97CII(A) Right of Action and Defenses

97Ck120 k. In general; nature and scope of remedy. Most Cited Cases

(Formerly 389k13 Trover and Conversion)

An action for damages for conversion is an action at law.

[8] Appeal and Error 30 ⇨ 201(1)

30 Appeal and Error

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(B) Objections and Motions, and Rulings Thereon

30k201 Mode and Conduct of Trial or Hearing

30k201(1) k. In general. Most Cited Cases

Purported wife did not waive her right to trial by jury on widow's conversion claim by failing to immediately appeal denial of her request for jury trial, in action brought by widow against purported wife alleging conversion and wrongful withholding of certain funds and personal property due the widow of deceased husband; purported wife's constitutional right to trial by jury on issue of conversion was lost through no fault of her own, as she made every effort to assert her right to jury trial and to immediately appeal issue, and, once case was tried non-jury; purported wife arguably was required to wait for written order prior to appealing. Const. Art. I, § 14; Code 1976, § 14-3-330(2); Appellate Court Rule 203(b)(1).

[9] Appeal and Error 30 ⇨ 91(7)

30 Appeal and Error

30III Decisions Reviewable

30III(E) Nature, Scope, and Effect of Decision

30k91 Affecting Substantial Rights

30k91(7) k. Relating to time, place, or conduct of trial. Most Cited Cases

Orders of the trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights, and are immediately appealable. Code 1976, § 14-3-330(2).

[10] Appeal and Error 30 ⇨ 201(1)

30 Appeal and Error

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(B) Objections and Motions, and Rulings Thereon

30k201 Mode and Conduct of Trial or

Hearing

30k201(1) k. In general. Most Cited Cases

Failure to immediately appeal an order affecting the mode of trial constitutes a waiver of the right to appeal these issues.

[11] Appeal and Error 30 91(7)

30 Appeal and Error

30III Decisions Reviewable

30III(E) Nature, Scope, and Effect of Decision

30k91 Affecting Substantial Rights

30k91(7) k. Relating to time, place, or conduct of trial. Most Cited Cases

Purpose of requiring an immediate appeal of the denial of the right to a jury trial is to preserve a party's constitutional rights that would otherwise be lost. Const. Art. 1, § 14; Code 1976, § 14-3-330(2).

****387 *670** Craig E. Burgess, of Atlanta, for Appellant-Respondent.

Deena Smith McRackan, of Charleston, for Respondent-Appellant.

HEARN, C.J.:

Clotell Bateman brought this action against Helen V. Rouse alleging conversion and wrongful withholding of certain funds and personal property due to the widow of Robert L. Bateman. The trial court issued an order awarding certain items of property to each party. Both parties appeal. We reverse and remand for a new trial.

FACTS

Clotell Bateman married Robert Bateman in 1944 when she was sixteen years old. The couple lived together continuously until 1968. On November 14, 1983, Robert Bateman purportedly obtained a divorce from Clotell. In 1988, Robert married Helen Rouse. Robert died on August 9, 1994. Upon his death, Helen received survivor's pension benefits, worker's death benefits under Social Security, survivor's insurance policy proceeds, and a flag

from the Veterans Administration.

In 1996, Clotell filed a motion to vacate the order of divorce, contending that the decree ****388** was void and that Robert's marriage to Helen was invalid. On July 7, 1997, the family court declared the 1983 divorce decree void *ab initio* due to Robert's misrepresentations and fraud upon the court in obtaining service by publication in his action for divorce. Therefore, the family court found the divorce decree and Robert's marriage to Helen were void, and declared Clotell to be Robert's wife at the date of his death. The family court ordered that "any funds due to the widow of [Robert] be paid over to [Clotell]." This order was not appealed.

Clotell brought this action on May 12, 2000 seeking to recover the following items that had been disbursed to Helen in her capacity as Robert's widow:

a) \$41,619.48 received from Robert's pension;

***671** b) a death benefit of \$10,000 under the Pension and Welfare Fund;

c) \$35,000 survivor's insurance policy proceeds under the Welfare Fund;

d) certain other bonuses and benefits;

e) a flag and certificate from the Veterans Administration; and

f) Robert's discharge papers.

Clotell alleged Helen committed conversion and wrongful withholding by obtaining these items that rightfully belong to Clotell, as Robert's widow under the 1997 family court order. Helen answered Clotell's complaint, specifically requesting a jury trial and asserting several equitable defenses. The case was set on the jury roster in Charleston County. Immediately before the trial began, the trial judge ruled on his own motion that Helen did not have a right to a jury trial because the claims and

defenses were equitable in nature. In denying Helen's request for a jury trial, the trial judge stated:

Now, bottom line is this. No matter which way you couch it, [Clotell's] action arises upon the basis of a family court decision unappealed from, finding that their marriage was never ended, because jurisdiction in the '82 divorce action was never conferred upon the family court in Charleston County. That's it.

The defenses as raised, even though it may be styled as conversion, the defenses as raised are all equitable. In an equity cause of action the trial court has to find matters of fact and matters of law in order to resolve equitable issues. Just because there's a question of fact in an equitable defense does not mean it's a trial by jury. It can't be. If that were the case, then you could never have a trial by court only, under equity, master in equity, or other issues, because in every single case there has to be a finding of fact, conclusion of law, an order in order to resolve the case

....

Now, it is equity, no matter which way you cut it. The reason it is equity is because the family court made a decision that gave rights to [Clotell], perhaps. Whether it *672 should be here or in probate court, I'm not going to address that issue except perhaps in a final order.

....

I find as a matter of law that this is in essence an equitable action pursuant to the code section—excuse me, not the code section, Rule 39(a) and (b). I do not find that [Helen] has a jury issue in this particular case. I find further that [Clotell] in her filing did not request a trial by jury, and therefore we're going to go forward today as a nonjury trial. Obviously both sides' rights are protected pursuant to my decision.

jury trial issue was not immediately appealable and denied Helen's motion to hold the matter in abeyance to allow for appeal. The case proceeded to trial that same day after a brief recess.

At the close of her case in chief, Clotell moved to amend the pleadings to include causes of action for recoupment and unjust enrichment. The judge took the matter under advisement until the conclusion of the case.

In the final order dated June 17, 2002, the trial judge found sufficient evidence to support the causes of action for conversion and wrongful withholding, but did not find sufficient evidence to support the claim for recoupment. In addition, the judge found that while Helen had been unjustly enriched at **389 Clotell's expense, Clotell's original claims for conversion and wrongful withholding afforded her sufficient relief. He therefore granted judgment against Helen in the amount of \$41,619.48 for the survivor's pension benefits and \$255 for the worker's death benefit under Social Security. He also awarded Clotell the flag from the Veterans Administration. Clotell's claims for return of the \$35,000 survivor's insurance proceeds under the Welfare Fund and the \$10,000 death benefits were denied on the grounds that Robert's designation of Helen as beneficiary was evidence of his intent that she receive the proceeds and benefits. Helen appeals, arguing the trial judge erred in (1) denying her right to a jury trial, (2) refusing to grant her motion for directed verdict, and (3) denying her equitable defenses. Clotell also appeals, asserting the trial judge erred by (1) failing to award her the \$35,000 insurance proceeds, and (2) excluding certain testimony.

*673 LAW/ANALYSIS

I. Denial of the request for a jury trial

[1] Helen argues the trial judge erred in ruling she did not have a right to a jury trial because Clotell's claim for conversion was an action at law. We agree.

The trial judge then advised counsel that the

[2][3][4][5][6] The South Carolina Constitution

preserves the right of trial by jury only in those cases in which parties would have been entitled to it at the time of the adoption of the Constitution. *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). See also Rule 38(a), SCRPC ("The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived."). "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Lester*, 327 S.C. at 267, 491 S.E.2d at 242 (citation omitted). Whether an action is legal or equitable is primarily determined by the allegations in the complaint. See *Nat'l Bank of South Carolina v. Daniels*, 283 S.C. 438, 440, 322 S.E.2d 689, 690 (Ct.App.1984). Where legal and equitable issues or rights are raised in the same complaint, the legal issues are for determination by a jury and the equitable issues are for determination by the court. *Floyd v. Floyd*, 306 S.C. 376, 379, 412 S.E.2d 397, 398-99 (1991). Furthermore, either party may demand a trial by jury of any issue triable by jury. See Rule 38(b), SCRPC.

[7] "An action for damages for conversion is an action at law." *Blackwell v. Blackwell*, 289 S.C. 470, 471, 346 S.E.2d 731, 732 (Ct.App.1986) (citation omitted). In this case, Clotell asserted causes of action for conversion, wrongful withholding, recoupment, and unjust enrichment. In addition to seeking equitable relief in the form of possession of items of personal property, Clotell asserted a legal cause of action for conversion and sought damages in the amount of the funds received by Helen as Robert's widow, and pre-and post-judgment interest. Furthermore, Helen properly endorsed upon her answer a demand for a jury trial. See Rule 38(b), SCRPC. Helen's *674 assertion of equitable defenses does not change the nature of Clotell's conversion claim from an action at law to one in equity. Rather, such equitable defenses are equi-

able issues for determination by the court. See *Hann v. Carolina Cas. Ins. Co.*, 252 S.C. 518, 526, 167 S.E.2d 420, 424 (1969). Accordingly, we hold the trial judge erred in denying Helen's request for a jury trial on Clotell's claim for conversion. See *Floyd*, 306 S.C. at 379, 412 S.E.2d at 398-99.

II. Failure to immediately appeal

[8] Clotell argues that Helen waived her right to a jury trial by not immediately appealing the trial judge's denial of her request for a jury trial. We disagree.

[9][10] Not only did the trial judge err in finding Helen did not have a right to a jury trial, but he also erred in finding the denial of a right to a jury trial is not immediately appealable. Orders of the trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights under **390section 14-3-330(2) of the South Carolina Code (1976 & Supp.2003), and are immediately appealable. See *Lester*, 327 S.C. at 266, 491 S.E.2d at 241. The failure to immediately appeal an order affecting the mode of trial constitutes a waiver of the right to appeal these issues. *Id.*

In *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997), an attorney brought an action to collect attorney's fees from a client. The client made at least two pre-trial motions for a jury trial. The circuit court rejected the client's motion for a jury trial and placed the case on the non-jury roster. The denial of the motion was not appealed from; rather, the client renewed his motion that the case be transferred to the jury roster at trial. The circuit court found the question moot because the client had not appealed from the previous order. *Id.* at 265, 491 S.E.2d at 241. The supreme court agreed, finding the client waived his right to a jury trial by not immediately appealing the order denying his motion for a jury trial.

Here, Helen had no opportunity to immediately appeal from the trial judge's sua sponte decision to hold a non-jury trial because the trial was held that same day after only a brief recess. When Helen re-

quested that the case be continued to *675 allow her to appeal, the trial judge refused her request, declaring that a right to a jury trial was not immediately appealable. Thus, while the judge's denial of Helen's request for a jury trial was immediately appealable, we find this case is not controlled by the waiver principles expressed in *Lester*.

Moreover, in other cases in which our supreme court has required an immediate appeal from the denial of a jury trial, the moving party had the opportunity to appeal when the trial court issued an order of reference to a master-in-equity. See, e.g., *Edwards v. Timmons*, 297 S.C. 314, 316, 377 S.E.2d 97, 97 (1988) (holding that the trial court's unappealed order of reference to a master-in-equity became the law of the case); *Creed v. Stokes*, 285 S.C. 542, 542-43, 331 S.E.2d 351, 351-52 (1985) (finding the appellant waived his objection to the order of reference by not immediately appealing the order). In this case, however, no order of reference was ever issued. Because the judge also denied Helen's motion to hold the case in abeyance and because the non-jury trial proceeded shortly after the judge made his erroneous finding that Helen had no right to a jury trial, Helen had no meaningful opportunity to immediately appeal. The judge's denial of Helen's motion to hold the trial in abeyance placed counsel in an untenable position, as Helen's counsel could not both proceed with the trial and immediately appeal the jury trial issue.

[11] Furthermore, the purpose of requiring an immediate appeal of the denial of the right to a jury trial is to preserve a party's constitutional rights that would otherwise be lost. See generally S.C. Const. Art. 1, § 14; S.C. Code Ann. § 14-3-330(2) (1976). In this case, Helen's constitutional right to a trial by jury on the conversion issue was lost through no fault of her own. Helen made every effort to assert her right to a jury trial and to immediately appeal the issue. However, due to the trial judge's errors, Helen's constitutional right to a trial by jury was lost. As a result, we find Helen did not waive her right to a jury trial because she was afforded no op-

portunity to immediately appeal the issue.

Clotell asserted in oral argument that Helen further waived her right to a jury trial by not appealing following the non-jury trial. Specifically, Clotell argues that Helen should have served a notice of appeal immediately after the non-jury trial *676 concluded rather than waiting until after the judge issued a written order resolving the case. We disagree.

As previously noted, the purpose of requiring an immediate appeal is to preserve a party's constitutional rights that would otherwise be lost. See generally S.C. Const. Art. 1, § 14; S.C. Code Ann. § 14-3-330(2) (1976). Here, Helen's constitutional right to a jury trial was lost despite her best efforts to secure a jury trial. Once the case was tried non-jury, Helen's right to a jury trial had already been forfeited. Under these circumstances, we do not believe the policy behind requiring an immediate appeal would have been furthered had Helen appealed at the conclusion of the non-jury trial. Moreover, once the case was tried non-jury, Helen arguably was required to wait for a written **391 order prior to appealing. See Rule 203(b)(1), SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment... When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment."); *Ford v. State Ethics Com'n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) ("The written order is the trial judge's final order and as such constitutes the final judgment of the court."). Thus, we find Helen preserved her right to a jury trial by timely serving her notice of appeal after the final judgment.

CONCLUSION

The trial judge erred in denying Helen's request for a jury trial and compounded that error when he ruled that the denial of a right to a jury trial was not immediately appealable. Because Helen had no op-

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358 S.C. 667, 596 S.E.2d 386
(Cite as: 358 S.C. 667, 596 S.E.2d 386)

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portunity to appeal from the trial judge's ruling prior to commencing the non-jury trial, we hold she did not waive her right to a jury trial. This case presents both legal and equitable issues, and as such, the legal issues are for determination by a jury and the equitable issues are for determination by the court. *Floyd*, 306 S.C. at 380, 412 S.E.2d at 399. If both the legal claims and the equitable claims are to be tried in a single proceeding, the legal issues are to be determined first, and the findings of the jury are binding on the court. *677 *Johnson v. South Carolina Nat'l Bank*, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987). Therefore, we reverse and remand for a new trial.

REVERSED AND REMANDED.

ANDERSON and BEATTY, JJ., concur.

S.C.App., 2004.
Bateman v. Rouse
358 S.C. 667, 596 S.E.2d 386

END OF DOCUMENT



CHARLESTON COUNTY SOUTH CAROLINA
NORTH AREA SMALL CLAIMS COURT

Judge James Turner
Magistrate

November 30, 2010

Elinor Cohen
1658 Omni Blvd.
Mt. Pleasant SC 29466

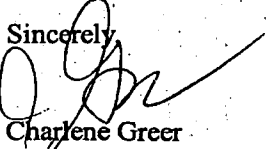
RE: **ELINOR COHEN -VS- TRIPP CREECH d/b/a SERVICE INC.**
CASE NO: **2010-SC-87-2526**

Dear Sir/Madam:

We have received your complaint along with your filing fee, Case Number and a Default Hearing Date. Please appear on the Date that the Defendant has answered and that a Bench Trial has been set. If you please notify this court in writing and it will not be necessary to appear.

If you have any questions, please refer to your case number.

Sincerely,


Charlene Greer
Summary Court Specialist

Enclosures: Receipt with Case Number and Default Hearing Date

PRINTED: 11/29/2010 15:50
POSTED: 11/29/2010

RECEIPT

RECEIPT NUMBER: (SC87) 2010-001780

SMALL CLAIMS
CASE NUMBER: 2010-SC-87-002526
CAPTION: COHEN, ELINOR
VERSUS: CREECH, TRIPP DBA ATLANTIC LAW
- NORTH AREA SMALLS CLAIMS

TRANSACTION TYPE: C
TUR

PAGE - 1 OF 1

A237184
AK237184

PAID BY: CHECK
RECEIVED OF: COHEN, ELINOR
MEMORANDUM: DEF. FOLIO 28, 2011 AT 10:00 AM. BEGINNING BALANCE

ACCOUNT
CCCC CHAS. CO COURT COST
PRSU SUMMRY COURT PROVISOR

DESCRIPTION: PRO PUBLIC
CHK MON ORD 10867
TOTAL SUM OF: 80.00
BEGINNING BALANCE: 80.00

AMOUNT
55.00
25.00

10-C-87-2526

Case No:

Filed:

Served:

Default:

Hearing:

2010-SC-87-002526

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

4045 BRIDGE VIEW DRIVE
POST OFFICE BOX 72035
N. CHARLESTON, SC 29405

COHEN, ELINOR

CREECH, TRIPP DBA ATLANTIC LAW

VS

PLAINTIFF

DEFENDANT

1658 OMNI BLVD

4827 SEEWEE ROAD

STREET ADDRESS

STREET ADDRESS

MT. PLEASANT SC 29466

AWENDAW SC 29429

CITY STATE ZIP

CITY STATE ZIP

NORTH AREA
SMALL CLAIMS COURT
SUMMONS

AGENT: -
N/A
N/A

DATE: 29TH DAY OF NOVEMBER, 2010

TO: CREECH, TRIPP DBA ATLANTIC LAW SERVICE, INC., DEFENDANT

YOU ARE SUMMONED AND REQUIRED TO ANSWER THE ALLEGATIONS OF THE ATTACHED COMPLAINT WITHIN THIRTY (30) DAYS FROM THE FIRST DAY AFTER RECEIPT OF THE SUMMONS. YOUR ANSWER MUST BE RECEIVED BY THE MAGISTRATE'S COURT LOCATED AT 4045 BRIDGE VIEW DRIVE, NORTH CHARLESTON, SC 29405.

IF YOU FAIL TO ANSWER WITHIN THE PRESCRIBED TIME, A JUDGMENT BY DEFAULT WILL BE RENDERED AGAINST YOU FOR THE AMOUNT OR OTHER REMEDY REQUESTED IN THE ATTACHED COMPLAINT, PLUS INTEREST AND COSTS. YOUR ANSWER MUST BE FILED IN WRITING TO THE SMALL CLAIMS COURT PRIOR TO THE EXPIRATION OF THIRTY (30) DAYS. A CLERK IS AVAILABLE TO ASSIST YOU AT THE SMALL CLAIMS COURT FROM 8:30 A.M. TO 4:30 P.M. MONDAY THROUGH FRIDAY.

THE COURT WILL SCHEDULE A HEARING ON THIS CLAIM AT THE TIME YOUR ANSWER IS FILED. IF YOU HAVE WITNESSES, BOOKS, RECEIPTS OR OTHER WRITINGS BEARING ON THIS CLAIM, YOU MUST BRING THEM WITH YOU AT THE TIME OF THE HEARING OR THEY WILL NOT BE CONSIDERED. IF YOU WISH TO HAVE WITNESSES CALLED TO COURT, SEE THE CLERK OF THE SMALL CLAIMS COURT FOR ASSISTANCE.

IF YOU HAVE A CLAIM AGAINST THE PLAINTIFF ARISING OUT OF THE SAME MATTER, YOU MUST FILE IT WITH THE COURT AT THE TIME YOU FILE YOUR ANSWER.

COURT COPY

000048

Case No: 10.S.C. 87-25-26

Filed: _____
Served: _____
Default: _____
Hearing: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

4045 BRIDGE VIEW DRIVE
PO BOX 70235
NORTH CHARLESTON, SC 29405

Elinor Cohen
Plaintiff
1658 Omni Blvd.
Street Address
Mt Pleasant, S.C. 29466
City State Zip
843-388-9047
Phone

ATLANTIC
TRIPP CREECH O/B/A LAWN SERVICE
Defendant INC.
4827 SEEWEE ROAD
Street Address
AWENAW, SC. 29429
City State Zip
843-345-0847
Phone
843-884-8858

COMPLAINT

I, the plaintiff in this civil action, make the following claim against the defendant:

- 1.) I believe that the defendant is a resident of Charleston County.
- 2.) Check a, b, or c to indicate type of suit and supply documents required.
 - a. () This is a suit on a note; Two (2) copies of note attached. Defendant has defaulted in payment of said note with balance of \$ _____ now due and payable.
 - b. () This is a suit on account; Two (2) copies of statement attached. Sign as affiant swearing to statement and have your signature notarized:

SWORN and subscribed before me this _____ day of _____, 20 _____

Attached to this complaint is a statement of account which I swear to be true and correct, with no part of the balance having been paid.

NOTARY PUBLIC, State of South Carolina
My Commission Expires: _____

Affiant's Signature (Plaintiff)

c. () OTHER. This is a claim based on the following facts: (Describe Complaint)
(attach supplement if necessary)

I contracted Mr Tripp Creech doing business as Atlantic Lawn Service, one to replace and install St. Augustine grass to my front lawn. This was done on May 6 and 7 2008. Mr Creech had Bugman Pest Control spray the lawn for fungus and chinch bugs on 9-19-08 for which I paid \$175.00 because new grass looked terrible and it was only 4 months after installation. Then in Feb 2009 he wanted to reseed the lawn with a chemical program. This didn't work either and I have called & called to inform him of a front lawn that is nothing but weeds. All this happened before the year guarantee

3.) I believe because of the above information, that I am entitled to, and request a judgment for \$ 7500.00 and/or other relief:

Plus Court cost of \$ 80.00 = \$ 7580.00

(List any costs resulting from this action (Example: court costs, legal fees, interest)

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE IS CORRECT AND TRUTHFUL.

11-23-10
Date

Elinor Cohen
Signature of Plaintiff or Attorney

C32-5270

000049

was even.

Also when he replaced the front lawn, he cut several wires which provided outside lawn lighting. This was repaired by Coastal Turf for \$ 3330.97.

This contract should have been honored when I reported defective sod few months after installation.

Cost of sod & installation	\$ 4407.00
Bugman Pest Control	175.00
Coastal Turf (Light Repair)	3330.97
	<hr/>
	\$ 7912.97

FILED IN CHARLESTON COUNTY
NOV 29 2010
SMALL CLAIMS COURT

Atlantic Lawn Service

P.O. Box 223

Mt. Pleasant, SC 29465-0223

PROPOSAL

CUSTOMER COPY

Date
5/1/2008

Name / Address
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Description	Total
9 Pallets of Palmetto St. Augustine including delivery and installation	3,780.00
15 yards of topsoil including delivery and installation	600.00
Spraying Roundup & Scythc for Weeds to kill existing weeds, grass	27.00
<p>1/2 of total contracted amount is due upon ordering the materials. The remaining portion will be upon completion of work to be performed.</p> <p>All sod is guaranteed by Atlantic Lawn Service Inc. for 1 year from the date of installation provided it receives adequate water, herbicides, pesticides, etc.</p> <p>Please review all terms, including those on the opposite page. If this agreement is acceptable, please sign on the opposite page and return this agreement to: Atlantic Lawn Service, P.O. Box 223, Mt. Pleasant, SC 29465-0223</p>	
<p>Total \$4,407.00</p>	

(D)
 # 4754
 # 2200
 ALS
 5/1/08
 ck # 5-10114
 # 2200.00

Tripp Creech 843-884-8858
Fax: 843-884-2169

ANNUAL LANDSCAPING AGREEMENT

This Agreement is hereby made and entered into this 1st day of May 2008, by and between Ms. Elinor Cohen and Atlantic Lawn Service, Inc. ("Landscape").

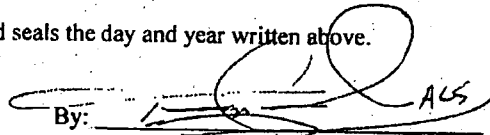
These parties, for the considerations mentioned, hereby agree to the following:

1. **SCOPE OF WORK:** The Landscaper agrees to provide on a timely basis all of the material and labor required to perform the work proposed on the opposite page. Additionally, the Landscaper will provide all tools and equipment required for the completion of the work.
2. **PAYMENT:** The Owner hereby agrees to pay the Landscaper, for the aforesaid materials and labor, the "Total Amount" set forth on the opposite page. This amount is payable over the term of this Agreement in 2 equal installments that will be due per contract. Payments should be mailed to the following address: Atlantic Lawn Service, P.O. Box 223, Mount Pleasant, South Carolina, 29465-0223. Any payment(s) that are due but not made within thirty days of the due date will accrue interest at the monthly rate of 1.5%, compounded monthly. In the event that Landscaper is required to bring legal action in order to collect payment(s) under this Agreement, Owner agrees that Landscaper will be entitled to reimbursement of the expenses incurred to collect said payment(s) from Owner, including a reasonable attorney's fee.
3. **AMENDMENTS TO AGREEMENT:** All changes and deviations in the work ordered by the Owner or to any other provision of this Agreement must be made in writing. If changes to the work are ordered by Owner, the contract sum will be increased or decreased accordingly by the Landscaper, also in writing.
4. **CANCELLATION:** Owner or Landscaper may cancel this Agreement by written notice to the other party. Upon cancellation, Owner may receive a rebate or may have to make an additional payment to Landscaper depending on the actual number of service visits that occurred during the term of this Agreement prior to the cancellation.
5. **UNAVOIDABLE DELAY:** In the event the Landscaper is delayed in the prosecution of the work by acts of God, fire, flood or any other unavoidable casualties; or by labor strikes, late delivery of materials; or by neglect of the Owner; the time for completion of the work shall be extended for the same period as the delay occasioned by any of the aforementioned causes.
6. **INSURANCE:** The Landscaper agrees to obtain insurance to protect himself against claims for property damage, bodily injury or death due to its performance of this Agreement. The Owner affirms that the property where the work is performed is also insured.
7. **ASSIGNMENT:** Neither the Owner nor Landscaper shall have the right to assign any rights or interest occurring under this Agreement without the written consent of the other, nor shall the Landscaper assign any sums due, or to become due, to it under the provisions of this Agreement.
8. **APPLICABLE LAW:** This Agreement shall be interpreted under laws of the State of South Carolina.
9. **ENTIRE AGREEMENT:** This Agreement constitutes the complete understanding between the parties and supersedes ~~any and all prior or contemporaneous representations, promises, inducements, understandings and agreements.~~

IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and year written above.

By: _____

Ms. Elinor Cohen

By:  _____

LANDSCAPER, ATLANTIC LAWN SERVICE INC



Atlantic Lawn Service Inc.
843-884-8858

Invoice

Date	Invoice #
2/16/2009	6328

Bill To
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Service Address
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Terms	Due Date	Account #
Net 15	3/3/2009	

Serviced	Description	Amount
2/17/2009	Mow, Edge and Blow <i>Ms. Cohen,</i> <i>I have put the front lawn on our chemical program for this spring & am going to try and mow the lawn before we replace it.</i> <i>Thanky,</i> <i>TRIP</i> <i>KEEA</i> 843-345-0847	85.00

PLEASE REMIT PAYMENT TO:	Total	\$85.00
Atlantic Lawn Service Inc. 4827 Seewee Road Awendaw, SC 29429		



Atlantic Lawn Service Inc.
843-884-8858

Invoice

Date	Invoice #
9/19/2008	6074

Bill To
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Service Address
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Terms	Due Date	Account #
Net 15	10/4/2008	

Serviced	Description	Amount
	Lawn feed + Fungus Suppress + chinch bug death	175.00
	Please remit payment to: Bugman Pest Control 8438 Yorkshire Lane N. Charleston, SC 29406	

PLEASE REMIT PAYMENT TO:	Total	\$175.00
Atlantic Lawn Service Inc. 4827 Seewee Road Awendaw, SC 29429		

OK # 10240
9-25-08

ELINOR COHEN
1658 Omni Blvd.
Mt. Pleasant, S. C. 29466
May 4, 2010

Atlantic Lawn Service Inc.
4827 Seewee Road
Awendaw, SC 29429

Mr. Creech,

After having front lawn treated for weeds, insects, and other things detrimental to grass, it is still full of weeds and is a mixture of St. Augustine and Bermuda grasses. I have waited a long time for this part of my yard to reflect resodding of St. Augustine grass and know that treating it further with chemicals as you suggested is a waste of time and money. Therefore I would like for us to meet and see about replacing the front lawn.

Also, I am enclosing a copy of the invoice which I paid to replace the wiring and transformer which was cut and ruined when you replaced the sod on the front lawn.

I am looking forward to hearing from you in order to discuss these issues.

Thank you,

Elinor Cohen

000055



Atlantic Lawn Service Inc.
4827 Seewee Road
Awendaw, SC 29429
(843)-884-8858

Ms. Cohen:

I spoke with the owner of the sod company that I used when installing your lawn and explained the situation. Although we installed your lawn over 2.5 years ago he agreed to warranty the sod provided I prove that it had been properly maintained with chemicals. (herbicides, pesticides, fungicides, etc.) Since I was maintaining your property at that time and knew that the only chemical going down was dog urine from the neighbors pet, I got him to agree to sell us 4 pallets of St. Augustine at COST, no delivery charge. Per our signed contract, all sod was guaranteed for 1 year from the date of installation provided it received adequate water, herbicides, pesticides, fungicides, etc, which we both know it did not. If you have or can come up with some type of paperwork stating that it was maintain with proper chemical applications, I will go back to my sod guy and give it to him.

I, Atlantic Lawn Service Inc., will agree to spray all existing grass/weeds, till/cultivate/level, install 4 pallets of St. Augustine, and power roll all newly installed turf for \$0.00. You will be responsible for paying for the turf.

Atlantic Lawn Service Inc. will not be responsible for any utilities other than those marked by Palmetto Utility Protection Services. This includes irrigation wires, lighting wires, irrigation pipes, dog fences, etc.

If this is acceptable to you, please sign and return. I will then prep the lawn. If you have any questions, please feel free to contact me on my mobile.

Please let me know if you would like a copy of the original contract that we signed. It explains all warranty information in it.

Thanks,

Tripp Crecch
Atlantic Lawn Service Inc.
4827 Seewee Road
Awendaw, SC 29429
Office-843.884.8858

12.10.10

000056

ELINOR COHEN
1658 Omni Blvd.
Mt. Pleasant, S. C. 29466
COctober 31,2010

Atlantic Lawn Service, Inc.
4827 Seewee Road
Awendaw, SC 29429

Dear Mr. Creech,

After receiving your letter on my front porch on October 5, 2010, I have been collecting professional information and looking up paper work such as contracts, etc. Per your signed agreement of May 1, 2008, the new sod was guaranteed for one year from the date of installation which was May 6 & 7, 2008. You were notified the first part of September 2008 that the sod was full of weeds and looked terrible. You were also notified that lighting wires were severed when the new sod was installed.

After four months of sod installation, it should have been replaced then and not wait until two years later. Contrary to your beliefs I have records of water irrigation and spraying of lawn. I feel you are completely responsible for all costs of replacing the lawn and repairing lighting. Please advise when you will be able to do this.

Thank you,

Elinor Cohen

000057

Coastal Turf

INVOICE

Elinor Cohen
1658 Omni Blvd
Mount Pleasant, SC 29464
388-9047 or 696-0602
elinorcohen@comcast.net

Date: 1/12/2010
Customer ID: n/a
Due Date: Immediately
Prepared by: Ross Settle

Name	#	Descr.	Installed price per	Extended Price
Replace existing lights w/ spotlights	11	2219	\$ 87.22	\$ 959.42
Replace existing lights w/ area lights	7	2500	197.40	1,381.80
Time to find/repair wire breaks	6	hours	45.00	270.00
Wire for new lights(10 gauge x 250')	1	10 gauge	133.00	133.00
Wire for new lights(12 gauge x 250')	1	12 gauge	96.75	96.75
600w transformer	1	600 watt	490.00	490.00
LIGHTING TOTALS				\$ 3,330.97

All fixtures and the transformer are manufactured by VISTA Professional Outdoor Lighting. You can check them out at www.vistapro.com

Manufacturer provides a 10 year warranty on all fixtures and a 3 year warranty on the socket inside the fixture.

Manufacturer provides a lifetime warranty on the transformer box and electrical inside.

Coastal Turf, LLC is not responsible for lighting damaged by "acts of God", animal damage, drought, vandalism, mechanical damage or other means not related to the condition of materials or workmanship when installed.

Please sign below to indicate the work is completed satisfactorily.

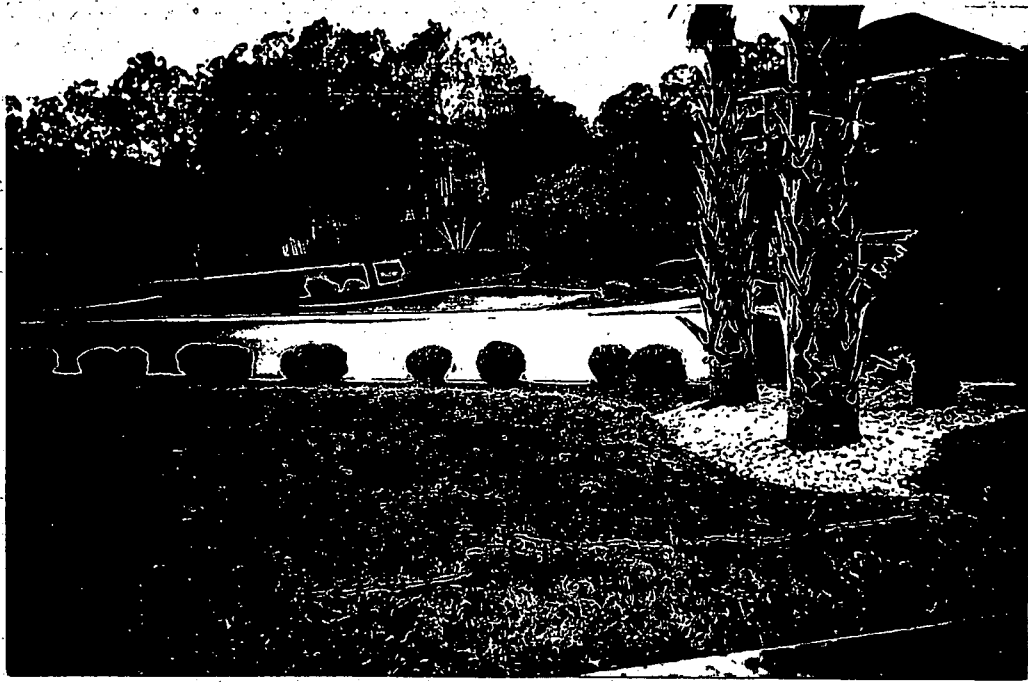
Customer Signature

Date

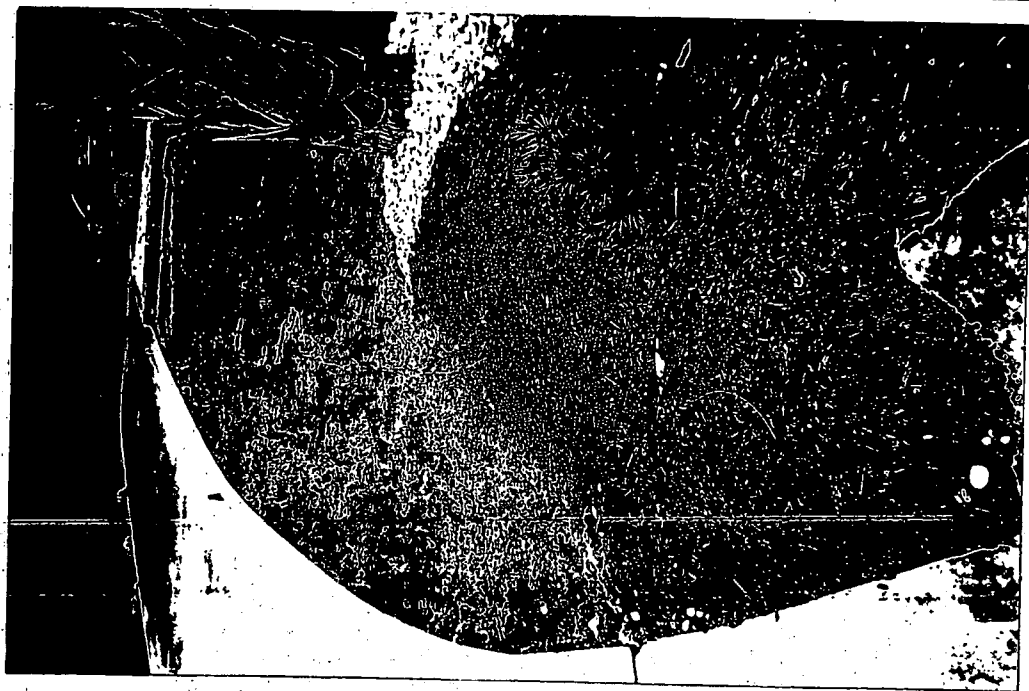
Printed Name

PO Box 2205, Summerville, SC 29484
Ph. 875-5000 Fax 875-9750
email: info@goturfinf.com
www.goturfinf.com

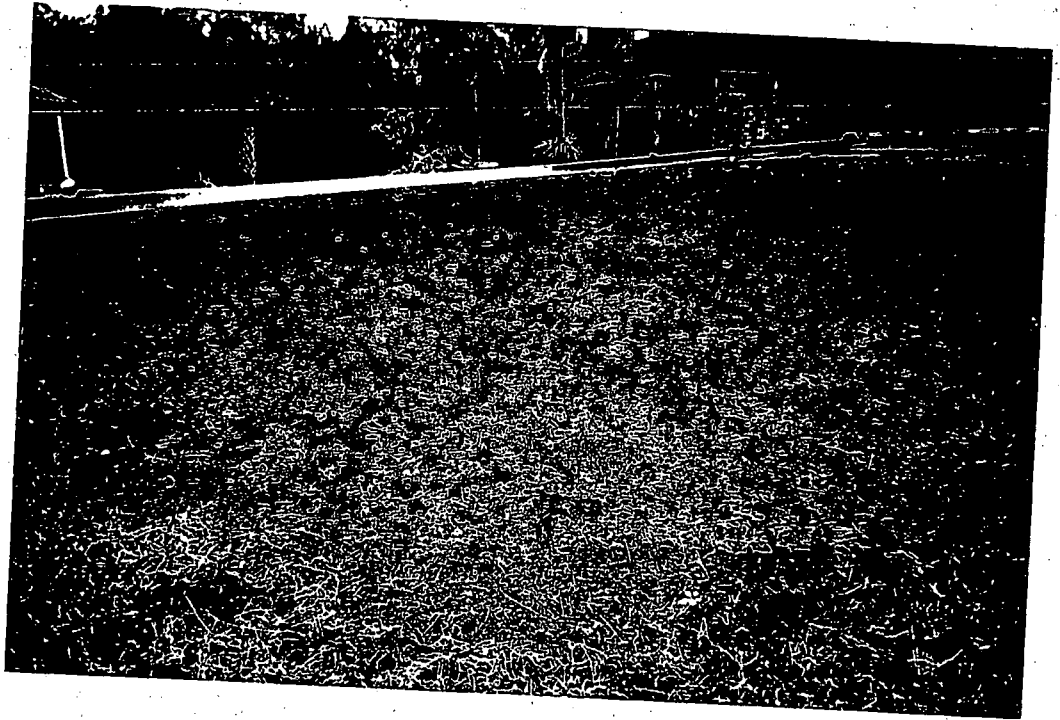
000058



000059



000060

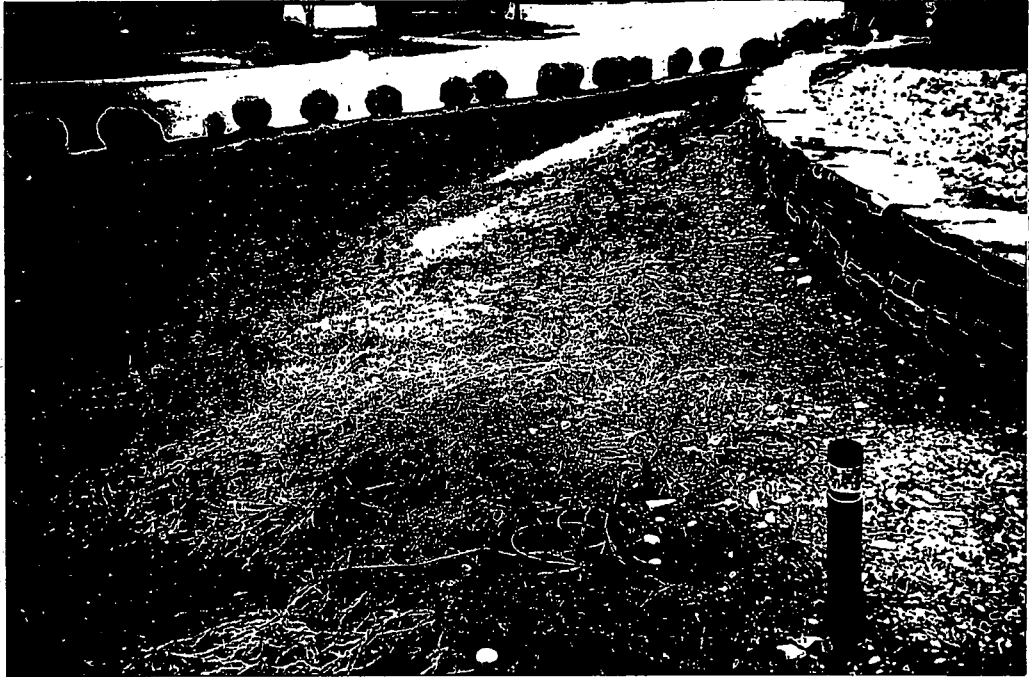


000061



000062







000065

25

Baron's Landscape & Design, LLC
1473 Kinloch Lane
Mount Pleasant, SC 29464

Date 2/8/2011
Invoice # 177

Bill To
E Cohen
Omni Blvd
Mt Pleasant, SC 29464

Ship To

P.O. #
Terms

Ship Date 2/8/2011
Due Date 2/8/2011
Other

Item	Description	Qty	Price	Amount
Turf	Remove any remaining grass, roots, or weeds from front yard. Regrade & add amendments to front yard. Sod front yard with Empire Zoysia.		5,800.00	5,800.00
Construction	Run new wire for lighting in front yard. Replace 1 light set.		450.00	450.00
Guarantee	Turf guaranteed for a period of 1 year from date of install. Not including acts of nature or failure to fertilize, water & maintain material property.		0.00	0.00

Subtotal	\$6,250.00
Sales Tax (0.0%)	\$0.00
Total	\$6,250.00
Payments/Credits	\$0.00
Balance Due	\$6,250.00

Baron's Landscape & Design, LLC
alexbdavis@gmail.com

843.696.4354

000066

Atlantic Lawn Service

P.O. Box 223
Mt. Pleasant, SC 29465-0223

Invoice

1

Date	Invoice #
4/23/2008	5763

Bill To
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Service Address
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Terms	Due Date	Account #
Net 15	5/8/2008	

Serviced	Description	Amount
4/10/2008	Mow, Edge and Blow	85.00
4/23/2008	Mow, Edge and Blow	85.00
<p>Ms. Cohen, Per our conversation yesterday, I will continue to service your property 2 times per month. If you need anything in the meantime, please don't hesitate to call me on my mobile @ 843-345-0847. Also, we spoke briefly about resodding the front lawn. Let me know if you would like for me quote new sod as there is NO grass there. Thanks, Tripp Creech Atlantic Lawn Service, Inc.</p>		

Please remit to above address.

Total

\$170.00

Questions concerning this Invoice?
843-884-8858

↓
Ch# 10103
5-1-08

000067

2

Atlantic Lawn Service
P.O. Box 223
Mt. Pleasant, SC 29465-0223

PROPOSAL

CUSTOMER COPY

Date
5/1/2008

Name / Address
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Description	Total
9 Pallets of Palmetto St. Augustine including delivery and installation	3,780.00
15 yards of topsoil including delivery and installation	600.00
Spraying Roundup & Scythe for Weeds to kill existing weeds, grass	27.00
1/2 of total contracted amount is due upon ordering the materials. The remaining portion will be upon completion of work to be performed.	
All sod is guaranteed by Atlantic Lawn Service Inc. for 1 year from the date of installation provided it receives adequate water, herbicides, pesticides, etc. 5-6 + 5-7 2008	
Please review all terms, including those on the opposite page. If this agreement is acceptable, please sign on the opposite page and return this agreement to: Atlantic Lawn Service, P.O. Box 223, Mt. Pleasant, SC 29465-0223	
<p>PK</p> <p>4759</p> <p>22.00</p> <p>PLS</p> <p>Tom</p> <p>CR # 57-10114</p> <p>#2200.00</p>	
Total	\$4,407.00

Tripp Creech 843-884-8858
Fax: 843-884-2169

000068

ANNUAL LANDSCAPING AGREEMENT

This Agreement is hereby made and entered into this 1st day of May 2008, by and between Ms. Elinor Cohen and Atlantic Lawn Service, Inc. ("Landscaper").

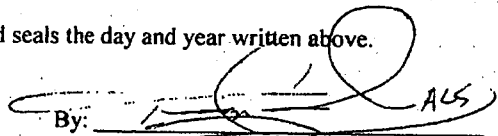
These parties, for the considerations mentioned, hereby agree to the following:

- 1. **SCOPE OF WORK:** The Landscaper agrees to provide on a timely basis all of the material and labor required to perform the work proposed on the opposite page. Additionally, the Landscaper will provide all tools and equipment required for the completion of the work.
- 2. **PAYMENT:** The Owner hereby agrees to pay the Landscaper, for the aforesaid materials and labor, the "Total Amount" set forth on the opposite page. This amount is payable over the term of this Agreement in 2 equal installments that will be due per contract. Payments should be mailed to the following address: Atlantic Lawn Service, P.O. Box 223, Mount Pleasant, South Carolina, 29465-0223. Any payment(s) that are due but not made within thirty days of the due date will accrue interest at the monthly rate of 1.5%, compounded monthly. In the event that Landscaper is required to bring legal action in order to collect payment(s) under this Agreement, Owner agrees that Landscaper will be entitled to reimbursement of the expenses incurred to collect said payment(s) from Owner, including a reasonable attorney's fee.
- 3. **AMENDMENTS TO AGREEMENT:** All changes and deviations in the work ordered by the Owner or to any other provision of this Agreement must be made in writing. If changes to the work are ordered by Owner, the contract sum will be increased or decreased accordingly by the Landscaper, also in writing.
- 4. **CANCELLATION:** Owner or Landscaper may cancel this Agreement by written notice to the other party. Upon cancellation, Owner may receive a rebate or may have to make an additional payment to Landscaper depending on the actual number of service visits that occurred during the term of this Agreement prior to the cancellation.
- 5. **UNAVOIDABLE DELAY:** In the event the Landscaper is delayed in the prosecution of the work by acts of God, fire, flood or any other unavoidable casualties; or by labor strikes, late delivery of materials; or by neglect of the Owner; the time for completion of the work shall be extended for the same period as the delay occasioned by any of the aforementioned causes.
- 6. **INSURANCE:** The Landscaper agrees to obtain insurance to protect himself against claims for property damage, bodily injury or death due to its performance of this Agreement. The Owner affirms that the property where the work is performed is also insured.
- 7. **ASSIGNMENT:** Neither the Owner nor Landscaper shall have the right to assign any rights or interest occurring under this Agreement without the written consent of the other, nor shall the Landscaper assign any sums due, or to become due, to it under the provisions of this Agreement.
- 8. **APPLICABLE LAW:** This Agreement shall be interpreted under laws of the State of South Carolina.
- 9. **ENTIRE AGREEMENT:** This Agreement constitutes the complete understanding between the parties and supersedes any and all prior or contemporaneous representations, promises, inducements, understandings and agreements.

IN WITNESS WHEREOF, the parties hcreto set their hands and seals the day and year written above.

By: _____

Ms. Elinor Cohen

By:  ALS

LANDSCAPER, ATLANTIC LAWN SERVICE INC

④



Atlantic Lawn Service Inc.
843-884-8858

Invoice

Date	Invoice #
9/19/2008	6074

Bill To
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Service Address
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Terms	Due Date	Account #
Net 15	10/4/2008	

Serviced	Description	Amount
	Lawn feed + Fungus Suppress + chinch bug death	175.00
	Please remit payment to: Bugman Pest Control 8438 Yorkshire Lane N. Charleston, SC 29406	

PLEASE REMIT PAYMENT TO:	Total	\$175.00
Atlantic Lawn Service Inc. 4827 Seewee Road Awendaw, SC 29429		

CR # 10240
9-25-08

000070

5



Atlantic Lawn Service Inc. 843-884-8858

Invoice

Date	Invoice #
2/16/2009	6328

Bill To
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Service Address
Ms. Elinor Cohen 1658 Omni Blvd. Mt. Pleasant, SC 29466

Terms	Due Date	Account #
Net 15	3/3/2009	

Serviced	Description	Amount
2/17/2009	Mow, Edge and Blow <i>Ms. Cohen,</i> <i>I have put the front lawn on</i> <i>our chemical program for this</i> <i>spring I am going to try and</i> <i>service the lawn before we replace</i> <i>it.</i> <i>Thanky,</i> <i>TRIPP</i> <i>(LEECA)</i> 843.345.0847	85.00

PLEASE REMIT PAYMENT TO:	Total	\$85.00
---------------------------------	--------------	---------

Atlantic Lawn Service Inc.
4827 Seewee Road
Awendaw, SC 29429

CRF 10353

7

10437 07/21/2009 \$500.00

MR. OR MRS. MANUEL COHEN 10 MAR 1911 40005 CORN A, SC 29401		10437
DATE <i>July 22 09</i>		
PAY TO THE ORDER OF <i>James L. Landon</i>	\$ 500.00	
<i>Five hundred dollars and no cents</i> DOLLARS 0 50		
FOR DEPOSIT ONLY		
<i>Mrs. Manuel Cohen</i>		
⑈10437⑈ ⑈051704780⑈ ⑈84700388⑈ ⑈		
10437 07/01/2009 \$500.00		

000073

8

FEDERAL RESERVE NOTE
 UNITED STATES OF AMERICA
 THREE THOUSAND DOLLARS
 PAID TO THE ORDER OF
W. H. H. Co.
 07/07
 3000 00

REF#1750030370 PAID 07/07

ISCC 303 01014 2304330012 111

9

ELMOR COVER
5001

on Aug 27, 19

Five hundred dollars and no/100ths

Edwards

PAID 08/27 500 00

REF#0453320650 PAID 08/27 500 00

000075

10

CR# 5067
12-21-09
\$ 2796.86

Coastal Turf

INVOICE

Elinor Cohen
1658 Omni Blvd
Mount Pleasant, SC 29464
388-9047 or 696-0602
elinorcohen@comcast.net

Date: 12/18/2009
Customer ID: n/a
Due Date: Immediately
Prepared by: Ross Settle

Name	#	Descr.	Installed price per	Extended Price
Replace existing lights w/ spotlights	3	2219	\$ 87.22	\$ 261.66
Replace existing lights w/ area lights	8	2500	197.40	1,579.20
Estimated time to find/repair wire breaks	6	hours	45.00	270.00
New Lights -area lights	2	2500	197.40	394.80
New Lights - well lights	8	5240	83.58	668.64
New Lights - spot lights	10	2219	87.22	872.20
Wire for new lights(10 gauge x 250')	1	10 gauge	133.00	133.00
Wire for new lights(12 gauge x 500')	2	12 gauge	96.75	193.50
600w transformer	1	600 watt	490.00	490.00
Irrigation estimate on time for repair	9.5	hours	45.00	427.50
Irrigation estimate on parts for repairs	1	parts	53.11	53.11
Lighting estimate on parts for repairs	11	bulbs for fixture	6.25	68.75
remove Mimosas	2		25.00	50.00
Mulch (black)- to replinish existin	21	yards	72.00	1,512.00
Move rock to needed areas	4	hours	45.00	180.00
Pruning (much to be done here)	26.5	hours	50.09	1,327.50
Pulling/spraying weeds	7	hours	45.00	315.00
LANDSCAPE TOTALS				\$ 8,796.86

All fixtures and the transformer are manufactured by VISTA Professional Outdoor Lighting. You can check them out at www.vistapro.com

Manufacturer provides a 10 year warranty on all fixtures and a 3 year warranty on the socket inside the fixture.

Manufacturer provides a lifetime warranty on the transformer box and electrical inside.

Coastal Turf, LLC is not responsible for lighting damaged by "acts of God", animal damage, drought, vandalism, mechanical damage or other means, not related to the condition of materials or workmanship when installed.

Coastal Turf requires a deposit of 50% of the value of the contract before work shall commence. Remaining balance is due immediately upon customer approval of satisfactory completion of contract.

To accept this proposal please sign below:

Customer Signature _____

Date _____

Printed Name _____

PO Box 2205, Summerville, SC 29484
Ph. 875-5000 Fax 875-9750
email: info@goturfinf.com
www.goturfinf.com

000076



Coastal Turf

INVOICE

Elinor Cohen
 1658 Omni Blvd
 Mount Pleasant, SC 29464
 388-9047 or 696-0602
 elinorcohen@comcast.net

Date: 1/12/2010
 Customer ID: n/a
 Due Date: Immediately
 Prepared by: Ross Settle

Name	#	Descr.	Installed price per	Extended Price
Replace existing lights w/ spotlights	11	2219	\$ 87.22	\$ 959.42
Replace existing lights w/ area lights	7	2500	197.40	1,381.80
Time to find/repair wire breaks	6	hours	45.00	270.00
Wire for new lights(10 gauge x 250')	1	10 gauge	133.00	133.00
Wire for new lights(12 gauge x 250')	1	12 gauge	96.75	96.75
600w transformer	1	600 watt	490.00	490.00
LIGHTING TOTALS				\$ 3,330.97

All fixtures and the transformer are manufactured by VISTA Professional Outdoor Lighting. You can check them out at www.vistapro.com

Manufacturer provides a 10 year warranty on all fixtures and a 3 year warranty on the socket inside the fixture.

Manufacturer provides a lifetime warranty on the transformer box and electrical inside.

Coastal Turf, LLC is not responsible for lighting damaged by "acts of God", animal damage, drought, vandalism, mechanical damage or other means not related to the condition of materials or workmanship when installed.

Please sign below to indicate the work is completed satisfactorily.

Customer Signature _____

Date _____

Printed Name _____

PO Box 2205, Summerville, SC 29484
 Ph. 875-5000 Fax 875-9750
 email: info@goturfinf.com
www.goturfinf.com

000077



P.O. 2205
 Summerville, SC 29484
 875.5000 summerville/charleston
 345.0366 mt. pleasant

SERVICE
 INVOICE
 NO. 24628
 61664-61664.0

(12)

REMARKS / RECOMMENDATIONS

Early Winter Lawn Application
 Today we applied your final lawn treatment of the year. This treatment helps your lawn during the dormant season. Potassium helps the root system. We also treated for weeds. If you have lots of leaves on the ground we used a granular product that will roll off of leaves onto the ground as the wind blows or as you rake. Please discontinue watering unless we enter a drought. Wet lawns encourage disease like Brown Patch. We appreciate your business in 2009 and look forward to an even better 2010. Your service automatically renews for 2010 so you do not have to contact us. Thank you and HAPPY HOLIDAYS!!!!

WEEDS IN LAWN SHOULD BEGIN TO DIE IN 2-3 WEEKS

DO NOT MOW OR WATER FOR _____ HRS. KEEP CHILDREN AND PETS OFF LAWN FOR 1 HRS.
 RECOMMENDED MOWING HEIGHT 2.5 SHARPEN MOWER BLADE WATER BEFORE MOWING
 LAWN HAS A DISEASE / INSECT PROBLEM WATER LAWN MORE OFTEN OTHER _____

Ms. Elinor Cohen
 1658 Omni Blvd
 Mount Pleasant, SC 29466

Jimmy Y.
 DATE 12-17-09
 TIME 10:15

Charge 0.00 Total 0.00

Service Address: 1658 Omni Blvd, Mount Pleasant

CUSTOMER COMMENTS / SUGGESTIONS

EASE SEE BACK FOR ADDITIONAL SERVICES AVAILABLE

Customer No. 61664

Charge

Please Remit 0.00
 Invoice No. 24628
 Account No. 61664.0

Ms. Elinor Cohen
 PAYMENT TO:

Coastal Turf • P.O. Box 2205 • Summerville, SC 29484



MENTION:

RECEIVED

PHONE:

ADDRESS:

PAYMENT DUE UPON RECEIPT - RETURN THIS PORTION WITH YOUR PAYMENT. R7



P.O. 2205
 Summerville, SC 29484
 875.5000 summerville/ charleston
 345.0366 mt pleasant

SERVICE
 INVOICE
 NO. 25055
 61664-61664.0

13

REMARKS / RECOMMENDATIONS

Early Spring Lawn Application
 Today we treated your lawn with a broadleaf weed control, pre-emergent and potassium. Pre-emergent is for weeds not yet germinated. It provides a barrier on the soil and kills many weeds before you see them. Potash is to develop the root system during the dormant season.

CALL TODAY TO SCHEDULE AN SPRING FERTILIZATION (S) FOR YOUR TREES AND SHRUBS

Treated lawn with pre-post emergent weed control. Allow 3-4 weeks for weeds to die.

DO NOT MOW OR WATER FOR ___ HRS. KEEP CHILDREN AND PETS OFF LAWN FOR ___ HRS.
 RECOMMENDED MOWING HEIGHT ___ SHARPEN MOWER BLADE WATER BEFORE MOWING
 LAWN HAS A DISEASE / INSECT PROBLEM WATER LAWN MORE OFTEN OTHER _____

Ms. Elinor Cohen
 1658 Omni Blvd
 Mount Pleasant, SC 29466

AL 0
 DATE 2/23/10
 TIME 12:05

Charge 162.00 Total 162.00

Service Address: 1658 Omni Blvd, Mount Pleasant

CUSTOMER COMMENTS / SUGGESTIONS

Customer No. 61664
 Charge 162.00
 Please Remit 162.00
 Invoice No. 25055
 Account No. 61664.0

EASE SEE BACK FOR ADDITIONAL SERVICES AVAILABLE

Ms. Elinor Cohen
 Payment to: Coastal Turf • P.O. Box 2205 • Summerville, SC 29484



PAYMENT METHOD
 CHECK ENCLOSED CASH/CHARGE CARD

EXPIRES 2/15/10

CHECK NO.
ACCOUNT NO.

YOUR NAME _____
 CREDIT CARD SECURITY # _____ CARDHOLDER'S SIGNATURE _____

PAYMENT DUE UPON RECEIPT - RETURN THIS PORTION WITH YOUR PAYMENT R1



P.O. Box 2205
 Summerville, SC 29484
 875.5000 Summerville / Charleston
 345.0366 Mt. Pleasant

SERVICE
 INVOICE
 NO. 25968
 61664-61664.0

14

REMARKS / RECOMMENDATIONS

Spring Lawn Application
 Today's treatment helps control existing weeds and minimize germination of ones that have not come up yet. This time of year your lawn is transitioning from the dormant to growing season. Lawns generally look their worst during this time so please be patient. We highly suggest you scalp your lawn (lower than normal) on your first mowing of the year. Bag your clippings to remove old dormant vegetation. This will allow sunlight in to increase soil temperature and green lawn up sooner.
 CALL TODAY TO SCHEDULE A CORE AERATION (\$) IF YOU HAVE NOT ALREADY DONE SO. AERATION WILL RELIEVE SOIL COMPACTION AND STIMULATE NEW GROWTH.

Treated lawn with pre-post emergent weed control. Notice visible

DO NOT MOW OR WATER FOR _____ HRS. KEEP CHILDREN AND PETS OFF LAWN FOR _____ HRS.
 RECOMMENDED MOWING HEIGHT _____ SHARPEN MOWER BLADE WATER BEFORE MOWING
 LAWN HAS A DISEASE / INSECT PROBLEM WATER LAWN MORE OFTEN OTHER _____

front lawn (L2)

Thank You!
 \$0
 DATE 3/25/10
 TIME 12 -

Ms. Elinor Cohen
 1658 Omni Blvd
 Mount Pleasant, SC 29466

Charge 162.00 Total 162.00

Service Address: 1658 Omni Blvd, Mount Pleasant

CUSTOMER COMMENTS / SUGGESTIONS

PLEASE SEE BACK FOR ADDITIONAL SERVICES AVAILABLE

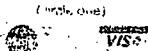
Customer No. 61664
 Charge 162.00
 Prev. Bal. 476.00
 Please Remit 638.00
 Invoice No. 25968
 Account No. 61664.0
 Balance as of 03/23/2010

*0061664.0

Ms Elinor Cohen
 SEND PAYMENT TO:
 Coastal Turf • P.O. Box 2205 • Summerville, SC 29484

PAYMENT METHOD

CHECK ENCLOSED PLEASE CHARGE MY



CHECK NO.

COUNT # _____ EXP. DATE _____

AMOUNT PAID

SECURITY # _____ CARDHOLDER SIGNATURE _____

PAYMENT DUE UPON RECEIPT - RETURN THIS PORTION WITH YOUR PAYMENT.

15

ELINOR COHEN
1658 Omni Blvd.
Mt. Pleasant, S. C. 29466
May 4, 2010

Atlantic Lawn Service Inc.
4827 Seewee Road
Awendaw, SC 29429

Mr. Creech,

After having front lawn treated for weeds, insects, and other things detrimental to grass, it is still full of weeds and is a mixture of St. Augustine and Bermuda grasses. I have waited a long time for this part of my yard to reflect resodding of St. Augustine grass and know that treating it further with chemicals as you suggested is a waste of time and money. Therefore I would like for us to meet and see about replacing the front lawn.

Also, I am enclosing a copy of the invoice which I paid to replace the wiring and transformer which was cut and ruined when you replaced the sod on the front lawn.

I am looking forward to hearing from you in order to discuss these issues.

Thank you,

Elinor Cohen

000081

ELINOR COHEN
1658 Omni Blvd.
Mt. Pleasant, S. C. 29466
June 18, 2010

Atlantic Lawn Service, Inc.
4827 Seewee Road
Awendaw, SC 29429

Dear Mr. Creech,

May 4, 2010, I advised you concerning the grass you sodded on my front lawn. I patiently waited for you to try to revive the lawn with chemicals before replacing it. I notified you that the chemicals did not cure the problem and I am ready for you to replace this portion of my yard.

I have attempted to call you several times but you have not answered nor have you called me back as suggested in my messages left. Please get in touch with me by June 30, 2010 to avoid my taking legal action.

Thank You,

Elinor Cohen

Natural Tendencies, LLC
P.O. Box 30246
Charleston, SC 29417

17



Bill To

Ms Elinor Cohen
1658 Omni Blvd
Mt. Pleasant, SC 29466

843-847-1186

www.naturaltendencies.net

Date: 8/3/2010
Invoice #: 2302

INVOICE

Due Date: 8/20/2010

Quantity	Item Code	Description	Price Each	Amount
	Landscape Mainten...	Monthly Landscape/Lawn Maintenance - July	540.00	540.00
	Irrigation/Pump M...	Irrigation/Pump Maintenance - Irrigation Rain Sensor	175.00	175.00
Thanks so much for your business!			Total	\$715.00

We will add finance charges to invoices 30 days past due.

CR# 10782
8-8-10

000083

Natural Tendencies, LLC
 P.O. Box 30246
 Charleston, SC 29417

18



Bill To

Ms. Elinor Cohen
 1658 Omni Blvd
 Mt. Pleasant, SC 29466

843-847-1186

www.naturaltendencies.net

Date Invoice #

9/3/2010

2352

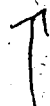
INVOICE

Due Date

9/20/2010

Quantity	Item Code	Description	Price Each	Amount
	Landscape Mainten...	Monthly Landscape/Lawn Maintenance August	510.00	510.00
Thanks so much for your business!			Total	\$540.00

CP# 105125
 9-13-10



We will add finance charges to invoices 30 days past due.

000084

19

Natural Tendencies, LLC
P.O. Box 30246
Charleston, SC 29417



Bill To

Ms. Elinor Cohen
1658 Omni Blvd
Mt. Pleasant, SC 29466

843-847-1186
www.naturaltendencies.net

Date: 10/4/2010
Invoice #: 2384

INVOICE

Due Date: 10/20/2010

Quantity	Item Code	Description	Price Each	Amount
	Landscape Mainten...	Monthly Landscape/Lawn Maintenance - September	540.00	540.00
Thanks so much for your business!			Total	\$540.00

We will add finance charges to invoices 30 days past due.

OK 10831
10-6-10

000085

Natural Tendencies, LLC
P.O. Box 30246
Charleston, SC 29417

20



Bill To

Ms. Elinor Cohen
1658 Omni Blvd
Mt. Pleasant, SC 29466

843-847-1186

www.naturaltendencies.net

Date: 11/4/2010
Invoice #: 2447

INVOICE

Due Date: 11/20/2010

Quantity	Item Code	Description	Price Each	Amount
	Landscape Mainten...	Monthly Landscape/Lawn Maintenance - October - FINAL INVOICE	540.00	540.00
Thanks so much for your business!			Total	\$540.00

We will add finance charges to invoices 30 days past due.

↓
CR # 10860

000086

8-5-10 4:45 PM cell
 8-10-10 8:40 PM home
 8-13-10 4:40 PM cell
 8-13-10 4:40 PM home

Called 6-14-10 8:53 PM
 both numbers left
 message

9-22-10 5:20 PM cell
 9-22-10 5:30 PM home
 9-23-10 6:48 PM home
 9-23-10 6:49 PM cell
 9-27-10 9:26 AM cell
 9-27-10 9:27 AM home
 9-27-10 7:32 PM cell

Called 11-15-10 7:45 PM
 by 11-20-10
 legal action
 Called me back Will call
 me no later than Wed
 lunch time 11-17-10

Will put info under
 front mat tomorrow
 morning
 9-28-10 No info under mat

11-21-10
 7:35 PM
 haven't heard from
 him as promised
 left him message
 again.

9-28-10 2:25 Cell left message
 9-29-10 11:21 AM Cell left message
 9-29-10 11:23 AM home left message
 10-1-10 8:34 AM cell left message
 10-1-10 8:36 AM home left message
 10-3-10 8:44 PM Cell left message
 10-3-10 8:46 PM home left message
 10-4-10 8:40 PM Cell left message
 10-4-10 8:43 PM home left message
 10-5-10 Left letter on front porch
 after 10 AM. I left at 10 AM



**Atlantic Lawn Service Inc.
4827 Seewee Road
Awendaw, SC 29429
(843)-884-8858**

Ms. Cohen:

I spoke with the owner of the sod company that I used when installing your lawn and explained the situation. Although we installed your lawn over 2.5 years ago he agreed to warranty the sod provided I prove that it had been properly maintained with chemicals. (herbicides, pesticides, fungicides, etc.) Since I was maintaining your property at that time and knew that the only chemical going down was dog urine from the neighbors pet, I got him to agree to sell us 4 pallets of St. Augustine at COST, no delivery charge. Per our signed contract, all sod was guaranteed for 1 year from the date of installation provided it received adequate water, herbicides, pesticides, fungicides, etc, which we both know it did not. If you have or can come up with some type of paperwork stating that it was maintain with proper chemical applications, I will go back to my sod guy and give it to him.

I, Atlantic Lawn Service Inc., will agree to spray all existing grass/weeds, till/cultivate/level, install 4 pallets of St. Augustine, and power roll all newly installed turf for \$0.00. You will be responsible for paying for the turf.

Atlantic Lawn Service Inc. will not be responsible for any utilities other than those marked by Palmetto Utility Protection Services. This includes irrigation wires, lighting wires, irrigation pipes, dog fences, etc.

If this is acceptable to you, please sign and return. I will then prep the lawn. If you have any questions, please feel free to contact me on my mobile.

Please let me know if you would like a copy of the original contract that we signed. It explains all warranty information in it.

Thanks,

Tripp Creech
Atlantic Lawn Service Inc.
4827 Seewee Road
Awendaw, SC 29429
Office-843.884.8858

Rec'd 10-5-10

ELINOR COHEN
1658 Omni Blvd.
Mt. Pleasant, S. C. 29466
October 31, 2010

Atlantic Lawn Service, Inc.
4827 Seewee Road
Awendaw, SC 29429

Dear Mr. Creech,

After receiving your letter on my front porch on October 5, 2010, I have been collecting professional information and looking up paper work such as contracts, etc. Per your signed agreement of May 1, 2008, the new sod was guaranteed for one year from the date of installation which was May 6 & 7, 2008. You were notified the first part of September 2008 that the sod was full of weeds and looked terrible. You were also notified that lighting wires were severed when the new sod was installed.

After four months of sod installation, it should have been replaced then and not wait until two years later. Contrary to your beliefs I have records of water irrigation and spraying of lawn. I feel you are completely responsible for all costs of replacing the lawn and repairing lighting. Please advise when you will be able to do this.

Thank you,

Elinor Cohen

24

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>T. Creech</i> C. Date of Delivery <i>11/2/10</i></p>
<p>1. Article Addressed to:</p> <p><i>Mr. Tripp Creech Atlantic Lawn Service 4827 Seewee Rd. Awendaw, S.C. 29429</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service label) <i>7007 1490 0004 1750 4441</i></p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7007 1490 0004 1750 4441

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 10.00
Certified Fee	12.00
Return Receipt Fee (Endorsement Required)	27.00
Restricted Delivery Fee (Endorsement Required)	20.00
Total Postage & Fees	\$ 79.00

Postmark Here
 ASANT, SC
 NOV - 1 2010
 USPS 11111

Sent to
Mr. Tripp Creech Atlantic Lawn Ser.
 Street, Apt. No., or PO Box No. *4827 Seewee Rd.*
 City, State, ZIP+4 *Awendaw SC 29429*

PS Form 3800, August 2005 See Reverse for Instructions

000090

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
)	
ELINOR COHEN,)	Case No.: 2011-CP-10-3367
)	
Plaintiff,)	
)	
v.)	
)	AFFIDAVIT OF WILLIAM H.
ATLANTIC LAWN SERVICE, INC.,)	CREECH, III
)	
Defendant.)	

FILED
 2011 NOV 22 PM 2:15
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY

COMES NOW, the affiant, William H. Creech, III, being duly sworn, and makes the following affidavit under oath based on his own personal knowledge:

1. My name is William H Creech, III. I am a resident of Awendaw, South Carolina and am the President of Atlantic Lawn Service, Inc., the defendant in this case. I have been engaged in the landscaping business for twelve years and have installed sod in several hundred different properties, including sports complexes, parks, commercial centers, and residences.

2. In 2008, I was hired by Plaintiff to install St. Augustine sod in the front yard of her house located in Mount Pleasant, South Carolina. The sod was backed by a one-year warranty, **provided that** Plaintiff provided adequate water and chemical treatments to maintain the sod. At the time the sod was installed, Plaintiff informed me that she already had a company that would treat the yard for her and did not need for me to make these arrangements.

3. Although I did not know this at the time, in 2010, Plaintiff did not maintain the yard with proper chemical treatments. As a result, the sod became infested

with cinch bugs in the late summer of 2010. Cinch bugs are commonly known to be a scourge of St. Augustine sod. If St. Augustine sod is not properly treated, cinch bugs can cause severe damage to a yard before the homeowner is even aware that there is a problem.

4. Although the warranty was expired and Plaintiff knew that she had not maintained the yard with proper chemical treatments, she sued my company (and me personally) in late 2010. This was the first and only time that my company has ever been sued by a customer. Not wanting to be involved in litigation with a customer, I reached and performed a settlement with Plaintiff in order to avoid the litigation, negative word of mouth, and to resolve the issue, even we were not at fault. The settlement was that I would install Empire Zoysia in her front yard at no cost to her. Of course, my company had to pay for the materials and labor, which I had to take out of my six-year old daughter's college fund.

5. Two weeks prior to the court date, I confirmed the settlement with Plaintiff. Then, when I was at Plaintiff's residence installing the new sod, Plaintiff said that she would "cancel court" due to our settlement. Unbeknownst to me, I was tricked by Plaintiff. She did not cancel court. Instead, after inducing me not to attend, Plaintiff attended the court date, and asked the Magistrate to give her a judgment in my absence. Ironically, and disappointingly, I was physically installing the sod in her yard on the day she went to court to obtain a judgment in my absence, which she had induced. There is no way that I would have skipped the court date if I knew what was happening.

6. I did not know that Plaintiff had misled me regarding the court date until I received a copy of a judgment for more than \$6,000 from Magistrate's Court. I was

shocked. After receiving the judgment, I contacted the Magistrate's Court to explain what had happened. Plaintiff had not explained the circumstances of the settlement on the day that she went to court and conducted a hearing with the Magistrate in my absence. At the time, my company was handling the case *pro se*. After seeing that Plaintiff obtained a false judgment, I hired an attorney, Ellis Lesemann, who requested a new trial. I was even more shocked when the Magistrate refused to grant my company a new trial on liability.

7. My counsel requested that the Magistrate specify the basis on which the Court was finding my company liable, but did not get a response. Due to the fact that a settlement was reached and performed, I believe that there is no liability or damages on the part of my company. Under the circumstances, my counsel asked for a jury trial. The Magistrate refused to grant a jury trial, indicating that my company should have made that request prior to the day when Plaintiff induced me not to attend. However, since we had reached a settlement, there was no need to ask for a jury trial because the case was going to be dismissed.

8. When the date for the damages hearing came, both of my third-party witnesses were unable to appear. One witness, Ben Sumrell, has a significant illness in the family and could not attend the hearing. Another witness, Stuart Lane, who has personal knowledge of the infestation, will testify that the cinch bug infestation was due to the lack of chemical treatments and was the worst he had ever seen in his many years of treating lawns for insects. However, Mr. Lane was out-of-town and was not available for the damages hearing. We requested a continuance, but the Magistrate refused to grant a continuance.

9. I believe that it was an injustice for Plaintiff to be able to induce me not to appear based on a settlement, and then on the day that I was installing the sod, go to court and obtain a judgment in my absence. The judgment was not only for sod, but also for a new lighting system that Plaintiff had installed in her yard that was not related to the sod with 17 new lights and new transformers. There were only two lights in the front yard, and we did not damage the lights. Then, at the hearing, Plaintiff claimed that she needed a entirely new lighting system because, two years earlier, we had cut one of the wires although she had never said word one about this. Plaintiff also later claimed that the new sod was defective, although she never told me that either. The new sod was not defective, but was in its natural dormant phase due to the time of year (February). However, a competitor came in and tore out the sod and installed new sod.

10. Under the circumstances, I request a new trial on liability and damages, to be tried by jury in the East Cooper Magistrate's Court.



William H. Creech, III

SWORN TO AND SUBSCRIBED BEFORE ME:

November 22, 2011



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9/8/2020

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THE COURT: All right, Mr. Lesemann. If you'll state your name for the record, and the party you represent.

MR. LESEMANN: Thank you, Your Honor. Ellis Lesemann on behalf of the defendant. It may be registered as Tripp Creech, d/b/a Atlantic Lawn Service, Inc. But the proper defendant is Atlantic Law Service, Inc.

I'm here on behalf of the defendant/appellant, Your Honor.

THE COURT: All right. And you tell me what it is, Mr. Lesemann, briefly that you want this Court to do.

MR. LESEMANN: Thank you, Your Honor. May I approach briefly with a copy of an affidavit that I had served on Mr. Bradley by email, but had filed today. And also a statute that would be of interest, it's somewhat obscure.

MR. BRADLEY: I object to this affidavit not being timely. Rule 16 clearly says two days prior to a hearing.

THE COURT: I can pass the two days, counsel, is that what you would like me to do? I would like to resolve this issue. Do you want me to pass it two days?

1 MR. BRADLEY: That's fine, we can go ahead. But
2 I would like to say that this is an appeal on a trial
3 that's taken place, and he is trying to offer new
4 testimony.

5 MR. LESEMANN: And, Your Honor, that's the
6 statute that I had handed to you, and I may have
7 actually handed you all of the copies. But I have it.

8 It's a statute that specifically relates to
9 trials in which the magistrate conducted a trial in the
10 absence of the defendant. And speaks that affidavits
11 can be provided to show that that was unjust under the
12 circumstances.

13 But, Your Honor, to answer your first
14 instruction. Briefly, why we are before today is
15 simply to request a new trial, and to request a jury
16 trial. I will give you a brief summary of --

17 THE COURT: Your client, this matter was tried
18 in your client's absence; is that correct?

19 MR. LESEMANN: That's correct.

20 THE COURT: Is that correct?

21 MR. BRADLEY: He did have a damages hearing.
22 There was an original damages hearing. He admitted
23 liability in the answer. He moved for a new trial,
24 that was granted, we had a new trial. And here we are.

25 THE COURT: All right.

1 MR. LESEMANN: Your Honor, if I can fill in some
2 items on the chronology there. What had happened is in
3 2008 Mr. Creech, he owns a landscaping company,
4 Atlantic Lawn Services, he installed St. Augustine sod
5 in Ms. Cohen's front yard in Mount Pleasant. That is
6 subject to a one-year warranty provided that there is
7 adequate water and chemical treatments provided.

8 In 2010 Ms. Creech -- excuse me, Ms. Cohen --
9 sued Tripp Creech and Atlantic Lawn Service. At that
10 time Mr. Creech was not -- Atlantic Lawn Service did
11 not have counsel. They responded, he responded the
12 best way he knew how.

13 Subsequent to that initial document, a
14 settlement was performed whereby my client went and
15 re-sodded the entire front yard. So all this happened
16 after.

17 And actually, Your Honor, ironically on the very
18 day that my client was installing this sod and Ms.
19 Cohen had said, okay, I'm going to cancel court, we've
20 resolved this because you replaced the grass. She
21 actually went to court before Judge Turner and obtained
22 a judgment for \$7,200.

23 And so a lot happened between when the case was
24 first filed and when my client was tried in his
25 absence. My client wasn't aware of the circumstances

1 until he received a judgment for \$7,200 in the mail.

2 At which point he contacted Ms. Cohen and she
3 said, well, I had some subsequent conversations with
4 the judge and we decided that we -- that the settlement
5 wasn't -- that you didn't perform the settlement so
6 that the judgment went forward.

7 So, Your Honor, all I asked to do once I entered
8 the case was this is a significant issue. It's not
9 just a \$7,200 judgment. It's not just that my client
10 went out of pocket to put new sod in this yard, even
11 though it was out of warranty.

12 Judgments affect small businesses in the service
13 arena, as you probably know, who are trying to be
14 approved vendors on various Service Magic and Angie's
15 List and things of this nature, and these judgments
16 have an impact.

17 And if a jury finds that my client was liable,
18 then that's fine. But what Judge Turner ended up doing
19 is he said, well, I'm just going to hold your client
20 liability, and I will let you have a new trial on a
21 damages hearing.

22 I asked that the magistrate, well, on what basis
23 are you finding Atlantic Lawn Services liable? Breach
24 of contract? Warranty? Negligence? He wouldn't tell
25 me, or couldn't tell me. So we had a damages hearing

1 when I had no notice of what the measure of damages
2 was.

3 So again just repeated my request for just a
4 simple jury trial on liability and damages, as well as
5 that it could be heard by a jury, and was denied on all
6 fronts by Judge Turner.

7 when the damages hearing came to pass, we had
8 two witnesses that we wanted to present. And neither
9 of those witnesses could be present for the damages
10 hearing. We requested a continuance which Judge Turner
11 again denied.

12 So, Your Honor, I'm not certain that the
13 transcript of the motion for the new trial is in the
14 record. I'm not certain whether the entire trial
15 transcript is in the record.

16 Do you see it before you?

17 THE COURT: I have everything that I need.

18 MR. LESEMANN: Okay. Thank you, Your Honor.

19 So --

20 THE COURT: All right, I have heard him.

21 Let me hear, what is it that you want? You want
22 the?

23 MR. BRADLEY: I would just like that second
24 trial damages hearing upheld. He has never actually
25 issued a judgment on it or an order that he has held it

1 abeyance pending this.

2 But some of the items brought up in this
3 affidavit are -- don't -- not only jive with the facts
4 we have, but we have contradicting evidence on the
5 record that really calls into question the credibility
6 of this affidavit.

7 We are not here to get into re-litigating all
8 the facts again. The facts of the matter are she filed
9 -- in 2008 he put down some faulty sod. She notified
10 him right away within the terms of the agreement.

11 Took him two years to never get it resolved.
12 Went back and forth with chemicals and all these other
13 things. And finally the only way she could get him to
14 hold up his end of the bargain was to file a lawsuit.

15 He offered for her to pay costs to have it
16 reinstalled. And she tried to work with him multiple
17 times. And finally she said, I have to go to court.
18 And he showed up the morning of that court to try to
19 start installing the sod. And she said, it's too
20 little to late, we have been going on for
21 two-and-a-half years now.

22 And he had plenty of opportunity to appeal that
23 and he did. And he had plenty of opportunity to
24 request a jury trial, and he never did that. We have
25 -- she had the first damages hearing pro se. He got

1 Mr. Lesemann involved, she got me involved.

2 We had plenty of notice for the second damages
3 hearing. I don't know why they couldn't get their
4 witnesses there. We had our witnesses there and we
5 proceeded.

6 And that's where we are. This motion for a jury
7 trial is not timely. It was not within the five days
8 prior to the hearing. Some close to 40 days after the
9 first hearing. He never made one prior to the second
10 damages hearing.

11 MR. LESEMAN: That's not true.

12 THE COURT: All right, Mr. Lesemann, he didn't
13 interrupt you.

14 MR. LESEMAN: I'm sorry, Your Honor.

15 THE COURT: Thank you.

16 MR. BRADLEY: And as for his motion for
17 continuance, he made that the morning of the second
18 hearing when he had plenty of notice before to get his
19 witnesses lined up, or know that they weren't going to
20 be available and do a timely continuance.

21 Just like we had today with the affidavit coming
22 in just two hours before this hearing. I haven't had
23 time to properly respond to that.

24 THE COURT: All right, counsel, I want proposed
25 orders. I'll give you until December 2nd at 5:00.

1 That will give you time to get through the holiday.
2 December 2nd at 5:00 for a proposed order.

3 MR. LESEMANN: That's fine. Thank you, Your
4 Honor.

5 MR. BRADLEY: Thank you.

6 THE COURT: Thank you.

7 (Whereupon, the proceedings in this matter
8 before the Court were adjourned.)

C E R T I F I C A T E

1
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8 I, the undersigned, ANNE BOULEY MEYER,
9 Official Court Reporter for the Ninth Judicial
10 Circuit of the State of South Carolina, do hereby
11 certify that the foregoing is a true, accurate, and
12 complete transcript of record, and of all the
13 proceedings had and evidence introduced in the above
14 captioned case, relative to appeal, in the Circuit
15 Court for South Carolina, on the indicated date.

16 I do further certify that I am neither
17 of kin, counsel, nor interest to any party hereto.

18
19 -----
Anne Bouley Meyer

20 Anne Bouley Meyer, RPR
21 Circuit Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
ELINOR COHEN,)
)
Plaintiff/Respondent,)
)
vs.)
)
TRIPP CREECH d/b/a)
ATLANTIC LAWN SERVICE, INC.,)
)
Defendant/Appellant.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-10-3367

ORDER DENYING
DEFENDANT'S
APPEAL

FILED
2011 DEC 20 PM 12:30
JULIE L. ARNS TRONG
CLERK OF COURT
BY _____

This matter comes before this court on an Appeal of the decisions of the Honorable James Turner, Charleston County Magistrate's Court, Case No.: 2010-SC-87-2526. The hearing was held on November 22, 2011. The decision of this Court is based on the submissions to the court by all interested parties and the record of the lower court.

Defendant/Appellant raised five (5) issues in his appeal from the judgments of the Magistrate's Court.

First, Defendant claims that the Magistrate improperly denied the Defendant's Motion for New Trial on the issue of liability. However, the Magistrate correctly denied the motion as to liability because Defendant admitted liability in its Answer and only disputed the alleged damages. Further, Magistrates Court Rule 19 provides a new trial *may* be granted on all or part of the issues, and the Magistrate properly acted within his discretion by granting the motion as to damages, thereby allowing Defendant to dispute the alleged damages. To the extent Defendant argues that Plaintiff promised to dismiss her lawsuit and then mislead Defendant into missing the original trial date, the Magistrate was in the best position to hear argument and testimony regarding this issue, after which he correctly denied the Motion for New Trial as to liability.

AKT 12/15/11

000105

Second, Defendant contends that it does not know the specific cause of action upon which the finding of liability was based. The Magistrate, however, correctly explains in its Return that the Defendant did not raise this issue in its Answer or at the trial on damages.

Third, Defendant argues that the Magistrate improperly denied its Motion to Amend, which requested a jury trial. As the Magistrate points out in its Return, the jury trial request was not timely since it was beyond the requirement of Magistrates Court Rule 13(c) that such requests be made in writing at least five (5) working days prior to the original date set for trial. Here, it is undisputed that Defendant missed this deadline as trial was originally set for February 9, 2011 and Defendant requested a jury trial on April 27, 2011. In South Carolina, untimely requests for jury trials are properly denied. See Mortgage Elec. Sys., Inc. v. White, 384 S.C. 606, 682 S.E.2d 498, 502 (Ct. App. 2009).

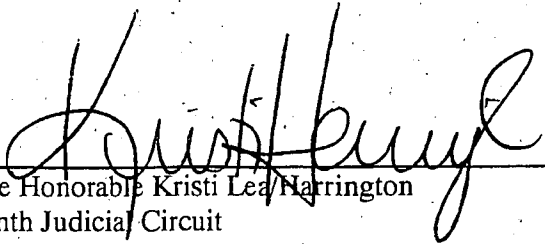
Fourth, Defendant claims that the Magistrate should have granted its Motion for Continuance because two witnesses were not available for the damages hearing. Again, the Magistrate properly denied the motion as it was made the day of trial and there was sufficient time for Defendant to produce its witnesses. The Magistrate has the discretion to grant or deny a request for a continuance. Here there is no evidence suggesting an abuse of this discretion in the Magistrate's decision.

Fifth and finally, the Defendant complains that the caption should be formally amended to delete Tripp Creech as the entity Atlantic Lawn Service, Inc. should be the sole defendant. The judgment below, however, is correct and based upon the full caption containing both the Defendant individual and entity, and there has been no motion to amend the same, therefore this ground for appeal is without merit.

THEREFORE, after consideration of all evidence and the lower Court records, each

[Handwritten signature]
12/15/11

individual ground for this appeal is hereby DENIED and it is so ORDERED that the judgment of the Magistrate's Court is hereby AFFIRMED.



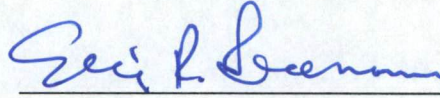
The Honorable Kristi Lea Narrington
Ninth Judicial Circuit

Dated: 12-15-11
Charleston, South Carolina

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 10, 2012



Ellis R. Lesemann, Esq.
Harvey & Vallini, LLC
497 Bramson Court, Suite 201
Mt. Pleasant, SC 29464
(843) 388-8883
Attorney for Appellants

000108