

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stillwell, Circuit Court Judge

Case No. 2014-CP-23-05031
Appeal No. 2017-002183

Oldcastle APG South, Inc.,
d/b/a Adams Products
Company, and Oldcastle APG
Northeast, Inc., d/b/a Foster-
Southeastern,

Respondents,

v.

Daniel B. Albert,

Appellant.

RECEIVED

RECORD ON APPEAL

SEP 04 2018

SC Court of Appeals

Daniel B. Albert
2 Tennwood Dr
Greenville, South Carolina 29609
(321) 474-9189
Appellant, *pro se*

Helen F. Hiser
McAngus, Goudelock & Courie, LLC
Post Office Box 650007
Mt. Pleasant, SC 29465
(843) 576-2900
Attorney for Respondent

Elizabeth McMillan
McAngus, Goudelock & Courie, LLC
Post Office Box 2980
Greenville, South Carolina 29602
(864) 239-4000
Attorney for Respondent

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INDEX

Order Denying Defendant's Motion for Relief of Judgment and Reinstatement to Trial Roster, filed July 10, 2017	1
Order Denying Defendant's Motion to Reconsider, filed July 27, 2017	7
Confession of Judgment, filed May 5, 2017	9
Form 4 Judgment in a Civil Case, filed July 10, 2017.....	14
Summons & Complaint, filed September 11, 2014, with attachments	22
Defendant's Answer, Affirmative Defenses and Counterclaim, dated Dec. 29, 2014	38
Reply to Defendant's Counterclaim, filed January 30, 2015.....	43
Defendant's Motion for Relief of Judgment and for Reinstatement to Trial Roster, with attachments, filed May 15, 2017	46
Plaintiff's Memorandum in Opposition to Defendant's Motion for Relief and Reinstatement to Trial Roster, with attachments, filed June 14, 2017	146
Motion to Reconsider Ruling on Defendant's Motion for Relief of Judgment and for Reinstatement to Trial Roster, filed July 20, 2017.....	215
Notice of Appeal, October 18, 2017	219
Transcript of Hearing before the Honorable Robin B. Stillwell, held June 15, 2017.....	231
Exhibit 14, Draft 40(j) Consent Order of Dismissal	275
Exhibit 15, Email Strings with Attachments.....	279
Executed 41(a) Stipulation of Dismissal with Prejudice, February 4, 2017	287
Docket in Case No. 2014-CP-23-05031	288
Certificate of Appellant.....	291

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
 ADAMS PRODUCTS COMPANY AND
 OLDCASTLE APG NORTHEAST, INC.
 D/B/A FOSTER-SOUTHEASTERN,

Civil Action No. 2014-CP-23-05031

Plaintiff,

v.

DANIEL B. ALBERT,

Defendant.

**ORDER DENYING DEFENDANT'S
 MOTION FOR RELIEF OF
 JUDGMENT AND REINSTATEMENT
 TO TRIAL ROSTER**

This matter comes before the Court pursuant to *pro se* Defendant's Motion for Relief of Judgment and Reinstatement to Trial Roster. The Court conducted a hearing on June 15, 2017, which was fully briefed by both parties before the hearing. Present at the hearing were Elizabeth M. McMillan, Esq., on behalf of Plaintiff, and Daniel B. Albert, *pro se*. Having fully considered the arguments by the parties in the briefs and at the hearing, the Court hereby **DENIES** Defendant's Motion for Relief of Judgment after reaching the following conclusions.

BACKGROUND FACTS

Plaintiff initiated this action by filing a Complaint on September 11, 2014, asserting claims for breach of contract, unjust enrichment, breach of guarantee, and quantum meruit against Defendant alleging that Defendant owed it \$127,212.13 for goods and services provided to Defendant and his companies for which he did not pay.

After discovery was conducted and numerous discussions were had regarding a settlement of this matter, Defendant agreed to enter into a confession of judgment for \$100,000 to end the litigation which he executed on May 16, 2016 ("Confession of Judgment"). The

Confession of Judgment states that Defendant obtained a judgment in a United States District Court case (the "Federal Case") in the amount of \$928,915.00 which judgment was on appeal. In the event Defendant received payment in the Federal Case, Defendant agreed to pay Plaintiff \$100,000. If within ten days after receiving payment in the Federal Case, Defendant failed to make a payment to Defendant, then Plaintiff would file the Confession of Judgment with the court. After executing the Confession of Judgment, Defendant requested a settlement agreement be signed by both parties. Plaintiff prepared a settlement agreement and release ("Settlement Agreement") to set forth the terms of the settlement and of the Confession of Judgment which was executed by all parties on May 23, 2016. Plaintiff then informed the court of the settlement and requested the case be removed from the trial roster. The case was removed from the immediate trial roster, but it remained an active case in the system and was subsequently scheduled for a status conference with the administrative judge for March 8, 2017.

On January 31, 2017, Defendant was awarded \$361,559.00 in the Federal Case. Defendant did not pay the \$100,000 settlement amount and the parties proceeded to the status conference on March 8. On March 9, 2017, Plaintiff made a formal demand for the \$100,000 agreed to in the Settlement Agreement and Confession of Judgment and informed Defendant that if payment was not received within ten days of the date of the letter, Plaintiff would file the Confession of Judgment with the Court. Defendant refused to pay the agreed upon settlement amount, and the Confession of Judgment was filed on May 5, 2017. Defendant argued to Plaintiff that because Plaintiff refused to file a stipulation of dismissal, Plaintiff had breached the Settlement Agreement and the Confession of Judgment was not valid. Defendant then proposed a new settlement agreement of \$75,000 and a declaration that the Confession of Judgment and Release were null and void. After Plaintiff declined to enter into a new settlement agreement,

Defendant filed a Motion for Relief of Judgment and For Reinstatement to Trial Roster on May 15, 2017.

In his motion, Defendant argued that the Confession of Judgment and Settlement Agreement were invalid because a stipulation of dismissal had not yet been filed. The Settlement Agreement contained paragraph 5 which states as follows: **"Stipulation of Dismissal"**. The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaim in the Litigation." Defendant argued that because no stipulation of dismissal had been filed and through negligence, breach of contract, fraud, misrepresentation or other misconduct of Plaintiff, Defendant had been denied the benefit of his bargain. He asked this Court to rule that the Confession of Judgment was null and void, and without any continuing effect.

Plaintiff filed a Memorandum in Opposition to the Motion for Relief of Judgment denying and refuting Defendant's entitlement to relief from the Confession of Judgment, and both sides appeared at the hearing and presented arguments. Plaintiff argued that the Motion should be denied for the following reasons: (1) Defendant failed to honor the terms of the Settlement Agreement and pay the \$100,000 upon his receipt of that amount from the Federal Case, and, thus the Confession of Judgment was rightly entered; (2) Defendant could not establish the necessary grounds to repudiate the Settlement Agreement and the Confession of Judgment because he could not show that there was any evidence of fraud, mistake or misconduct by Plaintiff; (3) Defendant could not establish that the Settlement Agreement had been breached by Plaintiff because Plaintiff had no duty to file a stipulation of dismissal, especially since Defendant had refused to pay the \$100,000 once he received more than that amount from the Federal Case; and (4) Defendant could not establish the grounds for relief from

judgment pursuant to Rule 60, SCRCP, even if that Rule were applicable to the Confession of Judgment.

APPLICABLE STANDARD OF LAW

The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct.App. 2008). When a party asserts grounds for relief because of fraud, misrepresentation, or other misconduct of an adverse party under Rule 60(b)(3), SCRCP, the movant must prove his entitlement by clear and convincing evidence. Chewning v. Ford Motor Co., 354 S.C. 72, 578 S.E.2d 605 (2003). A party asserting the fraudulent nature of a statement must demonstrate: (1) a representation; (2) the falsity of the representation; (3) the materiality of the representation; (4) knowledge of its falsity, or reckless disregard for its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 451 S.E.2d 907 (Ct.App. 1994).

CONCLUSIONS OF FACT AND LAW

Based on the filings of both parties and the arguments presented at the hearing, I make the following findings:

1. The Settlement Agreement is not ambiguous.
2. Based on the unambiguous language of the Settlement Agreement, Plaintiff was under no duty to file a stipulation of dismissal.
3. Defendant has failed to present sufficient evidence to show that the Plaintiff breached any terms of the Settlement Agreement.
4. Defendant has failed to present sufficient evidence to show that Plaintiff engaged in

negligence, fraud, misrepresentation or other misconduct that would relieve Defendant from his obligations under the Settlement Agreement and Confession of Judgment.

5. Defendant entered into a valid Settlement Agreement and Confession of Judgment and was obligated by their terms and cannot renegotiate the terms of those agreements under a pretextual argument that because no stipulation of dismissal had been filed he is not obligated by the terms of those agreements.
6. Defendant has failed to present sufficient evidence to establish that he is entitled to any relief under Rule 60, SCRCP.
7. The Confession of Judgment was validly entered by Plaintiff.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Relief of Judgment and Reinstatement to the Trial Roster is hereby denied and this case is stricken from the trial docket.

AND IT IS SO ORDERED.

Robin B. Stilwell, Judge
Thirteenth Judicial Circuit



Greenville Common Pleas

Case Caption: Oldcastle APG South Inc , plaintiff, et al vs. Daniel B Albert

Case Number: 2014CP2305031

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2017-07-10 10:21:23 page 6 of 6

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Oldcastle APG South, Inc., d/b/a Adams)
Products Company, and Oldcastle APG)
Northeast, Inc., d/b/a Foster-Southeastern,)
)
Plaintiffs,)
)
vs.)
)
Daniel B. Albert,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER**

Case No.: 2014-CP-23-05031

This matter comes before the Court pursuant to the Defendant's July 20, 2017, Motion to Reconsider the Court's Ruling on Defendant's Motion for Relief of Judgment and for Reinstatement to Trial Roster. Having carefully considered the same, this Court respectfully denies the Motion.

AND IT IS SO ORDERED.

ROBIN B. STILWELL

July 26, 2017
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Oldcastle APG South Inc , plaintiff, et al vs. Daniel B Albert

Case Number: 2014CP2305031

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2017-07-27 10:54:39 page 2 of 2

ELECTRONICALLY FILED - 2017 Jul 27 3:08 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2305031

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Plaintiff,

vs.

DANIEL B. ALBERT,

Defendant.

Civil Action No. 2014-CP-23-05031

CONFESSION OF JUDGMENT

Pursuant to SC Code Ann. §§15-35-350 and 15-35-360, this **CONFESSION OF JUDGMENT** is made and entered into as of this, the 16th day of May, 2016, by and between **Daniel B. Albert ("Defendant?") and Oldcastle APG South, Inc. and Oldcastle APG Northeast, Inc. (collectively referred to as "Plaintiffs")**.

WHEREAS, Defendant's company, Madawaska Hardscape Products, Inc. ("Madawaska") has previously purchased supplies from Plaintiffs and Defendant signed a personal guaranty for the purchase of those products and the extension of credit by Plaintiffs;

WHEREAS, Madawaska failed to pay for certain supplies sold and delivered to Madawaska as evidenced by the invoices and other documents produced by Plaintiffs; and

WHEREAS, there is presently due and owing to the Plaintiffs by Defendant, as the personal guarantor for Madawaska, the sum of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars;

WHEREAS, Plaintiffs have declared the entire balance due and payable, and has demanded payment of the same, but the Defendant has failed to pay the amount due, or any of it; and

WHEREAS, Defendant or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case"); and

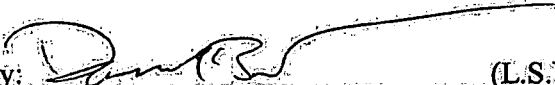
WHEREAS, upon his or his company's receipt of funds that are paid either as a judgment or as a settlement of the Federal Court Case, Defendant agrees to pay Plaintiffs the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars within ten days of receipt of the payment of the judgment in the Federal Court Case.

NOW, THEREFORE, this Confession of Judgment is made to Plaintiffs in the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Judgment is to be held by counsel for the Plaintiffs and remain unrecorded unless the Defendant fails to pay the settlement within ten days of his or his company receiving payment from the judgment or the settlement awarded in the Federal Court Case.

The Plaintiffs hereby agree to mark the Confession of Judgment "paid and satisfied" and return it to the Defendant upon payment of the complete settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Confession of Judgment shall be recorded with the court to allow enforcement by the Plaintiffs only if the Defendant fails to make payments and satisfy the settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars upon the terms as set forth in this Confession of Judgment. Defendant hereby confesses judgment in favor of the Plaintiffs herein in the amount of One Hundred

Thousand and 00/100 (\$100,000.00) Dollars and hereby authorizes judgment to be entered pursuant to the terms stipulated herein.

In acknowledgment and agreement, I hereby set my hand and seal this 16 day of May, 2016.

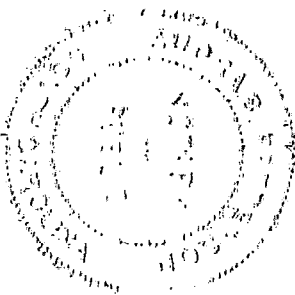
By:  (L.S.)
Daniel B. Albert

SWORN TO AND SUBSCRIBED before me

this 16th day of May, 2016

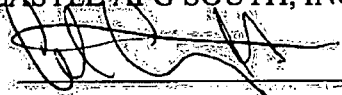
 (L.S.)
Notary Public for South Carolina

My Commission Expires: February 12, 2023



WE SO CONSENT:

OLDCASTLE APG SOUTH, INC.

By: 

Its: VICE PRESIDENT

Date: 05/23/2016

OLDCASTLE APG NORTHEASTERN, INC.

By: _____

Its: _____

Date: _____

WE SO CONSENT:

OLDCASTLE APG SOUTH, INC.

By: _____

Its: _____

Date: _____

OLDCASTLE APG NORTHEASTERN, INC.

By: Robert Capellaz

Its: Credit Manager

Date: 6/02/16

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2305031**

Oldcastle APG South Inc

Adams Products
Company
Foster Southeastern

Daniel B Albert
2017 JUL 10 AM 10:54

FILED-CLERK OF COURT
DEB BANTON

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

7/10/2017

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **July 10, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **July 10, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Elizabeth McDaniel McMillan 55 E. Camperdown Way,
Suite 300 PO Box 2980 Greenville, SC 29602
Jeanmarie Tankersley PO Box 2980 55 E. Camperdown
Way Greenville, SC 29602

Daniel B Albert 2 Tennwood Dr Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

s/Paul B. Wickensimer

Court Reporter

**Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court**

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
OLDCASTLE APG SOUTH, INC. D/B/A	)	Civil Action No. 2014-CP-23-05031
ADAMS PRODUCTS COMPANY AND	)	
OLDCASTLE APG NORTHEAST, INC.	)	
D/B/A FOSTER-SOUTHEASTERN,	)	
	)	
Plaintiff,	)	ORDER DENYING DEFENDANT'S
	)	MOTION FOR RELIEF OF
v.	)	JUDGMENT AND REINSTATEMENT
	)	TO TRIAL ROSTER
DANIEL B. ALBERT,	)	
	)	
Defendant.	)	

This matter comes before the Court pursuant to *pro se* Defendant's Motion for Relief of Judgment and Reinstatement to Trial Roster. The Court conducted a hearing on June 15, 2017, which was fully briefed by both parties before the hearing. Present at the hearing were Elizabeth M. McMillan, Esq., on behalf of Plaintiff, and Daniel B. Albert, *pro se*. Having fully considered the arguments by the parties in the briefs and at the hearing, the Court hereby **DENIES** Defendant's Motion for Relief of Judgment after reaching the following conclusions.

BACKGROUND FACTS

Plaintiff initiated this action by filing a Complaint on September 11, 2014, asserting claims for breach of contract, unjust enrichment, breach of guarantee, and quantum meruit against Defendant alleging that Defendant owed it \$127,212.13 for goods and services provided to Defendant and his companies for which he did not pay.

After discovery was conducted and numerous discussions were had regarding a settlement of this matter, Defendant agreed to enter into a confession of judgment for \$100,000 to end the litigation which he executed on May 16, 2016 ("Confession of Judgment"). The

Confession of Judgment states that Defendant obtained a judgment in a United States District Court case (the "Federal Case") in the amount of \$928,915.00 which judgment was on appeal. In the event Defendant received payment in the Federal Case, Defendant agreed to pay Plaintiff \$100,000. If within ten days after receiving payment in the Federal Case, Defendant failed to make a payment to Defendant, then Plaintiff would file the Confession of Judgment with the court. After executing the Confession of Judgment, Defendant requested a settlement agreement be signed by both parties. Plaintiff prepared a settlement agreement and release ("Settlement Agreement") to set forth the terms of the settlement and of the Confession of Judgment which was executed by all parties on May 23, 2016. Plaintiff then informed the court of the settlement and requested the case be removed from the trial roster. The case was removed from the immediate trial roster, but it remained an active case in the system and was subsequently scheduled for a status conference with the administrative judge for March 8, 2017.

On January 31, 2017, Defendant was awarded \$361,559.00 in the Federal Case. Defendant did not pay the \$100,000 settlement amount and the parties proceeded to the status conference on March 8. On March 9, 2017, Plaintiff made a formal demand for the \$100,000 agreed to in the Settlement Agreement and Confession of Judgment and informed Defendant that if payment was not received within ten days of the date of the letter, Plaintiff would file the Confession of Judgment with the Court. Defendant refused to pay the agreed upon settlement amount, and the Confession of Judgment was filed on May 5, 2017. Defendant argued to Plaintiff that because Plaintiff refused to file a stipulation of dismissal, Plaintiff had breached the Settlement Agreement and the Confession of Judgment was not valid. Defendant then proposed a new settlement agreement of \$75,000 and a declaration that the Confession of Judgment and Release were null and void. After Plaintiff declined to enter into a new settlement agreement,

Defendant filed a Motion for Relief of Judgment and For Reinstatement to Trial Roster on May 15, 2017.

In his motion, Defendant argued that the Confession of Judgment and Settlement Agreement were invalid because a stipulation of dismissal had not yet been filed. The Settlement Agreement contained paragraph 5 which states as follows: "Stipulation of Dismissal. The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaim in the Litigation." Defendant argued that because no stipulation of dismissal had been filed and through negligence, breach of contract, fraud, misrepresentation or other misconduct of Plaintiff, Defendant had been denied the benefit of his bargain. He asked this Court to rule that the Confession of Judgment was null and void, and without any continuing effect.

Plaintiff filed a Memorandum in Opposition to the Motion for Relief of Judgment denying and refuting Defendant's entitlement to relief from the Confession of Judgment, and both sides appeared at the hearing and presented arguments. Plaintiff argued that the Motion should be denied for the following reasons: (1) Defendant failed to honor the terms of the Settlement Agreement and pay the \$100,000 upon his receipt of that amount from the Federal Case, and, thus the Confession of Judgment was rightly entered; (2) Defendant could not establish the necessary grounds to repudiate the Settlement Agreement and the Confession of Judgment because he could not show that there was any evidence of fraud, mistake or misconduct by Plaintiff; (3) Defendant could not establish that the Settlement Agreement had been breached by Plaintiff because Plaintiff had no duty to file a stipulation of dismissal, especially since Defendant had refused to pay the \$100,000 once he received more than that amount from the Federal Case; and (4) Defendant could not establish the grounds for relief from

judgment pursuant to Rule 60, SCRCP, even if that Rule were applicable to the Confession of Judgment.

APPLICABLE STANDARD OF LAW

The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct.App. 2008). When a party asserts grounds for relief because of fraud, misrepresentation, or other misconduct of an adverse party under Rule 60(b)(3), SCRCP, the movant must prove his entitlement by clear and convincing evidence. Chewning v. Ford Motor Co., 354 S.C. 72, 578 S.E.2d 605 (2003). A party asserting the fraudulent nature of a statement must demonstrate: (1) a representation; (2) the falsity of the representation; (3) the materiality of the representation; (4) knowledge of its falsity, or reckless disregard for its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 451 S.E.2d 907 (Ct.App. 1994).

CONCLUSIONS OF FACT AND LAW

Based on the filings of both parties and the arguments presented at the hearing, I make the following findings:

1. The Settlement Agreement is not ambiguous.
2. Based on the unambiguous language of the Settlement Agreement, Plaintiff was under no duty to file a stipulation of dismissal.
3. Defendant has failed to present sufficient evidence to show that the Plaintiff breached any terms of the Settlement Agreement.
4. Defendant has failed to present sufficient evidence to show that Plaintiff engaged in

negligence, fraud, misrepresentation or other misconduct that would relieve Defendant from his obligations under the Settlement Agreement and Confession of Judgment.

5. Defendant entered into a valid Settlement Agreement and Confession of Judgment and was obligated by their terms and cannot renegotiate the terms of those agreements under a pretextual argument that because no stipulation of dismissal had been filed he is not obligated by the terms of those agreements.
6. Defendant has failed to present sufficient evidence to establish that he is entitled to any relief under Rule 60, SCRCP.
7. The Confession of Judgment was validly entered by Plaintiff.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Relief of Judgment and Reinstatement to the Trial Roster is hereby denied and this case is stricken from the trial docket.

AND IT IS SO ORDERED.

Robin B. Stilwell, Judge
Thirteenth Judicial Circuit



Greenville Common Pleas

Case Caption: Oldcastle APG South Inc , plaintiff, et al vs. Daniel B Albert
Case Number: 2014CP2305031
Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2017-07-10 10:21:23 page 6 of 6

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Oldcastle APG South, Inc. d/b/a Adams
Products Company and Oldcastle APG
Northeast, Inc. d/b/a Foster-Southeastern)

Plaintiffs,)

v.)

Daniel B. Albert)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-23-

05031

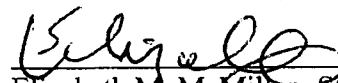
SUMMONS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS/MSR
2014 SEP 11 PM 4 08

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at their offices at Post Office Box 2980, 55 East Camperdown Way, Suite 300, Greenville, South Carolina 29602 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

MCANGUS GOUDELOCK & COURIE, L.L.C.


Elizabeth M. McMillan, SC Bar No. 15049
Jeanmarie Tankersley, SC Bar No. 101068
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000
Attorneys for Plaintiffs

September 10, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Oldcastle APG South, Inc. d/b/a Adams)
Products Company and Oldcastle APG)
Northeast, Inc. d/b/a Foster-Southeastern)
)
Plaintiff,)
)
v.)
)
Daniel B. Albert)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-23- 05031

COMPLAINT
(Jury Trial Demanded)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKENSIMER
2014 SEP 11 PM 4 03

Plaintiff, complaining of the Defendants above named, respectfully alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs, Oldcastle APG South, Inc. d/b/a Adams Products Company ("Adams") and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern ("FES"), collectively ("Oldcastle") are corporations organized and existing under the laws of one of the states of the United States and regularly conducts business in South Carolina.

2. Upon information and belief, Defendant Daniel B. Albert ("Albert") is an owner and principal of Madawaska, who resides in Greenville County, and who individually conducts business in Greenville County, State of South Carolina.

3. Upon information and belief, Madawaska Hardscape Products, Inc. ("Madawaksa") is a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business in Taylors, South Carolina, County of Greenville.

4. This Court has jurisdiction over the parties and subject matter of this action and venue is proper in Greenville County Court of Common Pleas.

FACTS

5. The preceding paragraphs are repeated and re-alleged herein as if set forth verbatim herein.

6. Oldcastle is in the business of supplying hardscape and building materials to various retailers and subcontractors, such as Madawaska.

7. On or about March 1, 2002 Albert signed a Personal Guarantee with Adams, agreeing to absolutely and unconditionally guarantee payments to Adams in consideration of Adams selling hardscape and building materials to Madawaska. A copy of this Personal Guarantee is attached hereto as Exhibit A.

8. On or about March 1, 2002 Albert signed a contract with Adams, in consideration of Adams selling building materials to Madawaska. A copy of this contract is attached hereto as Exhibit A.

9. On or about July 14, 2008, Albert signed a contract with FSE, agreeing to absolutely and unconditionally guarantee payments to FSE in consideration of FSE selling hardscape and building materials to Madawaska. A copy of this contract is attached hereto as Exhibit B.

10. The contracts and Personal Guarantee were accepted by Adams and FSE and thereafter, Adams and FSE began selling products to Madawaska.

11. From July 13, 2011 to November 1, 2011, FES sold and delivered products to Madawaska and extended approximately \$27,739.10 in credit to Madawaska.

12. Neither Madawaska nor Albert has paid the \$27,739.10, despite the fact that they received the products from FES.

13. From June 1, 2010 to February 29, 2012, Adams sold and delivered products to

Madawaska and extended approximately \$127,212.13 in credit to Madawaska.

14. Neither Madawaska nor Albert has paid the \$127,212.13, despite the fact that they received the products from Adams.

15. Albert has not made payments towards the outstanding balance to FES or Adams so that \$154,951.23 is still due and outstanding to Oldcastle.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

16. The preceding paragraphs are repeated and incorporated herein as if set forth verbatim.

17. Albert entered into a contract with Adams whereby Adams agreed to sell and Albert agreed to guarantee the payment to pay for building supplies, as set forth in Exhibit A.

18. Albert entered into a contract with FES whereby FES agreed to sell and Albert agreed to guarantee the payment to pay for building supplies, as set forth in Exhibit B.

19. FES and Adams sold and delivered \$154,951.23 worth of products to Madawaska and Albert has refused to pay for such products.

20. Albert has failed to make the payments as agreed to, and is therefore, in breach of its contracts with FES and Adams.

21. As the direct and proximate result of Albert's breach of contract, FES and Adams have suffered direct and consequential damages, including but not limited to attorneys' fees.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

22. The preceding paragraphs are repeated and incorporated herein as if set forth verbatim.

23. FES and Adams conferred a benefit on Albert and Madawaska by delivering

\$154,951.23 worth of products to Madawaska.

24. Albert has refused to pay for the products that were delivered by Plaintiff pursuant to the contracts.

25. By retaining the delivered products, while not repaying Plaintiff pursuant to the terms of the contracts, Albert has been unjustly enriched at Plaintiffs' expense.

26. As the direct and proximate result of Albert's refusal to pay for the delivered products, FES and Adams have been damaged and are entitled to recover from Defendant \$154,951.23, together with interest accrued thereon, plus the cost of collection and reasonable attorneys' fees.

FOR A THIRD CAUSE OF ACTION
(Breach of Guarantee)

27. The preceding paragraphs are repeated and incorporated herein as if set forth verbatim.

28. On or about March 1, 2002, in consideration of Adams extending credit to Madawaska, Albert individually, executed a Personal Guarantee wherein he individually, unconditionally, and absolutely guaranteed the full and prompt payment of all indebtedness incurred by Madawaska for goods sold to it by Adams.

29. On or about July 14, 2008, in consideration for FSE extending credit to Madawaska, Albert, individually, executed a Personal Guarantee wherein he individually, unconditionally, and absolutely guaranteed the full and prompt payment of all indebtedness incurred by Madawaska for goods sold to it by FSE.

30. The Guarantees executed by Albert are valid and binding contracts.

31. Plaintiffs have declared the entire balance due and payable and have demanded and hereby demand payment of the same, but the Defendant has refused to pay, and therefore, is

in default under the terms of the Personal Guarantees.

32. As a direct and proximate result of Albert's failure to make payment to Plaintiffs, Albert is unconditionally and absolutely liable to Plaintiffs for the total amount owed of \$154,951.23, together with interest accrued thereon, plus the cost of collection and reasonable attorneys' fees.

FOR A FOURTH CAUSE OF ACTION
(Quantum Meruit)

33. The preceding paragraphs are repeated and incorporated herein as if set forth verbatim.

34. Albert and Madawaska entered into contracts with FES and Adams whereby FES and Adams agreed to sell and Albert agreed to pay for building supplies delivered to Madawaska.

35. Oldcastle sold and delivered \$154,951.23 worth of products to Madawaska and Albert has refused to pay for such products.

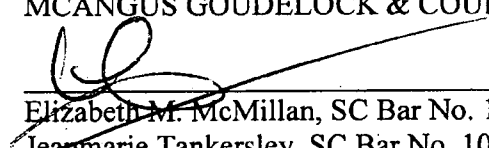
36. Albert's retention of the benefit conferred by Oldcastle without paying the value of the products is inequitable.

37. As the direct and proximate result of Albert's refusal to pay for the delivered products, FES and Adams have suffered damages and are entitled to recovery to the amount of which the court considers Defendant has been unjustly enriched at the expense of Plaintiffs.

WHEREFORE, Plaintiffs pray for judgment against the Defendant for actual damages, for the costs of this action, and for such other relief as this Honorable Court may deem just and proper.

[SIGNATURE ON FOLLOWING PAGE]

MCANGUS GOUDELOCK & COURIE, L.L.C.


Elizabeth M. McMillan, SC Bar No. 15049

Jeanmarie Tankersley, SC Bar No. 101068

Post Office Box 2980

55 East Camperdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

(864) 239-4000

ATTORNEYS FOR PLAINTIFFS, OLDCASTLE
APG SOUTH, INC. D/B/A ADAMS PRODUCTS
COMPANY AND OLDCASTLE APG
NORTHEAST, INC. D/B/A FOSTER-
SOUTHEASTERN

September 19, 2014

EXHIBIT A

GORIA ENTERPRISES

P.O. BOX 1448
GREENSBORO, NC 27416

SALES REP _____

CREDIT APPLICATION

COMPANY LEGAL NAME MANAWATKA LANDSCAPE PRODUCTS, INC.
TRADE/STYLE OR DOING BUSINESS AS (DBA) NAME(S) _____ CITY _____ STATE _____ ZIP _____
STREET ADDRESS _____
PHONE () _____
BILLING ADDRESS SEE ATTACHED CITY _____ STATE _____ ZIP _____
SPOUSE'S NAME (IF INDIVIDUAL) OR _____ SSN _____
SOLD PROPRIETORSHIP _____ CREDIT LIMIT REQUESTED _____
OCCUPATION/TITLE OF BUSINESS _____
TYPE OF ORGANIZATION: SOLD PROPRIETORSHIP PARTNERSHIP CORPORATION INDIVIDUAL
INCORPORATED IN THE STATE OF _____ YEAR BUSINESS ESTABLISHED _____
FEDERAL IDENTIFICATION # _____ TAX STATUS (ATTACH A CERTIFICATE)

PRINCIPALS OF CORPORATION/PARTNERSHIP

NAME	TITLE	SSN	CITY	STATE	ZIP	PHONE
NAME	TITLE	SSN	CITY	STATE	ZIP	PHONE
NAME	TITLE	SSN	CITY	STATE	ZIP	PHONE
NAME	TITLE	SSN	CITY	STATE	ZIP	PHONE

AUTHORIZED PURCHASERS

NAME	TITLE
NAME	TITLE
NAME	TITLE

IS A PURCHASE ORDER / REQUIRED WHEN PLACING AN ORDER?

BANK REFERENCE

NAME OF BANK _____ ACCOUNT NO. _____
ADDRESS _____ CITY _____ STATE _____ PHONE _____
CONTACT PERSON _____ TYPE OF ACCOUNT _____

TRADE REFERENCES

NAME	PHONE
ADDRESS	PHONE
NAME	PHONE
ADDRESS	PHONE
NAME	PHONE
ADDRESS	PHONE
NAME	PHONE
ADDRESS	PHONE
NAME	PHONE
ADDRESS	PHONE

MAR 1 2882 1145PM

GORIA ENTERPRISES

NO. 789

P. 3/3

BUSINESS INFORMATION

1. Are you now doing business under any other name, or have you ever, in the past, operated a business under any name not shown on this credit application? If yes, list these business names:

YES NO

PAVERS PLW. CO. INC.KEYSTONE NORTHEAST

2. Has the signer of this application at any time been involved in any business or personal bankruptcy, or have any of your principals been associated with any bankrupt enterprise?

3. Have any of the firm's principals ever been involved in any business legal action?

4. Is your company, or any of its principals, currently a co-signer or guarantor on any other firm's or individual's debt or other obligations?

TERMS AND CONDITIONS OF SALE

1. All orders placed for non-stock goods and/or materials, i.e., those goods and/or materials which are not kept as stock and must be special ordered, are final. If the manufacturer will not accept them for return, and as such, once an order is placed and confirmed in writing by Goria Enterprises, purchaser agrees to accept said goods and/or materials and make payment in full.

2. On all direct sales arranged by or through Goria Enterprises, purchaser agrees to all the terms and conditions stated herein, whether or not said goods and/or materials are delivered by or through Goria Enterprises.

3. All goods and/or materials delivered must be examined and inspected by the purchaser and/or its agent or representative upon receipt of said goods. On all goods and/or materials examined and inspected upon receipt, and claims of shortage and/or damage must be made at time of delivery. Where purchaser and/or its agent or representative cannot examine and inspect said goods upon receipt, any and all claims must be made within one (1) working day. Any claims made after the prescribed time period, as stated above, shall not be honored.

4. AT THE SOLE DISCRETION OF GORIA ENTERPRISES, alone goods and/or materials may be returned. If said goods and/or materials are in good condition, purchaser's account will be credited subject to a handling fee.

5. Purchaser acknowledges that any and all decisions as to the return of goods and/or materials is made AT THE SOLE DISCRETION OF GORIA ENTERPRISES, AND SAID POLICY MAY BE CHANGED OR REVOKED AT ANY TIME WITHOUT NOTICE.

6. Any claim or controversy shall be settled by any court of competent jurisdiction located in the state of North Carolina at the location of the order. On all disputed matters, purchaser agrees to pay Goria Enterprises attorney's fees, costs and disbursements.

7. TITLE FOR ALL GOODS AND/OR MATERIALS REMAINS WITH GORIA ENTERPRISES UNTIL PAID FOR IN FULL BY THE PURCHASER. Should any purchaser take any action under title of the United States code, or under any state machinery law, purchaser agrees to promptly return any goods and/or materials not paid for in full. Purchaser agrees to keep the goods and/or materials fully insured until paid for in full. Risk of loss is of the purchaser.

8. The undersigned applicant, in consideration for Goria Enterprises extending credit to it on an open account for the sale and delivery of merchandise and/or services, hereby agrees (or binds) to accept and assign to the following terms of payment: payment shall be due in full within thirty (30) days of invoice. MONTHLY PAYMENTS SHALL BE PAYABLE AT THE RATE OF ONE AND ONE HALF PERCENT (1.5%) PER MONTH on all amounts due which are not paid within thirty (30) days and in the event of default in payment, applicant shall be liable for attorney's fees, plus court costs and all the other costs of litigation including trial and limited to costs of service of process, deposition and duplicating.

9. Purchaser acknowledges that he has read and AGREES TO ALL OF THE ABOVE TERMS AND CONDITIONS OF SALE. Purchaser agrees that the ABOVE TERMS AND CONDITIONS OF SALE CONTROL ON ALL SALES.

NAME DAVID B. ALLENSIGNATURE David B. AllenTITLE The PresidentDATE 3-1-82

(Please Print)

PERSONAL GUARANTEE

In consideration of your extending credit to the applicant herein on an open account for the sale and delivery of merchandise and/or services to the applicant, we the undersigned, on behalf of the applicant, hereby, jointly and severally guarantee payment to Goria Enterprises (its successors and assigns) of all amounts which may become due by reason of this account, including interest, attorney's fees and costs. This guarantee is open, continuing, personal and unconditional, and shall continue in full force and without any change in form of such instrument, or renewal or extension thereof, granted by the creditor, and may be renewed only by the express written notice of rescission to Goria Enterprises by certified mail, and said renewal shall not in any manner affect the liability of the guarantors or to any liability incurred prior to actual receipt of such notice. We also grant to Goria Enterprises the right to check any and all portions of a guarantor's credit rating, and this guarantee is being executed in our individual capacities and not in any official capacity with above firm.

NAME DAVID B. ALLENSIGNATURE David B. AllenDATE 3-1-82

(Please Print)

NAME

SIGNATURE

DATE

(Please Print)

Madawaska

HARDSCAPE PRODUCTS

Credit Application Information

GENERAL INFORMATION

COMPANY NAME: Madawaska Hardscapes Products, Inc.
 BILLING ADDRESS: 101 Balfor Drive, Greenville, SC 29615
 SHIPPING ADDRESS: 222 Riverhill Street, Portland, ME 04103
 FED ID #: 61-0519648 (ME Sales Tax Reseller's #1046763)
 PHONE #: 207-574-1995
 FAX #: 207-571-1188

OWNERS / CORPORATE OFFICERS

Name: Daniel B. Albert TITLE: President PHONE: 864-244-9030

FORM OF BUSINESS ENTITY: Corporation

TYPE OF BUSINESS: Hardscapes Products Distributor DATE BUSINESS STARTED: 1998

BANK FINANCIAL REFERENCE

BANK REFERENCE / ACCOUNT #	ADDRESS	CONTACT NAME	TELEPHONE / FAX
Key Bank Acc. # [9138400]878	400 Park Avenue Portland, ME 04101	Walter L. Callahan	207-574-7352 / 207-574-7339

INDUSTRY TRADE CREDIT REFERENCES

TRADE CREDIT REFERENCE	ADDRESS	CONTACT NAME	TELEPHONE / FAX
Hilway Concrete Products	2744 Cranbury Highway Wareham, MA 02571	Christina Monks	508-293-0834 / 508-291-2852
A. Jandris & Sons	202 High Street Gardner, MA 01440	Annette Ducharme	978-437-0089 / 978-432-8065
Gro. Schofield Co. Inc.	P.O. Box 110 Bound Brook, NJ 08805	Bill Boney	732-354-0848 / 732-356-1137

EXHIBIT B

07/14/2008 15:49 8642720505

PAGE 02/04

#2341

John M.
Belgard

35K

1/22/08
John M. Belgard

Buyer: MADAWASKA LANDSCAPE PRODUCTS, INC.
 Street Address: 222 REVERSON ST
 City: PORTLAND State: ME Zip Code: 04103
 Billing Address: 3146 WOOD HAMPTON BLVD.
 City: TAYLOR State: SC Zip Code: 29617
 Estimated Purchases Per Month: \$5,000
 Phone #: 864-244-3266 Fax #: 864-272-0505 Mobile/Pager #: 864-616-6111
 Type of Account ☒ Business ☐ Personal (Please complete appropriate section below)

For Personal Accounts

Social Security No.: _____

Employer's Name: _____

Residence: ☐ Own ☐ Rent

Bank: _____

Mortgage With: _____

Credit Cards: _____

APPROVED

APPROVED

For Business AccountsType of Business: ☐ Gen. Contractor ☐ Homebuilder ☐ Landscaper☐ Mason Contractor ☒ Other (describe): DEALERForm of Business: ☒ Corporation ☐ Partnership ☐ Limited Liability Company☐ Proprietorship ☐ Other (describe): _____Federal Tax ID #: 01-0519648 No. of Years in Business: 10**Name of Owners, Officers and Principals:**

Name	Title	Address	Soc. Sec. No.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

PAGE

Has the business or any owners, officers or principals filed for bankruptcy? ☐ Yes ☒ No

Bank References: 1. Name _____ Phone _____ Fax _____

Trade References: 1. Name _____ Phone _____ Fax _____

2. Name _____ Phone _____ Fax _____

3. Name _____ Phone _____ Fax _____

TERMS: Net 30, unless otherwise indicated on invoice. Foster Southeastern reserves the right to charge, and Buyer agrees to pay, a service charge of 1.5% per month on any portion of the account which remains due beyond the date due. Buyer agrees to pay Foster Southeastern's costs, fees and expenses of collection including reasonable attorneys' fees, costs and disbursements.

GUARANTEE: In consideration of Foster Southeastern ("FSE") selling building materials on credit to the Buyer named on the foregoing pages of this credit application, the undersigned, individually and despite any official capacity indicated, absolutely and unconditionally, guarantee the full and prompt payment of all indebtedness of Buyer to Foster Southeastern, now owing or hereafter incurred. This is a guarantee of payment and not of collection. The liability of the undersigned shall not be affected by any modification of any indebtedness, the acceptance of any security, the filing of any liens, the disposition of, or failure to realize upon, any security, or the application of payments or credits on Buyer's account. Foster Southeastern need not resort at any time for payment to the Buyer or to anyone else in order to hold the undersigned liable, and no act or omission on Foster Southeastern's part in enforcing its claim against Buyer shall impair this guarantee. All legal formalities required to charge the undersigned with liability hereunder including, but not limited to, diligence in collection, presentment for payment, demand, protest, and notice of dishonor, default, nonpayment, the creation and existence of any indebtedness, liability or obligation, the acceptance of this guarantee, and of any and all extensions of credit hereunder are waived by the undersigned. This guarantee shall be unlimited in amount. The undersigned authorize and consent that Foster Southeastern may, from time to time, without notice to the undersigned, give and make extensions, renewals, settlements and compromises with respect to any indebtedness of the Buyer covered by this guarantee. In case of dissolution, liquidation, insolvency, receivership, bankruptcy, or other proceeding under the bankruptcy act of the Buyer, the indebtedness shall, at the option of Foster Southeastern, become immediately due and payable and be paid by the undersigned in the same manner as though the same had matured by lapse of time. This guarantee shall remain in full force and effect with respect to all obligations of the Buyer, whether presently due or that may become due in the future, and cannot be terminated, modified or released without the written consent of Foster Southeastern. The undersigned agree to pay all expenses and fees, including reasonable attorneys' fees, costs and disbursements, which may be incurred by Foster Southeastern in enforcing this guarantee. Buyer, its principal(s), and each guarantor authorize Foster Southeastern, its successors and assigns, to request information, make inquiries, and obtain reports and information, at any time and from time to time, in Foster Southeastern sole discretion, concerning the financial condition, credit history, and credit worthiness of Buyer, its principal(s) and/or each guarantor. The undersigned agree that facsimile signatures shall be, for purposes of this credit application and guarantee agreement, deemed an "original signature" and shall be legally binding. The undersigned have read and agree to the terms and conditions stated above including the guarantee agreement and represents that the information set forth in this application is true and accurate.


(Signature)

DANIEL B. ALBERT
(Printed Name)

264-33-2194
(Social Security No.)

Date: 7-14-08

(Signature)

(Printed Name)

(Social Security No.)

Date: _____

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Oldcastle APG South, Inc. d/b/a Adams Products
Company and Oldcastle APG Northeast, Inc. d/b/a
Foster-Southeastern

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

Daniel B. Albert

Defendant(s)

2014-CP - 23-05031

Submitted By: Elizabeth M. McMillan
Address: 55 East Camperdown Way, Suite 300
Greenville, SC 29601

SC Bar #: 15049
Telephone #: (864) 239-4000
Fax #: (864) 242-3199
Other:
E-mail:

NOTE: The coversheet 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 coversheet 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/Libel (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) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | 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 Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| 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 an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Date:

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, 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
County of Greenville

) IN THE COURT OF COMMON PLEAS
)
)
)
)

Oldcastle APG South, Inc. d/b/a Adams
Products Company and Oldcastle APG
Northeast, Inc. d/b/a Foster-Southeastern
PLAINTIFF

) Case NO. 2014-CP-23-05031
)
)

VS.

) **DEFENDANT'S ANSWER,**
)

) **AFFIRMATIVE DEFENSES**
)

DANIEL B. ALBERT, of GREENVILLE,
IN THE COUNTY OF GREENVILLE, AND
STATE OF SOUTH CAROLINA
DEFENDANT

) **AND**
)

) **COUNTERCLAIM**
) (Jury Trial Demanded)
)

ANSWER

NOW COMES the *DEFENDANT*, DANIEL B. ALBERT, personally, and he answers each paragraph of the complaint made by *PLAINTIFF*, Oldcastle APG South, Inc. and Oldcastle APG Northeast, Inc. as follows, to wit:

1. Denied.
2. Affirmed.
3. Denied.
4. Can neither affirm nor deny.
5. Denied.
6. Affirmed
7. Denied
8. Denied
9. Denied
10. Denied
11. Denied.
12. Denied.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKELSON
2014 DEC 29 PM 1 25

13. Denied.

14. Denied.

15. Denied

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied

AFFIRMATIVE DEFENSES

FOR A FIRST AFFIRMATIVE DEFENSE

Statute of Limitations/Statute of Repose

38. Plaintiff's actions are barred by the applicable statute of limitations and or the applicable statute of repose, including without limitation SC Code 15-3-530 & 39-5-150.

FOR A SECOND AFFIRMATIVE DEFENSE

Waiver

39. Plaintiff was engaged in conduct that constitutes a waiver of its rights under the contract, and by reason of said waiver, defendant is excused from further performance of the duties and obligations under the contract.

FOR A THIRD AFFIRMATIVE DEFENSE

Failure to Mitigate

40. Plaintiff has failed to mitigate and lessen its damages, if any, as required by law and are therefore barred from recovery.

FOR A FOURTH AFFIRMATIVE DEFENSE

Reservation of Rights

41. Defendant reserves the right to assert additional affirmative defenses throughout this litigation.

COUNTERCLAIM

NOW COMES the *DEFENDANT*, DANIEL B. ALBERT, personally, and makes the following counterclaim against *PLAINTIFF*,

42. In the summer of 2008, Plaintiff agreed to freeze the balance of funds then owed by Defendant or entities owned by Defendant to Plaintiff and to accept payment for each future order upon delivery of such future order.

43. Defendant remitted payment to Plaintiff in the amount of each order received from the summer of 2008 until Plaintiff made the unilateral decision to stop selling to Defendant in the fall of 2012.
44. Defendant expended time and resources over a ten-year period from 2002-2012 to establish and build the Belgard brand in the upstate of South Carolina to the benefit of Plaintiff.
45. The unilateral decision by Plaintiff to stop selling Belgard products to Defendant contributed to the closure of Defendant's business and resulted in lost profits and loss of goodwill for which Defendant is seeking damages in an amount to be determined by a jury.

Respectfully submitted,



DANIEL B. ALBERT, pro se
PLAINTIFF
2 Tennwood Dr
Greenville, SC 29609
Phone: 321-474-9189

December 29, 2014

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

Oldcastle APG South, Inc. and Oldcastle APG
Northeast, Inc.

Plaintiff,

vs.

Daniel B. Albert

Defendant.

IN THE COURT OF COMMON PLEAS
Civil JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

Case No.: 2014-CP-23-05031

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 DEC 29 PM 1 26

I certify that on this date, I served a copy of Defendant's Answer, Affirmative Defenses and Counterclaim in this action, dated

December 29, 2014, on McAngus Goudelock & Courie LLC by

- ☒ Delivering it to him/her personally;
☐ Mailing it to him/her, at his/her last known address, by depositing it in the U.S.

Mail, in an envelope with sufficient postage affixed, addressed as follows:

☐ Delivering it by commercial delivery service in accordance with Rule 4(d)(9),
SCRCP, addressed as follows: ; or,

☐ Other:

12-29-14

Date

Daniel B. Albert

Signature

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED-CLERK OF COURT
IN THE COURT OF COMMON PLEAS
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

OLDCASTLE APG SOUTH, INC. D/B/A FOSTER-SOUTHEASTERN,
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.

Civil Action No. 2014-CP-23-05031

2015 JAN 30 AM 9 07

Plaintiff,

REPLY TO DEFENDANT'S
COUNTERCLAIM

vs.

DANIEL B. ALBERT,

Defendant.

Plaintiff, Oldcastle Lawn & Garden, Inc., replies to the Defendant's Answer and Counterclaim and respectfully asserts the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Answer and Counterclaim not specifically admitted is denied.
2. Paragraphs 1 through 42 of the Answer and Counterclaim do not assert allegations against the Plaintiff, and therefore, no response is required.
3. Plaintiff denies Paragraphs 42, 43, 44 and 45 of the Answer and Counterclaim.

FOR A SECOND DEFENSE

4. Plaintiff would respectfully show each and every cause of action set forth in the Answer and Counterclaim fails to state a claim upon which relief can be granted and, therefore, the Counterclaims should be dismissed.

FOR A THIRD DEFENSE

5. The Counterclaims brought by Defendant are claims that can only be brought by Madawaska Hardscape Products, Inc., an entity owned by Defendant, and cannot be brought by him individually, and therefore, they should be dismissed.

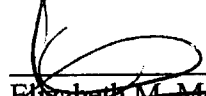
FOR A FOURTH DEFENSE

6. Defendant's claims are barred by the applicable statute of limitations.

7. Plaintiff's assert the doctrines of waiver and estoppel and unclean hands as a complete bar to Defendant's counterclaims.

WHEREFORE, having fully answered, Plaintiff prays that the Counterclaims be dismissed and judgment be entered on its claims against Defendant, for the costs of this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.


Elizabeth M. McMillan

15049

Post Office Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000

ATTORNEYS FOR PLAINTIFF, OLDCASTLE
APG SOUTH, INC. D/B/A ADAMS PRODUCTS
COMPANY

January 27, 2015

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE, SC
IN THE COURT OF COMMON PLEAS
PAUL B. WICKENSIMER
2015 JAN 30 AM 9:07

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Civil Action No. 2014-CP-23-05031

CERTIFICATE OF SERVICE

Plaintiff,

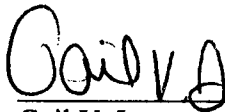
vs.

DANIEL B. ALBERT,

Defendant.

I hereby certify that I have this 27th day of January, 2015 served a copy of Reply to Defendant's Counterclaim by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Daniel B. Albert
2 Tennwood Drive
Greenville, SC 29609
Pro Se Defendant



Gail V. Inzero
Legal Assistant to Elizabeth M. McMillan

STATE OF SOUTH CAROLINA
County of Greenville

) IN THE COURT OF COMMON PLEAS

2017 MAY 15 PM 3: 32

Oldcastle APG South, Inc. d/b/a Adams
Products Company and Oldcastle APG
Northeast, Inc. d/b/a Foster-Southeastern
PLAINTIFF(s)

) Case NO. 2014-CP-23-0

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC

VS.

) **DEFENDANT'S MOTION FOR**
) **RELEIF OF JUDGMENT AND**
) **FOR REINSTATEMENT TO**
) **TRIAL ROSTER**

DANIEL B. ALBERT, of GREENVILLE,
IN THE COUNTY OF GREENVILLE,
AND STATE OF SOUTH CAROLINA
DEFENDANT

Pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, Defendant Daniel B Albert hereby files this Motion for Relief of Judgment and for Reinstatement to Trial Roster as set forth herein. The grounds for this Motion are as follows:

BACKGROUND

On May 16, 2016, Plaintiff, through counsel, sent to Defendant a proposed consent order to dismiss this case without prejudice pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. Upon review of the proposed dismissal without prejudice, Defendant rejected the proposed 40(j) dismissal because it did not bring the litigation to an immediate end. Defendant proposed entering into a confession of judgment in order to bring the litigation to an immediate end. These communications are attached as **Exhibit 1** to this motion.

Later on May 16, 2016, counsel for Plaintiff informed Defendant that Plaintiff would accept a confession of judgment from Defendant in exchange for an immediate dismissal of the case. These communications and the draft Confession of Judgment are attached as **Exhibit 2** to this motion. As instructed by counsel for Plaintiff, Defendant

executed the Confession of Judgment and had it notarized, subsequently scanning and emailing it to counsel for Plaintiff. A copy of this executed Confession of Judgment is attached as **Exhibit 3** to this motion.

Shortly after the May 16, 2016 email from Defendant to counsel for Plaintiff transmitting the executed Confession of Judgment, Defendant and counsel for Plaintiff engaged in communication regarding the validity of the Confession of Judgment as a proper and accurate reflection of the agreement between the parties. Defendant and counsel for Plaintiff were in sharp disagreement about the validity of the stand-alone Confession of Judgment, and the need for a Settlement Agreement to more fully and accurately set forth the terms of the agreement between the parties. Defendant objected to counsel for Plaintiff unilaterally having the case removed from the trial roster for the next week, and this email exchange, which culminated on May 20, 2016, led to the reinstatement of the case to the trial roster for the next week. These communications between Defendant and counsel for Plaintiff are attached as **Exhibit 4** of this motion.

Counsel for Plaintiff acquiesced to the insistence of Defendant that it was necessary for the parties to execute a Settlement Agreement in order to clarify the terms of the agreement and to validate the Confession of Judgment by emailing a draft Settlement Agreement and Release to Defendant on May 21, 2016. That email is attached to this motion as **Exhibit 5**, and the draft Settlements Agreement is attached as **Exhibit 6** to this motion. The Settlement Agreement was executed through a series of emails between Defendant and counsel for Plaintiff that started on May 23, 2016 and completed on June 2, 2016. Those emails are attached as **Exhibit 7** to this motion.

The several elements that comprise the Settlement Agreement and Release are assembled as one document in **Exhibit 8** to this motion. The Settlement Agreement stipulates in paragraph two of the Agreement that the Confession of Judgment was

attached to the Settlement Agreement, tying the validity of the Confession of Judgment to the execution of the Settlement Agreement. A material term of the Settlement Agreement stipulated in paragraph five was that a Stipulation of Dismissal dismissing all claims and counterclaims in the litigation would be entered into by the parties.

Defendant and counsel for Plaintiff engaged in email communication from May 20, 2016 through May 23, 2016 with Lyndall Coker, jury coordinator for this court, regarding the reinstatement of the case to the trial roster, and the subsequent removal of the case from the trial roster on May 23, 2016. In this email exchange, attached to this motion as **Exhibit 9**, counsel for Plaintiff informed the court that the parties had settled the case by entering into a Settlement Agreement, and that counsel for Plaintiff would be submitting a stipulation of dismissal shortly.

Counsel for Plaintiff did not file a stipulation of dismissal bringing the litigation to an immediate end as agreed throughout the discussions of the initial execution of the Confession of Judgment and the execution of the Settlement Agreement. From May 23, 2016 through the time that he received the case scheduling notice sent by the court dated January 18, 2017, Defendant had the understanding that the litigation in this matter was completely and finally over. Since learning that the case was not ended as agreed, Defendant has contested the validity of the Confession of Judgment. Defendant and counsel for Plaintiff could not come to terms on the resolution of the dispute, resulting in counsel for Plaintiff sending Defendant a demand letter dated March 9, 2017, which is attached as **Exhibit 10** to this motion.

Defendant responded to Plaintiff's demand letter with a letter setting forth the facts and arguments supporting his position to counsel for Plaintiff dated March 13, 2017, which is attached as **Exhibit 11** to this motion. Defendant emailed his letter in response to Plaintiff's demand letter on March 13, 2017, which started an email string

setting forth the arguments of Defendant and Plaintiff in the current dispute over the validity of the Confession of Judgment. In-house counsel for Plaintiff entered the email string communicating the position of each party in the dispute over the validity of the Confession of Judgment. Both counsel for Plaintiff and in-house counsel have stated that the failure of Plaintiff to file a stipulation of dismissal ending the litigation of this matter is not material to the validity of the Confession of Judgment. These communications by email string from March 13, 2017 through May 5, 2017 are attached as **Exhibit 12** to this motion.

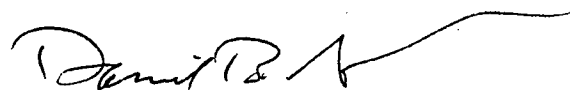
On April 7, 2016, prior to the settlement discussions by the parties in May 2016, Defendant sent an email, attached as **Exhibit 13** to this motion, regarding outstanding discovery issues to counsel for Plaintiff. This information is provided with this motion so that, should the court rule that the Confession of Judgment is void and the case reinstated to the trial docket, the court may instruct Plaintiff to address outstanding discovery issues and permit sufficient time for Plaintiff to do so.

ARGUMENT

Defendant rejected the offer by counsel for Plaintiff of a stipulation of dismissal without prejudice because it would not bring a complete and final end to the litigation in this case. The immediate, final and complete end of the litigation in this case was a key element of all of the settlement negotiations between Defendant and Plaintiff, and was a necessary and material provision of the Settlement Agreement and Release as well as the Confession of Judgment. Whether through negligence, breach of contract, fraud, misrepresentation or other misconduct of Plaintiff, Defendant has been denied the benefit of his bargain, therefore this court should rule that the Confession of Judgment is null and void, and without any continuing effect.

In addition to granting Defendant relief from the Confession of Judgment filed by Plaintiff in this case, this court should reinstate the case to the trial roster no sooner than late September, and that Plaintiff be instructed to address the outstanding discovery issues that Defendant brought to the attention of Plaintiff in April 2016.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel B. Albert", written over a horizontal line.

May 15, 2017

DANIEL B. ALBERT, pro se
DEFENDANT
2 Tennwood Dr
Greenville, SC 29609
Phone: 321-474-9189



Dan Albert <dan.albert7@gmail.com>

Oldcastle v. Daniel Albert

2 messages

Beth McMillan <beth.mcmillan@mgclaw.com>
 To: "Dan Albert (dan.albert7@gmail.com)" <dan.albert7@gmail.com>

Mon, May 16, 2016 at 11:21 AM

Dan,

As we discussed, attached is the proposed consent order to dismiss the case without prejudice pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. This basically allows the case to be frozen in time for a period of one year and all claims and defenses are preserved during that time. Either party may restore the case within 12 months of the filing of this order, and if no one does then the case will be dismissed with prejudice.

If you don't have any questions, please sign it and scan it back to me as soon as possible and I will file it with the court.

Thanks,

Beth



Beth McMillan, Attorney
 beth.mcmillan@mgclaw.com
 55 E. Camperdown Way Suite 300
 Greenville, SC 29601
 Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
 VCARD | BIO

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➤ Please consider the environment before printing this email.

14467986.doc
 35K

Dan Albert <dan.albert7@gmail.com>
 To: Beth McMillan <beth.mcmillan@mgclaw.com>

Mon, May 16, 2016 at 12:45 PM

Beth,

After reviewing the proposed Order of Dismissal Without Prejudice, I can't help but conclude that agreeing to it would virtually guarantee another year of no opportunity to do business with Oldcastle instead of enhancing the opportunity to resume doing business with Oldcastle in the near future. Going to trial next week would clarify matters and bring closure to the litigation phase of my relationship with Oldcastle. Dismissal without prejudice would technically continue litigation for another year plus the additional time to go through a new trial phase.

Another way to bring closure to the matter is to revise your confession of judgment to \$100,000 and get it executed today so that you and Oldcastle don't have to prepare for trial next week. Madawaska Hardscape Products, Inc. owes Oldcastle approximately \$143,000, all of it outside of the statute of limitations. The lawsuit is against me personally as the guarantor, which I believe will

DEF 0008

result in potentially Oldcastle receiving nothing at trial due to the statute of limitations barring success on their claim. In light of the risk that Oldcastle has of getting nothing or a partial judgment, I think that a \$100,000 confession of judgment is reasonable. If they can agree to this, we can be finished with this litigation immediately.

If Oldcastle is willing to put the litigation behind us and resume a business relationship, I am confident that the mutual benefit derived from future business will dwarf any perceived loss that Oldcastle has coming out of this litigation. As you have made clear, there would be no commitment to doing business on the part of Oldcastle if we agree to a confession of judgment. If Oldcastle is in agreement, simply revise the confession of judgment to reflect an amount of \$100,000 and send it over to me and I will sign it, scan it and send it back to you today.

Dan

[Quoted text hidden]

DEF 0009



Dan Albert <dan.albert7@gmail.com>

Oldcastle v. Daniel Albert

2 messages

Beth McMillan <beth.mcmillan@mgclaw.com>

Mon, May 16, 2016 at 2:26 PM

To: "Dan Albert (dan.albert7@gmail.com)" <dan.albert7@gmail.com>

Dan,

I received your response to my proposed Consent Order dismissing the case pursuant to Rule 40(j). My client is willing to accept a compromised Confession of Judgment from you in the amount of \$100,000 and I have attached the revised document for your signature. As we discussed at length last week, my client is not willing to agree to anything beyond this Confession of Judgment.

Please sign it as indicated and have it notarized and send it back to me and I will then advise the court of the dismissal of the case.

Thanks,

Beth

Beth McMillan, Attorney
 beth.mcmillan@mgclaw.com
 55 E. Campdown Way Suite 300
 Greenville, SC 29601
 Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3189
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Please consider the environment before printing this email.

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 33K

Dan Albert <dan.albert7@gmail.com>

Mon, May 16, 2016 at 4:58 PM

To: Beth McMillan <beth.mcmillan@mgclaw.com>

Beth,

It may be obvious, but please confirm that my assumption is accurate that, in the event that the funds that I or Keystone Northeast receives from the federal lawsuit net of attorney fees and costs is less than \$100,000, that I would disperse all of those proceeds to Oldcastle, and that Oldcastle would not be recording a judgment or seeking a residual balance. In other words, just as Oldcastle would not be pursuing payment in the event that I receive nothing from the judgment, they would be satisfied with all of the proceeds that I or Keystone Northeast receive in the event that those proceeds fall short of \$100,000.

Dan

[Quoted text hidden]

DEF 0014

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

)
) IN THE COURT OF COMMON PLEAS
)

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

) Civil Action No. 2014-CP-23-05031
)
)
)
)

) **CONFESSION OF JUDGMENT**
)
)
)
)

Plaintiff,

vs.

DANIEL B. ALBERT,

Defendant.

Pursuant to SC Code Ann. §§15-35-350 and 15-35-360, this **CONFESSION OF JUDGMENT** is made and entered into as of this, _____ day of May, 2016, by and between Daniel B. Albert ("Defendant") and Oldcastle APG South, Inc. and Oldcastle APG Northeast, Inc. (collectively referred to as "Plaintiffs").

WHEREAS, Defendant's company, Madawaska Hardscape Products, Inc. ("Madawaska") has previously purchased supplies from Plaintiffs and Defendant signed a personal guaranty for the purchase of those products and the extension of credit by Plaintiffs;

WHEREAS, Madawaska failed to pay for certain supplies sold and delivered to Madawaska as evidenced by the invoices and other documents produced by Plaintiffs; and

WHEREAS, there is presently due and owing to the Plaintiffs by Defendant, as the personal guarantor for Madawaska, the sum of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars;

DEF 0015

WHEREAS, Plaintiffs have declared the entire balance due and payable, and has demanded payment of the same, but the Defendant has failed to pay the amount due, or any of it; and

WHEREAS, Defendant or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case"); and

WHEREAS, upon his or his company's receipt of funds that are paid either as a judgment or as a settlement of the Federal Court Case, Defendant agrees to pay Plaintiffs the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars within ten days of receipt of the payment of the judgment in the Federal Court Case.

NOW, THEREFORE, this Confession of Judgment is made to Plaintiffs in the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Judgment is to be held by counsel for the Plaintiffs and remain unrecorded unless the Defendant fails to pay the settlement within ten days of his or his company receiving payment from the judgment or the settlement awarded in the Federal Court Case.

The Plaintiffs hereby agree to mark the Confession of Judgment "paid and satisfied" and return it to the Defendant upon payment of the complete settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Confession of Judgment shall be recorded with the court to allow enforcement by the Plaintiffs only if the Defendant fails to make payments and satisfy the settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars upon the terms as set forth in this Confession of Judgment. Defendant hereby confesses judgment in favor of the Plaintiffs herein in the amount of One Hundred

Thousand and 00/100 (\$100,000.00) Dollars and hereby authorizes judgment to be entered pursuant to the terms stipulated herein.

In acknowledgment and agreement, I hereby set my hand and seal this _____ day of May, 2016.

By: _____ (L.S.)
Daniel B. Albert

SWORN TO AND SUBSCRIBED before me

this _____ day of _____, 2016

Notary Public for South Carolina (L.S.)

My Commission Expires: _____

DEF 0017

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS)

OLDCASTLE APG SOUTH, INC. D/B/A)
 ADAMS PRODUCTS COMPANY AND)
 OLDCASTLE APG NORTHEAST, INC.)
 D/B/A FOSTER-SOUTHEASTERN,)

Civil Action No. 2014-CP-23-05031

Plaintiff,)

CONFESSION OF JUDGMENT

vs.)

DANIEL B. ALBERT,)

Defendant.)

Pursuant to SC Code Ann. §§15-35-350 and 15-35-360, this **CONFESSION OF JUDGMENT** is made and entered into as of this, the 16th day of May, 2016, by and between Daniel B. Albert ("Defendant") and Oldcastle APG South, Inc. and Oldcastle APG Northeast, Inc. (collectively referred to as "Plaintiffs").

WHEREAS, Defendant's company, Madawaska Hardscape Products, Inc. ("Madawaska") has previously purchased supplies from Plaintiffs and Defendant signed a personal guaranty for the purchase of those products and the extension of credit by Plaintiffs;

WHEREAS, Madawaska failed to pay for certain supplies sold and delivered to Madawaska as evidenced by the invoices and other documents produced by Plaintiffs; and

WHEREAS, there is presently due and owing to the Plaintiffs by Defendant, as the personal guarantor for Madawaska, the sum of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars;

WHEREAS, Plaintiffs have declared the entire balance due and payable, and has demanded payment of the same, but the Defendant has failed to pay the amount due, or any of it; and

WHEREAS, Defendant or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case"); and

WHEREAS, upon his or his company's receipt of funds that are paid either as a judgment or as a settlement of the Federal Court Case, Defendant agrees to pay Plaintiffs the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars within ten days of receipt of the payment of the judgment in the Federal Court Case.

NOW, THEREFORE, this Confession of Judgment is made to Plaintiffs in the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Judgment is to be held by counsel for the Plaintiffs and remain unrecorded unless the Defendant fails to pay the settlement within ten days of his or his company receiving payment from the judgment or the settlement awarded in the Federal Court Case.

The Plaintiffs hereby agree to mark the Confession of Judgment "paid and satisfied" and return it to the Defendant upon payment of the complete settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Confession of Judgment shall be recorded with the court to allow enforcement by the Plaintiffs only if the Defendant fails to make payments and satisfy the settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars upon the terms as set forth in this Confession of Judgment. Defendant hereby confesses judgment in favor of the Plaintiffs herein in the amount of One Hundred

DEF 0030

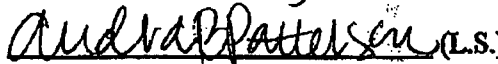
Thousand and 00/100 (\$100,000.00) Dollars and hereby authorizes judgment to be entered pursuant to the terms stipulated herein.

In acknowledgment and agreement, I hereby set my hand and seal this 16th day of May, 2016.

By:  (L.S.)
Daniel B. Albert

SWORN TO AND SUBSCRIBED before me

this 16th day of May, 2016

 (L.S.)
Notary Public for South Carolina

My Commission Expires
My Commission Expires: February 12, 2023



DEF 0031



Dan Albert <dan.albert7@gmail.com>

Confession of Judgment

12 messages

Dan Albert <dan.albert7@gmail.com>

Mon, May 16, 2016 at 5:29 PM

To: Beth McMillan <beth.mcmillan@mgclaw.com>

Attached is the executed, notarized Confession of Judgment.

 Confession of Judgment 5.16.16.pdf
122K

Beth McMillan <beth.mcmillan@mgclaw.com>

Wed, May 18, 2016 at 3:40 PM

To: Dan Albert <dan.albert7@gmail.com>

Dan,

Can you please send me the original Confession of Judgment by mail?

Thanks,

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com]

Sent: Monday, May 16, 2016 5:30 PM

To: Beth McMillan

Subject: Confession of Judgment

Attached is the executed, notarized Confession of Judgment.



Beth McMillan, Attorney

beth.mcmillan@mgclaw.com

55 E. Camperdown Way Suite 300

Greenville, SC 29601

Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199

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Please consider the environment before printing this email.

Dan Albert <dan.albert7@gmail.com>

Wed, May 18, 2016 at 4:46 PM

To: Beth McMillan <beth.mcmillan@mgclaw.com>

DEF 0018

Beth,

It seems to me that we should draft a simple settlement agreement that is signed by both parties that spells out without ambiguity the intent of the agreement. As we have discussed, my intent in entering into this agreement is that:

1. Oldcastle will be paid only from net proceeds paid to Keystone Northeast, Inc. or to me personally as a result of the judgment or settlement arising from the federal case that you have cited in the confession of judgment. By definition, proceeds from the federal case to Keystone Northeast, Inc. or to me personally are logically defined as what Keystone Northeast, Inc. or I actually receive in hand. I have made my intent clear in this, but I think it would be best to make it clear in writing.
2. Net proceeds from the federal case is the gross payment amount less legal fees and legal costs that have already been predetermined by my contract with counsel in that case. You would be able to verify with counsel in that case that no proceeds have been diverted from the judgment or settlement in the case.
3. If the net proceeds that I or Keystone Northeast, Inc. receives is less than \$100,000, the entirety of the net proceeds will be payable to Oldcastle, and the difference between the net proceeds and the \$100,000 amount agreed to in the confession of judgment will not be collectible by Oldcastle, nor will there be a partial judgment recorded with the court.
4. If there are no proceeds from the federal case, there will be no judgment or collection action on the part of Oldcastle. I know that you have represented that the language of the confession of judgment accomplishes that intent, but it wouldn't hurt to plainly state the intent in a settlement agreement.

After I emailed you the confession of judgment the other day I realized that there was no provision for executing an agreement by Oldcastle, even though the confession of judgment has language that says "Plaintiffs hereby agree". I don't see how what you have put together is binding upon Oldcastle. I emailed the confession of judgment to an attorney to look at, but based upon a brief conversation over the phone it seems that a simple settlement agreement executed by both parties would establish a legally binding agreement. Let me know your thoughts.

Dan
[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>
To: Dan Albert <dan.albert7@gmail.com>

Wed, May 18, 2016 at 4:52 PM

Dan,

Your points in this email are completely inconsistent with what you and I discussed on Monday when I told you that I did not agree with your assumptions, inconsistent with what is in the confession of judgment that you signed, and inconsistent with what you told me on the phone and what we agreed to. The confession of judgment is the settlement agreement. You cannot renege on what you already agreed to do and try to input new terms into the confession judgment.

I expect you to send the original confession of judgment that you signed.

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Wednesday, May 18, 2016 4:46 PM
To: Beth McMillan
Subject: Re: Confession of Judgment

[Quoted text hidden]
[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>
Bcc: Paul Pappas <pappas3858@yahoo.com>

Wed, May 18, 2016 at 5:13 PM

DEF 0019

Beth,

It's a good thing they were having this discussion, because nothing that I have requested in a settlement agreement is in my view inconsistent with the confession of judgment that I signed, inconsistent with our discussions, or inconsistent with what I have expressed my intent to be. You have said things along the way like "that is what a confession of judgment is", "that is what is contemplated by the agreement" in response to some of my questions and statements of my intent, as well as my requests for clarity. If you are so correct in your view of things, then please explain to me how Oldcastle is bound by an agreement, and what that agreement is. Based upon your response above, we clearly do not have an agreement. My request for a simple settlement agreement is in pursuit of actually memorializing an agreement that is binding on both parties. Please identify anything that I have proposed clarifying that is inconsistent with what I have been expressing my intent to be all along.

Dan

[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>
Bcc: Paul Pappas <pappas3858@yahoo.com>

Thu, May 19, 2016 at 12:27 PM

Beth,

Please tell me if any of the following statements do not accurately reflect the intent of the contemplated agreement to settle this case:

1. Oldcastle will receive money only if I, or Keystone Northeast, Inc. receive money from the federal lawsuit.
2. The only money that Oldcastle receives in this matter will come from money that I or Keystone Northeast, Inc. receive from the federal lawsuit.
3. If I, or Keystone Northeast, Inc. do not receive any money from the federal lawsuit, then Oldcastle will receive no money from me and the Confession of Judgment will not be recorded and will be of no effect.
4. The Confession of Judgment will only be recorded if I fail to pay Oldcastle after I or Keystone Northeast, Inc. have received money from the federal lawsuit.
5. If I, or Keystone Northeast, Inc. receive less than \$100,000 from the federal lawsuit and remit payment to Oldcastle of all of the funds received, the confession of judgment will not be recorded and will have no continuing effect.
6. Upon execution of a legally binding settlement agreement stipulating a confession of judgment on the above terms, the present litigation will be resolved, and Oldcastle will be relinquishing all claims against me personally and Madawaska Hardscape Products, Inc.

Dan

[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>
To: Dan Albert <dan.albert7@gmail.com>

Fri, May 20, 2016 at 2:30 PM

Dan,

Unlike your email prior to this one in which you stated assumptions that were directly inconsistent with what you and I agreed to over the phone, the items you have set forth in the email from yesterday are correct except for the following items: (1) the confession of judgment provides that you will pay the \$100,000 if you or one of your companies, not just Keystone Northeast, Inc., receives money from the Keystone litigation in federal court. We will not stipulate to any more narrow language than is provided in the Confession of Judgment; and (2) we disagree with your item #6. You have already executed a legally binding confession of judgment which we intend to enforce. I will be glad to send you a settlement agreement that states that we are relinquishing all claims against you personally and Madawaska Hardscape Products, Inc. due to your signing of that Confession of Judgment.

Please let me know if you have any questions.

Beth

DEF 0020

From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Thursday, May 19, 2016 12:27 PM

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>
Bcc: Paul Pappas <pappas3858@yahoo.com>

Fri, May 20, 2016 at 3:17 PM

Beth,

There are no tricks, gimmicks or intentionally ambiguous statements on my part. I have no problem with adding language encompassing all of my companies. I have consistently made my intention clear that any and all payments of funds from me or my companies to Oldcastle contemplated by the confession of judgment discussions would come from proceeds of funds received by me or my companies from the federal lawsuit. Your statement in your last email seems to attempt to clarify that I will pay the \$100,000 if I or one of my companies, not just Keystone Northeast, Inc. receives money from the federal lawsuit, but I am concerned that you may be intentionally ambiguous in this language and in the language of the Confession of Judgment. The language structure that you have used seems to leave the possibility open for collection action on the entire \$100,000 even if a lesser amount is received by me or my companies from the federal lawsuit. I sought to clarify this potential ambiguity by the six statements I made above.

I have questioned whether what we have executed a legally binding agreement, and in your objection to my item number six you have asserted your contrary opinion on the legality of the confession of judgment while stating that you would give me a settlement agreement that states that Oldcastle is relinquishing all claims against me personally and Madawaska Hardscape Products, Inc. based upon the execution of a Confession of Judgment. It would seem to me that, unless you are intending ambiguity, we could satisfy all concerns by simply modifying my six points above to clearly include money received by any of my companies and have a duly authorized representative of Oldcastle and I sign a document that sets forth those six points (which I would call a Settlement Agreement), and also have a duly authorized representative of Oldcastle sign the Confession of Judgment.

I hope that you will agree that this simple approach should satisfy the concerns of all. In the event that we cannot come to terms on this, and we must appear in court next week and argue over whether we have a legally binding agreement or not and in all likelihood proceed with trial, I am attaching sixty-four pages of documents that I intend to use at trial.

Dan

[Quoted text hidden]

11 attachments

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 DEF 000042-DEF 000043.pdf
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 DEF 000044-DEF 000045.pdf
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 DEF 000046-DEF 000048.pdf
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 DEF 000049-DEF 000052.pdf
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DEF 000060-DEF 000062.pdf

DEF 0021

258K

DEF 000063-DEF 000064.pdf
210K

Beth McMillan <beth.mcmillan@mgclaw.com>
To: Dan Albert <dan.albert7@gmail.com>

Fri, May 20, 2016 at 3:49 PM

Dan,

You keep trying to change your position or make statements that you think will somehow affect what we previously agreed to. You first agreed to dismiss the case pursuant to Rule 40(j), and then you backed out of that. You then agreed to sign the Confession of Judgment and after you signed it and I asked for the original to be sent to me, you acted as if we were still negotiating over the settlement. We reached a settlement agreement on Wednesday that is straight forward and is not ambiguous and you signed a confession of judgment that is straight forward and not ambiguous. I do not intend to try this case next week – I intend to enforce our settlement agreement.

You know exactly what the terms are. If you or your company, which presumably is Keystone Northeast, Inc. since it is the party in the federal lawsuit, receives an award or settlement in the presently pending federal action which is on appeal to the Fourth Circuit, you agree to pay Oldcastle \$100,000. If you receive an award or settlement that is more than \$100,000 and you do not pay Oldcastle, only then we will enter the Confession of Judgment and seek to go after you personally. If you lose on appeal, then we will not go after you. That is as straightforward as it gets. As I told you, if the amount you receive is less than the amount Judge Hendricks awarded you and you have issues with how much you have to pay your lawyers and how much is left to Oldcastle, that is a battle that we will have to fight with your attorneys at the time of the award. As of right now, we have agreed to not go forward with this trial and are willing to be paid out of the award in the federal action.

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Friday, May 20, 2016 3:18 PM

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>
To: "Dan Albert (dan.albert7@gmail.com)" <dan.albert7@gmail.com>

Fri, May 20, 2016 at 4:44 PM

Dan,

I also wanted to let you know that we are not on the trial roster for next week because I had informed the court that we had resolved the matter. If you disagree with that position, then we need to let the court know ASAP of your position.

DEF 0022

Beth

From: Beth McMillan
Sent: Friday, May 20, 2016 3:50 PM
To: 'Dan Albert'
Subject: RE: Confession of Judgment

[Quoted text hidden]
[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>
Bcc: Paul Pappas <pappas3858@yahoo.com>

Fri, May 20, 2016 at 4:52 PM

Beth,

I do not agree with that position, and object to you unilaterally informing the court that we had resolved the matter when we have had such sharp disagreement. Please immediately inform the court that we are not in agreement, and I will also be in touch with them to let them know. If we do not work out our disagreement I expect to go to trial next week.

Dan
[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>
To: Dan Albert <dan.albert7@gmail.com>

Fri, May 20, 2016 at 5:09 PM

I responded to an email that the court had sent me after you and I had reached an agreement.

Please call me back to discuss this matter.

Beth

Sent from my iPhone

On May 20, 2016, at 4:52 PM, Dan Albert <dan.albert7@gmail.com<mailto:dan.albert7@gmail.com>> wrote:

Beth,

I do not agree with that position, and object to you unilaterally informing the court that we had resolved the matter when we have had such sharp disagreement. Please immediately inform the court that we are not in agreement, and I will also be in touch with them to let them know. If we do not work out our disagreement I expect to go to trial next week.

Dan

On Fri, May 20, 2016 at 4:44 PM, Beth McMillan <beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>> wrote:

Dan,

I also wanted to let you know that we are not on the trial roster for next week because I had informed the court that we had resolved the matter. If you disagree with that position, then we need to let the court know ASAP of your position.

Beth

From: Beth McMillan
Sent: Friday, May 20, 2016 3:50 PM
To: 'Dan Albert'
Subject: RE: Confession of Judgment

Dan,

You keep trying to change your position or make statements that you think will somehow affect what we previously agreed to. You first agreed to dismiss the case pursuant to Rule 40(j), and then you backed out of that. You then agreed to sign the Confession of

DEF 0023

Judgment and after you signed it and I asked for the original to be sent to me, you acted as if we were still negotiating over the settlement. We reached a settlement agreement on Wednesday that is straight forward and is not ambiguous and you signed a confession of judgment that is straight forward and not ambiguous. I do not intend to try this case next week - I intend to enforce our settlement agreement.

You know exactly what the terms are. If you or your company, which presumably is Keystone Northeast, Inc. since it is the party in the federal lawsuit, receives an award or settlement in the presently pending federal action which is on appeal to the Fourth Circuit, you agree to pay Oldcastle \$100,000. If you receive an award or settlement that is more than \$100,000 and you do not pay Oldcastle, only then we will enter the Confession of Judgment and seek to go after you personally. If you lose on appeal, then we will not go after you. That is as straightforward as it gets. As I told you, if the amount you receive is less than the amount Judge Hendricks awarded you and you have issues with how much you have to pay your lawyers and how much is left to Oldcastle, that is a battle that we will have to fight with your attorneys at the time of the award. As of right now, we have agreed to not go forward with this trial and are willing to be paid out of the award in the federal action.

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Friday, May 20, 2016 3:18 PM
To: Beth McMillan
Subject: Re: Confession of Judgment

Beth,

There are no tricks, gimmicks or intentionally ambiguous statements on my part. I have no problem with adding language encompassing all of my companies. I have consistently made my intention clear that any and all payments of funds from me or my companies to Oldcastle contemplated by the confession of judgment discussions would come from proceeds of funds received by me or my companies from the federal lawsuit. Your statement in your last email seems to attempt to clarify that I will pay the \$100,000 if I or one of my companies, not just Keystone Northeast, Inc. receives money from the federal lawsuit, but I am concerned that you may be intentionally ambiguous in this language and in the language of the Confession of Judgment. The language structure that you have used seems to leave the possibility open for collection action on the entire \$100,000 even if a lesser amount is received by me or my companies from the federal lawsuit. I sought to clarify this potential ambiguity by the six statements I made above.

I have questioned whether what we have executed a legally binding agreement, and in your objection to my item number six you have asserted your contrary opinion on the legality of the confession of judgment while stating that you would give me a settlement agreement that states that Oldcastle is relinquishing all claims against me personally and Madawaska Hardscape Products, Inc. based upon the execution of a Confession of Judgment. It would seem to me that, unless you are intending ambiguity, we could satisfy all concerns by simply modifying my six points above to clearly include money received by any of my companies and have a duly authorized representative of Oldcastle and I sign a document that sets forth those six points (which I would call a Settlement Agreement), and also have a duly authorized representative of Oldcastle sign the Confession of Judgment.

I hope that you will agree that this simple approach should satisfy the concerns of all. In the event that we cannot come to terms on this, and we must appear in court next week and argue over whether we have a legally binding agreement or not and in all likelihood proceed with trial, I am attaching sixty-four pages of documents that I intend to use at trial.

Dan

On Fri, May 20, 2016 at 2:30 PM, Beth McMillan <beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>> wrote:

Dan,

Unlike your email prior to this one in which you stated assumptions that were directly inconsistent with what you and I agreed to over the phone, the items you have set forth in the email from yesterday are correct except for the following items: (1) the confession of judgment provides that you will pay the \$100,000 if you or one of your companies, not just Keystone Northeast, Inc., receives money from the Keystone litigation in federal court. We will not stipulate to any more narrow language than is provided in the Confession of Judgment; and (2) we disagree with your item #6. You have already executed a legally binding confession of judgment which we intend to enforce. I will be glad to send you a settlement agreement that states that we are relinquishing all claims against you personally and Madawaska Hardscape Products, Inc. due to your signing of that Confession of Judgment.

Please let me know if you have any questions.

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com<mailto:dan.albert7@gmail.com>]
Sent: Thursday, May 19, 2016 12:27 PM

To: Beth McMillan

DEF 0024

Subject: Re: Confession of Judgment

Beth,

Please tell me if any of the following statements do not accurately reflect the intent of the contemplated agreement to settle this case:

1. Oldcastle will receive money only if I, or Keystone Northeast, Inc. receive money from the federal lawsuit.
2. The only money that Oldcastle receives in this matter will come from money that I or Keystone Northeast, Inc. receive from the federal lawsuit..
3. If I, or Keystone Northeast, Inc. do not receive any money from the federal lawsuit, then Oldcastle will receive no money from me and the Confession of Judgment will not be recorded and will be of no effect.
4. The Confession of Judgment will only be recorded if I fail to pay Oldcastle after I or Keystone Northeast, Inc. have received money from the federal lawsuit.
5. If I, or Keystone Northeast, Inc. receive less than \$100,000 from the federal lawsuit and remit payment to Oldcastle of all of the funds received, the confession of judgment will not be recorded and will have no continuing effect.
6. Upon execution of a legally binding settlement agreement stipulating a confession of judgment on the above terms, the present litigation will be resolved, and Oldcastle will be relinquishing all claims against me personally and Madawaska Hardscape Products, Inc.

Dan

On Wed, May 18, 2016 at 5:13 PM, Dan Albert <dan.albert7@gmail.com<mailto:dan.albert7@gmail.com>> wrote:
Beth,

It's a good thing they were having this discussion, because nothing that I have requested in a settlement agreement is in my view inconsistent with the confession of judgment that I signed, inconsistent with our discussions, or inconsistent with what I have expressed my intent to be. You have said things along the way like "that is what a confession of judgment is", "that is what is contemplated by the agreement" in response to some of my questions and statements of my intent, as well as my requests for clarity. If you are so correct in your view of things, then please explain to me how Oldcastle is bound by an agreement, and what that agreement is. Based upon your response above, we clearly do not have an agreement. My request for a simple settlement agreement is in pursuit of actually memorializing an agreement that is binding on both parties. Please identify anything that I have proposed clarifying that is inconsistent with what I have been expressing my intent to be all along.

Dan

On Wed, May 18, 2016 at 4:52 PM, Beth McMillan <beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>> wrote:

Dan,

Your points in this email are completely inconsistent with what you and I discussed on Monday when I told you that I did not agree with your assumptions, inconsistent with what is in the confession of judgment that you signed, and inconsistent with what you told me on the phone and what we agreed to. The confession of judgment is the settlement agreement. You cannot renege on what you already agreed to do and try to input new terms into the confession judgment.

I expect you to send the original confession of judgment that you signed.

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com<mailto:dan.albert7@gmail.com>]
Sent: Wednesday, May 18, 2016 4:46 PM
To: Beth McMillan
Subject: Re: Confession of Judgment

Beth,

It seems to me that we should draft a simple settlement agreement that is signed by both parties that spells out without ambiguity the intent of the agreement. As we have discussed, my intent in entering into this agreement is that:

1. Oldcastle will be paid only from net proceeds paid to Keystone Northeast, Inc. or to me personally as a result of the judgment or settlement arising from the federal case that you have cited in the confession of judgment. By definition, proceeds from the federal case to Keystone Northeast, Inc. or to me personally are logically defined as what Keystone Northeast, Inc. or I actually receive in hand. I have made my intent clear in this, but I think it would be best to make it clear in writing.
2. Net proceeds from the federal case is the gross payment amount less legal fees and legal costs that have already been predetermined by my contract with counsel in that case. You would be able to verify with counsel in that case that no proceeds have been diverted from the judgment or settlement in the case.
3. If the net proceeds that I or Keystone Northeast, Inc. receives is less than \$100,000, the entirety of the net proceeds will be

DEF 0025

payable to Oldcastle, and the difference between the net proceeds and the \$100,000 amount agreed to in the confession of judgment will not be collectible by Oldcastle, nor will there be a partial judgment recorded with the court.

4. If there are no proceeds from the federal case, there will be no judgment or collection action on the part of Oldcastle. I know that you have represented that the language of the confession of judgment accomplishes that intent, but it wouldn't hurt to plainly state the intent in a settlement agreement.

After I emailed you the confession of judgment the other day I realized that there was no provision for executing an agreement by Oldcastle, even though the confession of judgment has language that says "Plaintiffs hereby agree". I don't see how what you have put together is binding upon Oldcastle. I emailed the confession of judgment to an attorney to look at, but based upon a brief conversation over the phone it seems that a simple settlement agreement executed by both parties would establish a legally binding agreement. Let me know your thoughts.

Dan

On Wed, May 18, 2016 at 3:40 PM, Beth McMillan <beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>> wrote:

Dan,

Can you please send me the original Confession of Judgment by mail?

Thanks,

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com<mailto:dan.albert7@gmail.com>]
Sent: Monday, May 16, 2016 5:30 PM
To: Beth McMillan
Subject: Confession of Judgment

Attached is the executed, notarized Confession of Judgment.

<image001.png><https://service127-us.mimecast.com/mimecast/click?account=CUSA64A23&code=d970a383530541212a1ff6d891310db3>

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000<tel:864-239-4000> | Direct: 864-239-4037<tel:864-239-4037> | Fax: 864-242-3199<tel:864-242-3199>
VCARD<http://www.mgclaw.com/wp-content/uploads/2014/10/BethMcMillan.vcf> | BIO<http://www.mgclaw.com/attorney/elizabeth-mcmillan/>

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Beth McMillan, Attorney
beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main:864-239-4000<tel:864-239-4000> | Direct:864-239-4037<tel:864-239-4037> | Fax:864-242-3199<tel:864-242-3199>
VCARD<http://www.mgclaw.com/wp-content/uploads/2014/10/BethMcMillan.vcf> | BIO<http://www.mgclaw.com/attorney/elizabeth-m-mcmillan/>

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Beth McMillan, Attorney
beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main:864-239-4000<tel:864-239-4000> | Direct:864-239-4037<tel:864-239-4037> | Fax:864-242-3199<tel:864-242-3199>
VCARD<http://www.mgclaw.com/wp-content/uploads/2014/10/BethMcMillan.vcf> | BIO<http://www.mgclaw.com/attorney/elizabeth-m-mcmillan/>

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Beth McMillan, Attorney
beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main:864-239-4000 | Direct:864-239-4037 | Fax:864-242-3199
VCARD<http://www.mgclaw.com/wp-content/uploads/2014/10/BethMcMillan.vcf> | BIO<http://www.mgclaw.com/attorney/elizabeth-mcmillan/>

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mgc

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main:864-239-4000 | Direct:864-239-4037 | Fax:864-242-3199
VCARD | BIO

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Please consider the environment before printing this email.

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Dan Albert <dan.albert7@gmail.com>

Oldcastle v. Albert

3 messages

Beth McMillan <beth.mcmillan@mgclaw.com>
 To: "Dan Albert (dan.albert7@gmail.com)" <dan.albert7@gmail.com>

Sat, May 21, 2016 at 12:06 PM

Dan,

Attached is a Settlement Agreement and Release that incorporates the terms of our settlement agreement and which addresses the points you raised in your email to me of yesterday.

Please review this agreement and let me know if you have any questions.

Thanks,

Beth


Beth McMillan, Attorney

beth.mcmillan@mgclaw.com
 55 E. Camperdown Way Suite 300
 Greenville, SC 29601
 Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
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Please consider the environment before printing this email.

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Dan Albert <dan.albert7@gmail.com>
 To: Beth McMillan <beth.mcmillan@mgclaw.com>

Sat, May 21, 2016 at 3:05 PM

This looks good to me Beth. I think it would be good to have the representative of each plaintiff that will sign the Settlement Agreement to also agree to and acknowledge the Confession of Judgment, as that document states that "Plaintiffs hereby agree to mark..." Each representative of Oldcastle can sign independently of the other and scan and send it back to you without a notary, and that will be fine with me. I assume that you will collect the signatures and send executed copies to me, and I execute and send mine to you, and that we will then inform the court that the case has been settled. If you have access to the Oldcastle folks today, you can take care of it today, otherwise we can wait until Monday.

[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>
 To: Dan Albert <dan.albert7@gmail.com>

Sat, May 21, 2016 at 6:13 PM

Dan,

I will add those signatures and get it to you on Monday.

Thanks

Beth

Sent from my iPhone

On May 21, 2016, at 3:05 PM, Dan Albert <dan.albert7@gmail.com<mailto:dan.albert7@gmail.com>> wrote:

This looks good to me Beth. I think it would be good to have the representative of each plaintiff that will sign the Settlement Agreement to also agree to and acknowledge the Confession of Judgment, as that document states that "Plaintiffs hereby agree to mark..." Each representative of Oldcastle can sign independently of the other and scan and send it back to you without a notary, and that will be fine with me. I assume that you will collect the signatures and send executed copies to me, and I execute and send mine to you, and that we will then inform the court that the case has been settled. If you have access to the Oldcastle folks today, you can take care of it today, otherwise we can wait until Monday.

On Sat, May 21, 2016 at 12:06 PM, Beth McMillan <beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>> wrote:

Dan,

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Thanks,

Beth

<116052112070102435.png><https://service127-us.mimecast.com/mimecast/click?account=CUSA64A23&code=9eb1a9248db48cbfefb2955af3dfa009>

Beth McMillan, Attorney

beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>

55 E. Camperdown Way Suite 300

Greenville, SC 29601

Main:864-239-4000 | Direct:864-239-4037 | Fax:864-242-3199

VCARD<http://www.mgclaw.com/wp-content/uploads/2014/10/BethMcMillan.vcf> | BIO<http://www.mgclaw.com/attorney/elizabeth-m-mcmillan/>

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<116052112070102235.png>

mgc

Beth McMillan, Attorney

beth.mcmillan@mgclaw.com

55 E. Camperdown Way Suite 300

Greenville, SC 29601

Main:864-239-4000 | Direct:864-239-4037 | Fax:864-242-3199

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2 attachments

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116052112070102235.png
3K

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
OLDCASTLE APG SOUTH, INC. D/B/A	)	Civil Action No. 2014-CP-23-05031
ADAMS PRODUCTS COMPANY AND	)	
OLDCASTLE APG NORTHEAST, INC.	)	
D/B/A FOSTER-SOUTHEASTERN,	)	
	)	SETTLEMENT AGREEMENT AND
Plaintiff,	)	RELEASE
	)	
v.	)	
	)	
DANIEL B. ALBERT,	)	
	)	
Defendant.	)	

This Settlement Agreement ("Agreement") is entered into effective on the date set forth upon execution by and between Plaintiffs Oldcastle APG South, Inc. d/b/a Adams Products Company ("Adams Products") and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern ("Foster-Southeastern") (collectively referred to as "Oldcastle") and the Defendant Daniel Albert ("Albert").

Oldcastle and Albert are to be denominated as the "Parties".

RECITALS

1. WHEREAS, Adams Products and Foster-Southeastern are corporations organized and existing under the laws of one of the states of the United States and regularly conduct business in South Carolina.

2. WHEREAS, Albert is a South Carolina resident.

3. WHEREAS, Oldcastle, through its various entities, supplied Defendant's company Madawaska Hardscape Products, Inc. with supplies and hardscape products, and Defendant signed a personal guaranty for the purchase of those products and the extension of credit by Oldcastle. Oldcastle contends there is an outstanding balance owed it in the amount of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars. Albert disputes this amount and has asserted counterclaims against Oldcastle.

4. WHEREAS, Adams Products and Foster-Southeastern filed a Complaint in the Court of Common Pleas for the County of Greenville, South Carolina captioned Oldcastle APG South, Inc. d/b/a Adams Products company and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern v. Daniel Albert, Case No. 2014-CP-23-05031 ("Litigation"), alleging, inter alia, breach of contract naming Albert as the Defendant.

5. WHEREAS, Albert or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case").

6. WHEREAS, to avoid further expenses, burden, and delay inherent in litigation, the parties have agreed to enter into this Agreement in full settlement and discharge of all claims by and between the Parties, upon the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises and consideration set forth herein, and with the intent to be bound, the parties agree upon the following terms and conditions:

1. **Payment.** Albert agrees to pay the sum of \$100,000 to Oldcastle when and only if he

or one of his companies receives money from the Federal Court Case ("Settlement Amount"). Albert is only obligated to pay the Settlement Amount solely from the money he receives from the Federal Court Case.

2. **Confession of Judgment.** Albert has agreed to enter into a Confession of Judgment in the amount of \$100,000.00 which is attached hereto and which will only be recorded if Albert fails to pay Oldcastle from the funds he or one of his companies receives from the Federal Court Case. If Albert or one of his companies does not receive any money from the Federal Court Case, the Confession of Judgment will not be recorded and will have no effect. If Albert or one of his companies receives less than \$100,000 from the Federal Court Case and he remits payment to Oldcastle of all of the funds he receives, the Confession of Judgment will not be recorded and will have no continuing effect.

3. **Effect of Payment.** Old Castle agrees to accept the Settlement Amount to be paid as specified above, and if such amount is paid, the payment shall act as a release of all claims with prejudice. The Parties waive and forever relinquish any and all claims they may have against each other prior to the execution of this Agreement, regardless of their nature and extent. This waiver extends to known or unknown claims, which may directly or indirectly relate to events that occurred prior to the execution of this

agreement.

4. **Release of All Claims.** The parties understand and agree that of this Agreement is followed, it shall act as a full and final release of all Claims. Each party fully understands that if the facts in respect to which this Agreement are executed are found hereafter to be different from facts now believed by any party to be true, each party expressly accepts and assumes the risks of such a difference and agrees that this Agreement shall remain effective, notwithstanding such difference. Oldcastle and Albert do hereby fully release each other, each others' partners, officers, directors, guarantors, agents, employees, representatives, successors and assigns and all other persons and associations, including but not limited to Madawaska Hardscape Products, Inc., from all claims and causes of action by reason of any damages, injuries or losses which may have been sustained or may be sustained in the future, arising out of, or in any way concerning the past business relationship between Oldcastle and Albert whereby Oldcastle sold products to Albert and his company or companies and concerning the claims asserted by Oldcastle in the Litigation and the counterclaims asserted by Albert in the Litigation. Obligations created by this Agreement, including the obligations set forth in the Confession of Judgment, are exempt from the coverage of this release.

5. **Stipulation of Dismissal.** The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaims in the Litigation.

IN WITNESS WHEREOF, Adams Products, Foster-Southeastern and Albert have executed this Agreement as of the day and year subscribed below. This agreement may be executed in counterparts.

Agreed and Accepted:

OLDCASTLE APG SOUTH, INC.

By: _____

Its: _____

Date: _____

DANIEL ALBERT

Date: _____

OLDCASTLE APG NORTHEASTERN, INC.

By: _____

Its: _____

Date: _____



Dan Albert <dan.albert7@gmail.com>

FW: Dan Albert

1 message

Beth McMillan <beth.mcmillan@mgclaw.com>
To: "Dan Albert (dan.albert7@gmail.com)" <dan.albert7@gmail.com>

Mon, May 23, 2016 at 1:49 PM

Dan,

Here is the signature page of Robert Capellazzi on the Settlement Agreement. I expect to have his signature on the Confession of Judgment and Todd Ring's signature on both documents shortly. I will forward them to you once I receive them.

Beth



Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Campdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
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DEF 0045

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

)
) IN THE COURT OF COMMON PLEAS
)

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Plaintiff,

v.

DANIEL B. ALBERT,

Defendant.

)
) Civil Action No. 2014-CP-23-05031
)
)

)
) **SETTLEMENT AGREEMENT AND**
) **RELEASE**
)
)
)
)
)

This Settlement Agreement ("Agreement") is entered into effective on the date set forth upon execution by and between Plaintiffs Oldcastle APG South, Inc. d/b/a Adams Products Company ("Adams Products") and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern ("Foster-Southeastern") (collectively referred to as "Oldcastle") and the Defendant Daniel Albert ("Albert").

Oldcastle and Albert are to be denominated as the "Parties".

RECITALS

1. WHEREAS, Adams Products and Foster-Southeastern are corporations organized and existing under the laws of one of the states of the United States and regularly conduct business in South Carolina.

2. WHEREAS, Albert is a South Carolina resident.

3. WHEREAS, Oldcastle, through its various entities, supplied Defendant's company Madawaska Hardscape Products, Inc. with supplies and hardscape products, and Defendant signed a personal guaranty for the purchase of those products and the extension of

DEF 0046

credit by Oldcastle. Oldcastle contends there is an outstanding balance owed it in the amount of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars. Albert disputes this amount and has asserted counterclaims against Oldcastle.

4. WHEREAS, Adams Products and Foster-Southeastern filed a Complaint in the Court of Common Pleas for the County of Greenville, South Carolina captioned Oldcastle APG South, Inc. d/b/a Adams Products company and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeaster v. Daniel Albert, Case No. 2014-CP-23-05031 ("Litigation"), alleging, inter alia, breach of contract naming Albert as the Defendant.

5. WHEREAS, Albert or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case").

6. WHEREAS, to avoid further expenses, burden, and delay inherent in litigation, the parties have agreed to enter into this Agreement in full settlement and discharge of all claims by and between the Parties, upon the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises and consideration set forth herein, and with the intent to be bound, the parties agree upon the following terms and conditions:

1. Payment. Albert agrees to pay the sum of \$100,000 to Oldcastle when and only if he or one of his companies receives money from the Federal Court Case ("Settlement Amount"). Albert is only obligated to pay the Settlement Amount solely from the

money he receives from the Federal Court Case.

2. **Confession of Judgment.** Albert has agreed to enter into a Confession of Judgment in the amount of \$100,000.00 which is attached hereto and which will only be recorded if Albert fails to pay Oldcastle from the funds he or one of his companies receives from the Federal Court Case. If Albert or one of his companies does not receive any money from the Federal Court Case, the Confession of Judgment will not be recorded and will have no effect. If Albert or one of his companies receives less than \$100,000 from the Federal Court Case and he remits payment to Oldcastle of all of the funds he receives, the Confession of Judgment will not be recorded and will have no continuing effect.
3. **Effect of Payment.** Old Castle agrees to accept the Settlement Amount to be paid as specified above, and if such amount is paid, the payment shall act as a release of all claims with prejudice. The Parties waive and forever relinquish any and all claims they may have against each other prior to the execution of this Agreement, regardless of their nature and extent. This waiver extends to known or unknown claims, which may directly or indirectly relate to events that occurred prior to the execution of this agreement.
4. **Release of All Claims.** The parties understand and agree that of this Agreement is followed, it shall act as a full and final release of all Claims. Each party fully understands that if the facts in respect to which this Agreement are executed are found hereafter to be different from facts now believed by any party to be true, each party expressly accepts and assumes the risks of such a difference and agrees that this Agreement shall remain effective, notwithstanding such difference. Oldcastle and

DEF 0048

Albert do hereby fully release each other, each others' partners, officers, directors, guarantors, agents, employees, representatives, successors and assigns and all other persons and associations, including but not limited to Madawaska Hardscape Products, Inc., from all claims and causes of action by reason of any damages, injuries or losses which may have been sustained or may be sustained in the future, arising out of, or in any way concerning the past business relationship between Oldcastle and Albert whereby Oldcastle sold products to Albert and his company or companies and concerning the claims asserted by Oldcastle in the Litigation and the counterclaims asserted by Albert in the Litigation. Obligations created by this Agreement, including the obligations set forth in the Confession of Judgment, are exempt from the coverage of this release.

5. Stipulation of Dismissal. The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaims in the Litigation.

IN WITNESS WHEREOF, Adams Products, Foster-Southeastern and Albert have executed this Agreement as of the day and year subscribed below. This agreement may be executed in counterparts.

Agreed and Accepted:

OLDCASTLE APG SOUTH, INC.

By: _____

Its: _____

Date: _____

DANIEL ALBERT

OLDCASTLE APG NORTHEASTERN, INC.

By: *Robert Capellone*

Its: *Credit Manager*

Date: *5/23/16*

DEF 0049



Dan Albert <dan.albert7@gmail.com>

FW: Scan from Adams Products - Greensboro, NC

2 messages

Beth McMillan <beth.mcmillan@mgclaw.com>
To: "Dan Albert (dan.albert7@gmail.com)" <dan.albert7@gmail.com>

Mon, May 23, 2016 at 3:48 PM

Dan,

Here are the signature pages from Todd Ring for Adams Products. I should have the other page from Robert any time now.

Please send me your signed page for the settlement agreement. We will attach the "We Consent" page to the Confession of Judgment.

If you don't have any other questions, I would like to advise the court that we have settled.

Beth



Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
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Please consider the environment before printing this email.

Scan from Adams Products - Greensboro_ NC.pdf
55K

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>

Mon, May 23, 2016 at 3:59 PM

Hi Beth,

Here is my piece. Based upon your representations that these signatures are from duly authorized representatives of Plaintiffs, that the signature page saying "We Consent" will be forthcoming from Robert, and that the "We Consent" signatures pertain to the Confession of Judgment that you already have, I agree that we have settled the matter, and that you may inform the court of that fact.

It is a minor point of clarification, but it looks like the Adams piece was signed by Colin Clampett.

Dan

[Quoted text hidden]

Settlement DBA 5.23.16.pdf
191K

DEF 0050

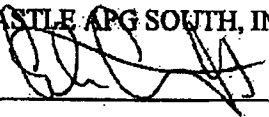
Albert do hereby fully release each other, each others' partners, officers, directors, guarantors, agents, employees, representatives, successors and assigns and all other persons and associations, including but not limited to Madawaska Hardscape Products, Inc., from all claims and causes of action by reason of any damages, injuries or losses which may have been sustained or may be sustained in the future, arising out of, or in any way concerning the past business relationship between Oldcastle and Albert whereby Oldcastle sold products to Albert and his company or companies and concerning the claims asserted by Oldcastle in the Litigation and the counterclaims asserted by Albert in the Litigation. Obligations created by this Agreement, including the obligations set forth in the Confession of Judgment, are exempt from the coverage of this release.

5. Stipulation of Dismissal. The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaims in the Litigation.

IN WITNESS WHEREOF, Adams Products, Foster-Southeastern and Albert have executed this Agreement as of the day and year subscribed below. This agreement may be executed in counterparts.

Agreed and Accepted:

OLDCASTLE APG SOUTH, INC.

By: 

Its: VICE PRESIDENT

Date: 05/23/2016

DANIEL ALBERT

OLDCASTLE APG NORTHEASTERN, INC.

By: _____

Its: _____

Date: _____

DEF 0051

WE SO CONSENT:

OLDCASTLE APG SOUTH, INC.

By: [Signature]

Its: VICE PRESIDENT

Date: 05/23/2016

OLDCASTLE APG NORTHEASTERN, INC.

By: _____

Its: _____

Date: _____

DEF 0052

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Civil Action No. 2014-CP-23-05031

Plaintiff,

SETTLEMENT AGREEMENT AND
RELEASE

v.

DANIEL B. ALBERT,

Defendant.

This Settlement Agreement ("Agreement") is entered into effective on the date set forth upon execution by and between Plaintiffs Oldcastle APG South, Inc. d/b/a Adams Products Company ("Adams Products") and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern ("Foster-Southeastern") (collectively referred to as "Oldcastle") and the Defendant Daniel Albert ("Albert").

Oldcastle and Albert are to be denominated as the "Parties".

RECITALS

1. WHEREAS, Adams Products and Foster-Southeastern are corporations organized and existing under the laws of one of the states of the United States and regularly conduct business in South Carolina.
2. WHEREAS, Albert is a South Carolina resident.
3. WHEREAS, Oldcastle, through its various entities, supplied Defendant's company Madawaska Hardscape Products, Inc. with supplies and hardscape products, and Defendant signed a personal guaranty for the purchase of those products and the extension of

D/B

DEF 0053

credit by Oldcastle. Oldcastle contends there is an outstanding balance owed it in the amount of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars. Albert disputes this amount and has asserted counterclaims against Oldcastle.

4. WHEREAS, Adams Products and Foster-Southeastern filed a Complaint in the Court of Common Pleas for the County of Greenville, South Carolina captioned Oldcastle APG South, Inc. d/b/a Adams Products company and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern v. Daniel Albert, Case No. 2014-CP-23-05031 ("Litigation"), alleging, inter alia, breach of contract naming Albert as the Defendant.

5. WHEREAS, Albert or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case").

6. WHEREAS, to avoid further expenses, burden, and delay inherent in litigation, the parties have agreed to enter into this Agreement in full settlement and discharge of all claims by and between the Parties, upon the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises and consideration set forth herein, and with the intent to be bound, the parties agree upon the following terms and conditions:

1. Payment. Albert agrees to pay the sum of \$100,000 to Oldcastle when and only if he or one of his companies receives money from the Federal Court Case ("Settlement Amount"). Albert is only obligated to pay the Settlement Amount solely from the

DA

DEF 0054

money he receives from the Federal Court Case.

2. Confession of Judgment. Albert has agreed to enter into a Confession of Judgment in the amount of \$100,000.00 which is attached hereto and which will only be recorded if Albert fails to pay Oldcastle from the funds he or one of his companies receives from the Federal Court Case. If Albert or one of his companies does not receive any money from the Federal Court Case, the Confession of Judgment will not be recorded and will have no effect. If Albert or one of his companies receives less than \$100,000 from the Federal Court Case and he remits payment to Oldcastle of all of the funds he receives, the Confession of Judgment will not be recorded and will have no continuing effect.
3. Effect of Payment. Old Castle agrees to accept the Settlement Amount to be paid as specified above, and if such amount is paid, the payment shall act as a release of all claims with prejudice. The Parties waive and forever relinquish any and all claims they may have against each other prior to the execution of this Agreement, regardless of their nature and extent. This waiver extends to known or unknown claims, which may directly or indirectly relate to events that occurred prior to the execution of this agreement.
4. Release of All Claims. The parties understand and agree that of this Agreement is followed, it shall act as a full and final release of all Claims. Each party fully understands that if the facts in respect to which this Agreement are executed are found hereafter to be different from facts now believed by any party to be true, each party expressly accepts and assumes the risks of such a difference and agrees that this Agreement shall remain effective, notwithstanding such difference. Oldcastle and

DBA

DEF 0055

Albert do hereby fully release each other, each others' partners, officers, directors, guarantors, agents, employees, representatives, successors and assigns and all other persons and associations, including but not limited to Madawaska Hardscape Products, Inc., from all claims and causes of action by reason of any damages, injuries or losses which may have been sustained or may be sustained in the future, arising out of, or in any way concerning the past business relationship between Oldcastle and Albert whereby Oldcastle sold products to Albert and his company or companies and concerning the claims asserted by Oldcastle in the Litigation and the counterclaims asserted by Albert in the Litigation. Obligations created by this Agreement, including the obligations set forth in the Confession of Judgment, are exempt from the coverage of this release.

5. Stipulation of Dismissal. The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaims in the Litigation.

IN WITNESS WHEREOF, Adams Products, Foster-Southeastern and Albert have executed this Agreement as of the day and year subscribed below. This agreement may be executed in counterparts.

Agreed and Accepted:

OLDCASTLE APG SOUTH, INC.

By: _____

Its: _____

Date: _____

OLDCASTLE APG NORTHEASTERN, INC.

By: _____

Its: _____

Date: _____

DANIEL ALBERT

DA

DEF 0056

David B. A.

Date: 5.23.16

DEF 0057



Dan Albert <dan.albert7@gmail.com>

Oldcastle v. Dan Albert

2 messages

Beth McMillan <beth.mcmillan@mgclaw.com>

Thu, Jun 2, 2016 at 5:56 PM

To: "Dan Albert (dan.albert7@gmail.com)" <dan.albert7@gmail.com>

Dan,

Here is the signature page from Robert Capellazzi for the Confession of Judgment. I think you should now have all signature lines from my client. Please send me the original pages of your signature lines for the Confession of Judgment and the Settlement Agreement.

Thanks,

Beth

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3189
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doc02033920160802114354.pdf
173K

Dan Albert <dan.albert7@gmail.com>

Thu, Jun 2, 2016 at 10:03 PM

To: Beth McMillan <beth.mcmillan@mgclaw.com>

I will get those out to you. If you would like to circulate copies of the Settlement Agreement to your people in order to get original signatures on the same page, you can do that and send two copies to me with all the signatures and I will sign one and send it back to you.

Is there a stipulation of dismissal or some other document that will be forthcoming?

[Quoted text hidden]

DEF 0065

WE SO CONSENT:

OLDCASTLE APG SOUTH, INC.

By: _____

Its: _____

Date: _____

OLDCASTLE APG NORTHEASTERN, INC.

By: Robert Capellazzi

Its: Credit Manager

Date: 6/02/16

DEF 0066

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS)

OLDCASTLE APG SOUTH, INC. D/B/A
 ADAMS PRODUCTS COMPANY AND
 OLDCASTLE APG NORTHEAST, INC.
 D/B/A FOSTER-SOUTHEASTERN,

Civil Action No. 2014-CP-23-05031

Plaintiff,

**SETTLEMENT AGREEMENT AND
 RELEASE**

v.

DANIEL B. ALBERT,

Defendant.

This Settlement Agreement ("Agreement") is entered into effective on the date set forth upon execution by and between Plaintiffs Oldcastle APG South, Inc. d/b/a Adams Products Company ("Adams Products") and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern ("Foster-Southeastern") (collectively referred to as "Oldcastle") and the Defendant Daniel Albert ("Albert").

Oldcastle and Albert are to be denominated as the "Parties".

RECITALS

1. WHEREAS, Adams Products and Foster-Southeastern are corporations organized and existing under the laws of one of the states of the United States and regularly conduct business in South Carolina.
2. WHEREAS, Albert is a South Carolina resident.
3. WHEREAS, Oldcastle, through its various entities, supplied Defendant's company Madawaska Hardscape Products, Inc. with supplies and hardscape products, and Defendant signed a personal guaranty for the purchase of those products and the extension of

DEF 0058

credit by Oldcastle. Oldcastle contends there is an outstanding balance owed it in the amount of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars. Albert disputes this amount and has asserted counterclaims against Oldcastle.

4. WHEREAS, Adams Products and Foster-Southeastern filed a Complaint in the Court of Common Pleas for the County of Greenville, South Carolina captioned Oldcastle APG South, Inc. d/b/a Adams Products company and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern v. Daniel Albert, Case No. 2014-CP-23-05031 ("Litigation"), alleging, inter alia, breach of contract naming Albert as the Defendant.

5. WHEREAS, Albert or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case").

6. WHEREAS, to avoid further expenses, burden, and delay inherent in litigation, the parties have agreed to enter into this Agreement in full settlement and discharge of all claims by and between the Parties, upon the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises and consideration set forth herein, and with the intent to be bound, the parties agree upon the following terms and conditions:

1. Payment. Albert agrees to pay the sum of \$100,000 to Oldcastle when and only if he or one of his companies receives money from the Federal Court Case ("Settlement Amount"). Albert is only obligated to pay the Settlement Amount solely from the


DEF 0059

money he receives from the Federal Court Case.

2. Confession of Judgment. Albert has agreed to enter into a Confession of Judgment in the amount of \$100,000.00 which is attached hereto and which will only be recorded if Albert fails to pay Oldcastle from the funds he or one of his companies receives from the Federal Court Case. If Albert or one of his companies does not receive any money from the Federal Court Case, the Confession of Judgment will not be recorded and will have no effect. If Albert or one of his companies receives less than \$100,000 from the Federal Court Case and he remits payment to Oldcastle of all of the funds he receives, the Confession of Judgment will not be recorded and will have no continuing effect.
3. Effect of Payment. Old Castle agrees to accept the Settlement Amount to be paid as specified above, and if such amount is paid, the payment shall act as a release of all claims with prejudice. The Parties waive and forever relinquish any and all claims they may have against each other prior to the execution of this Agreement, regardless of their nature and extent. This waiver extends to known or unknown claims, which may directly or indirectly relate to events that occurred prior to the execution of this agreement.
4. Release of All Claims. The parties understand and agree that of this Agreement is followed, it shall act as a full and final release of all Claims. Each party fully understands that if the facts in respect to which this Agreement are executed are found hereafter to be different from facts now believed by any party to be true, each party expressly accepts and assumes the risks of such a difference and agrees that this Agreement shall remain effective, notwithstanding such difference. Oldcastle and

DBA

DEF 0060

Albert do hereby fully release each other, each others' partners, officers, directors, guarantors, agents, employees, representatives, successors and assigns and all other persons and associations, including but not limited to Madawaska Hardscape Products, Inc., from all claims and causes of action by reason of any damages, injuries or losses which may have been sustained or may be sustained in the future, arising out of, or in any way concerning the past business relationship between Oldcastle and Albert whereby Oldcastle sold products to Albert and his company or companies and concerning the claims asserted by Oldcastle in the Litigation and the counterclaims asserted by Albert in the Litigation. Obligations created by this Agreement, including the obligations set forth in the Confession of Judgment, are exempt from the coverage of this release.

5. Stipulation of Dismissal. The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaims in the Litigation.

IN WITNESS WHEREOF, Adams Products, Foster-Southeastern and Albert have executed this Agreement as of the day and year subscribed below. This agreement may be executed in counterparts.

Agreed and Accepted:

OLDCASTLE APG SOUTH, INC.

By: _____

Its: _____

Date: _____

OLDCASTLE APG NORTHEASTERN, INC.

By: _____

Its: _____

Date: _____

DANIEL ALBERT

DS

DEF 0061

Daniel B. [Signature]

Date: 5.23.16

Albert do hereby fully release each other, each others' partners, officers, directors, guarantors, agents, employees, representatives, successors and assigns and all other persons and associations, including but not limited to Madawaska Handicrafts Products, Inc., from all claims and causes of action by reason of any damages, injuries or losses which may have been sustained or may be sustained in the future, arising out of, or in any way concerning the past business relationship between Oldcastle and Albert whereby Oldcastle sold products to Albert and his company or companies and concerning the claims asserted by Oldcastle in the Litigation and the counterclaims asserted by Albert in the Litigation. Obligations created by this Agreement, including the obligations set forth in the Confession of Judgment, are exempt from the coverage of this release.

5. Settlement of Dismissal. The parties agree to enter into a Settlement of Dismissal which will dismiss all claims and counterclaims in the Litigation.

IN WITNESS WHEREOF, Adams Products, Foster Southeastern and Albert have executed this Agreement as of the day and year subscribed below. This agreement may be executed in counterparts.

Agreed and Accepted:

OLDCASTLE APG SOUTH, INC.

By: _____

Its: _____

Date: _____

OLDCASTLE APG NORTHEASTERN, INC.

By: *Robert C. [Signature]*

Its: *Credit Manager*

Date: *5/23/66*

DANIEL ALBERT

DEF 0063

Albert do hereby fully release each other, each others' partners, officers, directors, guarantors, agents, employees, representatives, successors and assigns and all other persons and associations, including but not limited to Madawaska Hardscape Products, Inc., from all claims and causes of action by reason of any damages, injuries or losses which may have been sustained or may be sustained in the future, arising out of, or in any way concerning the past business relationship between Oldcastle and Albert whereby Oldcastle sold products to Albert and his company or companies and concerning the claims asserted by Oldcastle in the Litigation and the counterclaims asserted by Albert in the Litigation. Obligations created by this Agreement, including the obligations set forth in the Confession of Judgment, are exempt from the coverage of this release.

5. Stipulation of Dismissal. The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaims in the Litigation.

IN WITNESS WHEREOF, Adams Products, Foster-Southeastern and Albert have executed this Agreement as of the day and year subscribed below. This agreement may be executed in counterparts.

Agreed and Accepted:

OLDCASTLE APG SOUTH, INC.

By: [Signature]

Its: VICE PRESIDENT

Date: 05/23/2016

DANIEL ALBERT

OLDCASTLE APG NORTHEASTERN, INC.

By: _____

Its: _____

Date: _____

DEF 0064

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Plaintiff,

vs.

DANIEL B. ALBERT,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-23-05031

CONFESSION OF JUDGMENT

Pursuant to SC Code Ann. §§15-35-350 and 15-35-360, this CONFESSION OF JUDGMENT is made and entered into as of this, the 16th day of May, 2016, by and between Daniel B. Albert ("Defendant") and Oldcastle APG South, Inc. and Oldcastle APG Northeast, Inc. (collectively referred to as "Plaintiffs").

WHEREAS, Defendant's company, Madawaska Hardscape Products, Inc. ("Madawaska") has previously purchased supplies from Plaintiffs and Defendant signed a personal guaranty for the purchase of those products and the extension of credit by Plaintiffs;

WHEREAS, Madawaska failed to pay for certain supplies sold and delivered to Madawaska as evidenced by the invoices and other documents produced by Plaintiffs; and

WHEREAS, there is presently due and owing to the Plaintiffs by Defendant, as the personal guarantor for Madawaska, the sum of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars;

DEF 0067

WHEREAS, Plaintiffs have declared the entire balance due and payable, and has demanded payment of the same, but the Defendant has failed to pay the amount due, or any of it; and

WHEREAS, Defendant or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case"); and

WHEREAS, upon his or his company's receipt of funds that are paid either as a judgment or as a settlement of the Federal Court Case, Defendant agrees to pay Plaintiffs the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars within ten days of receipt of the payment of the judgment in the Federal Court Case.

NOW, THEREFORE, this Confession of Judgment is made to Plaintiffs in the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Judgment is to be held by counsel for the Plaintiffs and remain unrecorded unless the Defendant fails to pay the settlement within ten days of his or his company receiving payment from the judgment or the settlement awarded in the Federal Court Case.

The Plaintiffs hereby agree to mark the Confession of Judgment "paid and satisfied" and return it to the Defendant upon payment of the complete settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Confession of Judgment shall be recorded with the court to allow enforcement by the Plaintiffs only if the Defendant fails to make payments and satisfy the settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars upon the terms as set forth in this Confession of Judgment. Defendant hereby confesses judgment in favor of the Plaintiffs herein in the amount of One Hundred

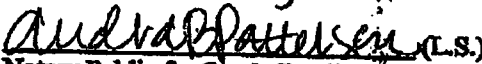
Thousand and 00/100 (\$100,000.00) Dollars and hereby authorizes judgment to be entered pursuant to the terms stipulated herein.

In acknowledgment and agreement, I hereby set my hand and seal this 16th day of May, 2016.

By:  (L.S.)
Daniel B. Albert

SWORN TO AND SUBSCRIBED before me

this 16th day of May, 2016

 (L.S.)
Notary Public for South Carolina

My Commission Expires: February 12, 2023



DEF 0069

WE SO CONSENT:

OLDCASTLE APG SOUTH, INC.

By: [Signature]

Its: VICE PRESIDENT

Date: 05/23/2016

OLDCASTLE APG NORTHEASTERN, INC.

By: _____

Its: _____

Date: _____

DEF 0070

WE SO CONSENT:

OLDCASTLE APG SOUTH, INC.

By: _____

Its: _____

Date: _____

OLDCASTLE APG NORTHEASTERN, INC.

By: Ralph Capellazzi

Its: Credit Manager

Date: 6/02/16

DEF 0071



Dan Albert <dan.albert7@gmail.com>

Trial Roster

2 messages

Dan Albert <dan.albert7@gmail.com>

Fri, May 20, 2016 at 4:58 PM

To: lcoker@greenvillecounty.org

Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Bcc: Paul Pappas <pappas3858@yahoo.com>

I just received an email from Beth McMillan stating that she had taken our case off of the trial roster for next week because we had resolved the matter. That is not the case from my perspective, as we have been in sharp disagreement over the terms of a contemplated agreement to settle the matter.

I intend to show up Monday morning as scheduled unless the matter is resolved in the interim.

Dan Albert
321.474.9189

Coker, Lyndall <LCoker@greenvillecounty.org>

Fri, May 20, 2016 at 5:45 PM

To: Dan Albert <dan.albert7@gmail.com>

Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Mr. Albert,

Thank you for your email. Court has been cancelled for Monday and will begin Tuesday, May 24, 2016 in courtroom 7 at 9:15 a.m.

You can talk with the judge at time if it becomes necessary.

Thank you.

Lyndall Coker

From: Dan Albert [dan.albert7@gmail.com]**Sent:** Friday, May 20, 2016 4:58 PM**To:** Coker, Lyndall**Cc:** Beth McMillan**Subject:** Trial Roster

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

[Quoted text hidden]

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DEF 0038



Dan Albert <dan.albert7@gmail.com>

Old castle V. Daniel Albert

3 messages

Beth McMillan <beth.mcmillan@mgclaw.com>
To: "LCoker@greenvillecounty.org" <LCoker@greenvillecounty.org>
Cc: Dan Albert <dan.albert7@gmail.com>

Fri, May 20, 2016 at 5:00 PM

Lyndal,

Unfortunately,

This case did not resolve as I believed it had. Please put it back on the trial roster. We will be present at the roster meeting on Monday at 9:15.

Thanks,

Beth

Sent from my iPhone



Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Campdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
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Please consider the environment before printing this email.

Coker, Lyndall <LCoker@greenvillecounty.org>
To: Beth McMillan <beth.mcmillan@mgclaw.com>
Cc: Dan Albert <dan.albert7@gmail.com>

Fri, May 20, 2016 at 5:52 PM

Beth,

Thank you. I will place the case back on the trial roster when I return to work on Monday.

Judge Gee isn't going to begin court until Tuesday due to scheduling issues. The roster will be at 9:15 a.m. in courtroom 7. We will have juror qualification about 10:00 a.m.

Thanks,

Lyndall

From: Beth McMillan [beth.mcmillan@mgclaw.com]
Sent: Friday, May 20, 2016 5:00 PM
To: Coker, Lyndall
Cc: Dan Albert
Subject: Old castle V. Daniel Albert

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Lyndal,

Unfortunately,

This case did not resolve as I believed it had. Please put it back on the trial roster. We will be present at the roster meeting on

DEF 0037

Monday at 9:15.

Thanks,

Beth

Sent from my iPhone

[cid:116052017010103979@us-mta-12.us.mimecast.lan]<https://service127-us.mimecast.com/mimecast/click?account=CUSA64A23&code=df5eb658c75ac43f144dfc388efcb353>

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3198
VCARD<http://www.mgclaw.com/wp-content/uploads/2014/10/BethMcMillan.vcf> | BIO<http://www.mgclaw.com/attorney/ellizabeth-m-mcmillan/>

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2 attachments

ⓘ Please consider the environment before printing this email.

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mgc 116052017010104879.png
3K

Beth McMillan <beth.mcmillan@mgclaw.com>
To: "Coker, Lyndall" <LCoker@greenvillecounty.org>
Cc: Dan Albert <dan.albert7@gmail.com>

Fri, May 20, 2016 at 5:53 PM

Thank you Lyndall.

Sent from my iPhone

On May 20, 2016, at 5:52 PM, Coker, Lyndall <LCoker@greenvillecounty.org<mailto:LCoker@greenvillecounty.org>> wrote:

Beth,
Thank you. I will place the case back on the trial roster when I return to work on Monday.
Judge Gee isn't going to begin court until Tuesday due to scheduling issues. The roster will be at 9:15 a.m. in courtroom 7. We will have juror qualification about 10:00 a.m.
Thanks,
Lyndall

DEF 0038

From: Beth McMillan [beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>]
Sent: Friday, May 20, 2016 5:00 PM
To: Coker, Lyndall
Cc: Dan Albert
Subject: Old castle V. Daniel Albert

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Lyndal,

Unfortunately,

This case did not resolve as I believed it had. Please put it back on the trial roster. We will be present at the roster meeting on Monday at 9:15.

Thanks,

Beth

Sent from my iPhone

[cid:116052017010103979@us-mta-12.us.mimecast.lan<mailto:116052017010103979@us-mta-12.us.mimecast.lan>]<https://service127-us.mimecast.com/mimecast/click?account=CUSA64A23&code=df5eb658c75ac43f144dfc388efcb353<https://service127-us.mimecast.com/mimecast/click?account=CUSA64A23&code=df5eb658c75ac43f144dfc388efcb353>>

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com><mailto:beth.mcmillan@mgclaw.com>
55 E. Campdown Way Suite 300
Greenville, SC 29601
Main:864-239-4000 | Direct:864-239-4037 | Fax:864-242-3199
VCARD<http://www.mgclaw.com/wp-content/uploads/2014/10/BethMcMillan.vcf<http://www.mgclaw.com/wp-content/uploads/2014/10/BethMcMillan.vcf>> | BIO<http://www.mgclaw.com/attorney/elizabeth-m-mcmillan/<http://www.mgclaw.com/attorney/elizabeth-m-mcmillan/>>

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mgc

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Campdown Way Suite 300
Greenville, SC 29601
Main:864-239-4000 | Direct:864-239-4037 | Fax:864-242-3199
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DEF 0039

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 Please consider the environment before printing this email.



Dan Albert <dan.albert7@gmail.com>

RE: Old castle V. Daniel Albert 2014-CP-23-5031

3 messages

Coker, Lyndall <LCoker@greenvillecounty.org>
To: Beth McMillan <beth.mcmillan@mgclaw.com>
Cc: Dan Albert <dan.albert7@gmail.com>

Mon, May 23, 2016 at 8:20 AM

Ms. McMillan and Mr. Albert,

Your case has been placed back on the May 24, 2016 trial roster. Right now, it's number 3 in line for trial. See roster below.

Please be prepared to try your case should the 2 cases ahead of you settle.

Judge Gee will be in courtroom 7 and the roster meeting is tomorrow at 9:15 a.m.

If you have any questions, please let me know.

Thank you,

Lyndall

Lyndall Coker

Jury Trial Coordinator

Greenville County

864-467-8510

#	Case / Case Caption	Plaintiff Attorney	Defendant Attorney	Filed Date	Sub Type	Status	Notes
1	2014CP2304911 Marilyn Paula Smedberg Gobbett vs. Sean Justin Graham	Scott James Bradley (864) 370-9300	Langdon Cheves III (864) 552-4606	08/05/2014	Motor Veh Accid 320	Pending	1 - 2 days
2	2014CP2305010 Gail Nichole Dennis vs. Sydney Jordan Littleton	Eddie R. Harbin (864) 242-4112	R Taylor Speer (864) 552-4618 Martin Kyle Thompson (864) 331-8940	09/11/2014	Personal Injury 350	Pending/ADR	2 days (Kyle Thompson is out of the case.)
3	2014CP2305031 Oldcastle APG South Inc , plaintiff, et al vs. Daniel B Albert	Elizabeth McDaniel McMillan (864) 239-4037 Jeanmarie Tankersley (864) 239-4039	Daniel B Albert (321) 474-9189	09/11/2014	Breach of Cont 140	Pending/ADR	2 days

DEF 0041

From: Beth McMillan [mailto:beth.mcmillan@mgclaw.com]
Sent: Friday, May 20, 2016 5:54 PM
To: Coker, Lyndall
Cc: Dan Albert
Subject: Re: Old castle V. Daniel Albert

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Thank you Lyndall.

Sent from my iPhone

On May 20, 2016, at 5:52 PM, Coker, Lyndall <LCoker@greenvillecounty.org<mailto:LCoker@greenvillecounty.org>> wrote:

Beth,
Thank you. I will place the case back on the trial roster when I return to work on Monday.
Judge Gee isn't going to begin court until Tuesday due to scheduling issues. The roster will be at 9:15 a.m. in courtroom 7. We will have juror qualification about 10:00 a.m.
Thanks,
Lyndall

From: Beth McMillan [beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com>]
Sent: Friday, May 20, 2016 5:00 PM
To: Coker, Lyndall
Cc: Dan Albert
Subject: Old castle V. Daniel Albert

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Lyndal,

Unfortunately,

This case did not resolve as I believed it had. Please put it back on the trial roster. We will be present at the roster meeting on Monday at 9:15.

Thanks,

Beth

Sent from my iPhone

[cid:116052017010103979@us-mta-12.us.mimecast.lan<mailto:116052017010103979@us-mta-12.us.mimecast.lan>]<https://service127-us.mimecast.com/mimecast/click?account=CUSA64A23&code=df5eb658c75ac43f144dfc388efcb353><https://service127-us.mimecast.com/mimecast/click?account=CUSA64A23&code=df5eb658c75ac43f144dfc388efcb353>>

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com<mailto:beth.mcmillan@mgclaw.com><mailto:beth.mcmillan@mgclaw.com>
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main:864-239-4000 | Direct:864-239-4037 | Fax:864-242-3199

DEF 0042

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mgc

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
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Beth McMillan <beth.mcmillan@mgclaw.com>
To: "Coker, Lyndall" <LCoker@greenvillecounty.org>
Cc: Dan Albert <dan.albert7@gmail.com>

Mon, May 23, 2016 at 4:30 PM

Lyndall,

DEF 0043

This email is to advise you that we have settled this case and have executed a Settlement Agreement. I will be submitting a stipulation of dismissal shortly. Please remove this case from the trial roster. If you have any questions, please let me know.

Thank you,

Beth

From: Coker, Lyndall [mailto:LCoker@greenvillecounty.org]
Sent: Monday, May 23, 2016 9:20 AM
To: Beth McMillan
Cc: Dan Albert
Subject: RE: Old castle V. Daniel Albert 2014-CP-23-5031

[Quoted text hidden]
[Quoted text hidden]

Coker, Lyndall <LCoker@greenvillecounty.org>
To: Beth McMillan <beth.mcmillan@mgclaw.com>
Cc: Dan Albert <dan.albert7@gmail.com>

Mon, May 23, 2016 at 4:48 PM

Thanks Beth,

I will remove the case from the trial roster and make a note that the Settlement Agreement will follow.

Lyndall

From: Beth McMillan [mailto:beth.mcmillan@mgclaw.com]
Sent: Monday, May 23, 2016 4:30 PM
To: Coker, Lyndall
Cc: Dan Albert
Subject: RE: Old castle V. Daniel Albert 2014-CP-23-5031

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

[Quoted text hidden]
[Quoted text hidden]

DEF 0044

INSURANCE
DEFENSE**Reply To**ELIZABETH M. McMILLAN
Direct Dial: (864) 239-4037
beth.mcmillan@mgclaw.com

March 9, 2017

VIA U.S. MAIL & EMAILDaniel B. Albert
2 Tennwood Drive
Greenville, SC 29609

RE: Oldcastle APG South, Inc. d/b/a Adams Products Company and
Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern v. Madawaska
Hardscape Products, Inc. and Daniel B. Albert
Civil Action No.: 2014-CP-23-05031 (Greenville)
MGC File No.: 20799.14001

Dear Dan:

This letter is to make formal demand on you for the payment of \$100,000 as you agreed to pay in the settlement of the above-referenced case. This amount is now due as final judgment was rendered in the Federal Court case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720 on 1/31/17 in which your company Keystone Northeast, Inc. was awarded \$248,957 as past damages under the Transfer Agreements which were the subject of that action and \$112,602 in pre-judgment interest for a total award of \$361,559. (A copy of the Judgment is attached hereto as Exhibit A.)

Pursuant to our agreement, you have agreed to pay \$100,000 to Oldcastle APG South, Inc. and APG Northeast, Inc. out of the proceeds from the Federal judgment. As further clarification of our settlement, I am attaching hereto as Exhibit B the specific emails between you and me in which you agreed to the terms of our settlement.

If you do not deliver the \$100,000 to our office within 10 days of your receipt of the proceeds from the federal judgment, or if you have already received the funds, within 10 days of the date of this letter, I will be forced to file the Confession of Judgment that you signed which is attached hereto as Exhibit C.

With regards, I am

Very truly yours,

Elizabeth M. McMillan

EMM/emm
Attachments

cc: Sarah T. Brooks, Oldcastle, Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Keystone Northeast, Inc., f/k/a Pavers) Civil Action No.: 6:12-cv-720-BHH
Plus GSP, Inc., assignee of Madawaska)
Brick and Block Corp.,)

Plaintiff,)

vs.)

Order

Keystone Retaining Wall Systems, LLC,)
f/k/a Keystone Retaining Wall Systems)
Inc., a division and wholly owned)
subsidiary of Contech Construction)
Products, Inc.,)

Defendants.)

This matter is before the Court following the Fourth Circuit Court of Appeals' issuance of an Opinion (ECF No. 161) affirming in part and vacating in part this Court's prior rulings (ECF Nos. 131 & 141) on the parties' motions for summary judgment. Specifically, the Fourth Circuit concluded that the Court erred in holding that the Transfer Agreements imposed independent and continuing obligations beyond the termination of the License Agreement and reversed the Court's ruling in that regard.¹ (ECF No. 161 at 15.) Accordingly, the Fourth Circuit vacated the Court's award of damages and the order of specific performance and remanded for the recalculation of damages, limiting damages to the period ending December 31, 2010. (*Id.* at 15, 16-17.)

¹ The Court assumes familiarity with the facts of this case, the terminology referencing the parties' agreements, and the relevant provisions contained therein. All of these matters are thoroughly set forth in the Court's prior orders. (See ECF Nos. 131 & 141.) Accordingly, the Court says here only what is necessary to comply with the directives laid out in the Fourth Circuit's January 18, 2017 Opinion (ECF No. 161).

The Court's conclusion that Defendants breached their obligation to make payments to Plaintiff under the Transfer Agreements remains undisturbed. Regarding damages for the breach, the express terms of the Transfer Agreements required Defendants to pay to Plaintiff fees "based on sales of units manufactured" in the transferred territories. See, e.g., Gagne Transfer Agreement, § 3; Jandris Transfer Agreement, § 4; Hiway Transfer Agreement, § 3.²

As noted in the Court's March 31, 2015 Order (ECF No. 147), the parties do not dispute the square footage sales from January 1, 2009, to February 28, 2015, for products sold by Gagne, Jandris, and Hiway. The Court will now limit the damages calculation to that period extending from January 1, 2009, to December 31, 2010, based upon the evidence presented at the March 26, 2015 damages hearing. Again, for retaining wall products not identified on the respective Schedules C of the Transfer Agreements, the Court has, consistent with the parties' course of performance, used a 50% allocation of the royalties charged to the local manufacturers pursuant to the terms of the Transfer Agreements. The Court has not included non-retaining wall products, such as pavers or edgers, as part of the damages. Based on the above, the annual fees are:

a. Gagne Transfer Agreement:

2009	2010	GAGNE TOTAL
\$42,345	\$51,325	\$93,670

² The Transfer Agreements also each contain an "Exhibit C" setting forth the allocation of fees between the parties for the specific products.

b. Jandris Transfer Agreement:

2009	2010	JANDRIS TOTAL
\$39,139	\$37,816	\$76,955

c. Hiway Transfer Agreement:

2009	2010	HIWAY TOTAL
\$35,545	\$42,787	\$78,332

The calculations above result in a total of \$248,957 in past damages under the three Transfer Agreements.

Furthermore, the Court concludes that pre-judgment interest should apply to these damages. Because the Transfer Agreements lack a choice of law provision, the Court will apply South Carolina substantive law, including its law on pre-judgment interest. South Carolina Code § 34-31-20 applies a rate of 8.75% to the fees under Exhibit C, as they are "capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties." *Dixie Bell, Inc. v. Redd*, 656 S.E.2d 765, 769 (S.C. Ct. App. 2007) (citations omitted). To arrive at the amount of interest for each year, the Court adopts the "South Carolina interest factor" submitted by Plaintiff's expert in his most recent report.³ The calculation of interest is set forth below:

³ Although the Court elects to use the expert's interest factor, the Court declines to use the expert's calculation of proposed lost royalties. The parties agreed that fees would only be due "based on sales of units manufactured" in the transferred territories. See, e.g., Gagne Transfer Agreement, § 3; Jandris Transfer Agreement, § 4; Hiway Transfer Agreement, § 3.

Year	Total Fees	SC Interest Factor	Interest Calculation
2009	\$117,029	0.4949	\$57,918
2010	\$131,928	0.4145	\$54,684
TOTAL INTEREST			\$112,602

At the damages hearing, Defendants argued that future damages were wholly speculative because Plaintiff's future damages would largely depend upon a continuing relationship between Keystone Retaining Wall Systems, LLC ("KRWS") and Gagne, Hi-Way, and Jandris – the duration and details of which could not have been forecasted to a reasonable certainty. Defendants further argued that specific performance, vis-à-vis reinstatement of Plaintiff's Transfer Agreements, would be a more appropriate remedy. The Court initially agreed and ordered specific performance accordingly. (See ECF No. 147 at 4-5.)

However, the Fourth Circuit held that the Court erred in its predicate finding that the Transfer Agreements constituted separate contracts that imposed independent and continuing obligations on KRWS to pay royalties to Plaintiff. (ECF No. 161 at 13.) Rather, as stated by the Fourth Circuit, the Transfer Agreements were amendments to the License Agreement, and when the License Agreement expired at the end of 2010, so did the Transfer Agreements. (See *id.* at 13-15.) Therefore, the specific performance portion of the Court's March 15, 2015 Order has been vacated (*id.* at 16-17) and needs no further treatment here. As to any amounts representing continuing payments under the Transfer Agreements deposited by Defendants into an escrow account, in accordance with the Court's Order (see ECF No. 147 at 5), during the pendency of the

appeal, those funds are now released and may be recovered by Defendants without reservation.

WHEREFORE, the Court ORDERS:

1. Plaintiff shall be entitled to a judgment of \$248,957 in past damages under the three Transfer Agreements;
2. Plaintiff shall be entitled to prejudgment interest in the amount of \$112,602.
3. Plaintiff's remaining claims are dismissed *with prejudice*.
4. The Parties shall bear their own costs.

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

January 31, 2017
Greenville, South Carolina

EXHIBIT B

Beth McMillan

From: Dan Albert <dan.albert7@gmail.com>
Sent: Monday, May 16, 2016 12:46 PM
To: Beth McMillan
Subject: Re: Oldcastle v. Daniel Albert

Beth,

After reviewing the proposed Order of Dismissal Without Prejudice, I can't help but conclude that agreeing to it would virtually guarantee another year of no opportunity to do business with Oldcastle instead of enhancing the opportunity to resume doing business with Oldcastle in the near future. Going to trial next week would clarify matters and bring closure to the litigation phase of my relationship with Oldcastle. Dismissal without prejudice would technically continue litigation for another year plus the additional time to go through a new trial phase.

Another way to bring closure to the matter is to revise your confession of judgment to \$100,000 and get it executed today so that you and Oldcastle don't have to prepare for trial next week. Madawaska Hardscape Products, Inc. owes Oldcastle approximately \$143,000, all of it outside of the statute of limitations. The lawsuit is against me personally as the guarantor, which I believe will result in potentially Oldcastle receiving nothing at trial due to the statute of limitations barring success on their claim. In light of the risk that Oldcastle has of getting nothing or a partial judgment, I think that a \$100,000 confession of judgment is reasonable. If they can agree to this, we can be finished with this litigation immediately.

If Oldcastle is willing to put the litigation behind us and resume a business relationship, I am confident that the mutual benefit derived from future business will dwarf any perceived loss that Oldcastle has coming out of this litigation. As you have made clear, there would be no commitment to doing business on the part of Oldcastle if we agree to a confession of judgment. If Oldcastle is in agreement, simply revise the confession of judgment to reflect an amount of \$100,000 and send it over to me and I will sign it, scan it and send it back to you today.

Dan

On Mon, May 16, 2016 at 11:21 AM, Beth McMillan <beth.mcmillan@mgclaw.com> wrote:

Dan,

As we discussed, attached is the proposed consent order to dismiss the case without prejudice pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. This basically allows the case to be frozen in time for a period of one year and all claims and defenses are preserved during that time. Either party may restore the case within 12 months of the filing of this order, and if no one does then the case will be dismissed with prejudice.

If you don't have any questions, please sign it and scan it back to me as soon as possible and I will file it with the court.

Thanks,

Beth



Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
VCARD | BIO

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Please consider the environment before printing this email.

Beth McMillan

From: Dan Albert <dan.albert7@gmail.com>
Sent: Monday, May 23, 2016 4:00 PM
To: Beth McMillan
Subject: Re: FW: Scan from Adams Products - Greensboro, NC
Attachments: Settlement DBA 5.23.16.pdf

Hi Beth,

Here is my piece. Based upon your representations that these signatures are from duly authorized representatives of Plaintiffs, that the signature page saying "We Consent" will be forthcoming from Robert, and that the "We Consent" signatures pertain to the Confession of Judgment that you already have, I agree that we have settled the matter, and that you may inform the court of that fact.

It is a minor point of clarification, but it looks like the Adams piece was signed by Colin Clampett.

Dan

On Mon, May 23, 2016 at 3:48 PM, Beth McMillan <beth.mcmillan@mgclaw.com> wrote:

Dan,

Here are the signature pages from Todd Ring for Adams Products. I should have the other page from Robert any time now.

Please send me your signed page for the settlement agreement. We will attach the "We Consent" page to the Confession of Judgment.

If you don't have any other questions, I would like to advise the court that we have settled.

Beth



Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
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EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Plaintiff,

vs.

DANIEL B. ALBERT,

Defendant.

Civil Action No. 2014-CP-23-05031

CONFESSION OF JUDGMENT

Pursuant to SC Code Ann. §§15-35-350 and 15-35-360, this **CONFESSION OF JUDGMENT** is made and entered into as of this, the 16th day of May, 2016, by and between Daniel B. Albert ("Defendant") and Oldcastle APG South, Inc. and Oldcastle APG Northeast, Inc. (collectively referred to as "Plaintiffs").

WHEREAS, Defendant's company, Madawaska Hardscape Products, Inc. ("Madawaska") has previously purchased supplies from Plaintiffs and Defendant signed a personal guaranty for the purchase of those products and the extension of credit by Plaintiffs;

WHEREAS, Madawaska failed to pay for certain supplies sold and delivered to Madawaska as evidenced by the invoices and other documents produced by Plaintiffs; and

WHEREAS, there is presently due and owing to the Plaintiffs by Defendant, as the personal guarantor for Madawaska, the sum of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars;

WHEREAS, Plaintiffs have declared the entire balance due and payable, and has demanded payment of the same, but the Defendant has failed to pay the amount due, or any of it; and

WHEREAS, Defendant or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case"); and

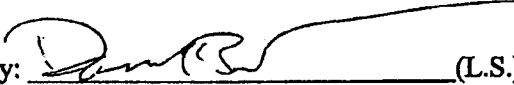
WHEREAS, upon his or his company's receipt of funds that are paid either as a judgment or as a settlement of the Federal Court Case, Defendant agrees to pay Plaintiffs the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars within ten days of receipt of the payment of the judgment in the Federal Court Case.

NOW, THEREFORE, this Confession of Judgment is made to Plaintiffs in the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Judgment is to be held by counsel for the Plaintiffs and remain unrecorded unless the Defendant fails to pay the settlement within ten days of his or his company receiving payment from the judgment or the settlement awarded in the Federal Court Case.

The Plaintiffs hereby agree to mark the Confession of Judgment "paid and satisfied" and return it to the Defendant upon payment of the complete settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Confession of Judgment shall be recorded with the court to allow enforcement by the Plaintiffs only if the Defendant fails to make payments and satisfy the settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars upon the terms as set forth in this Confession of Judgment. Defendant hereby confesses judgment in favor of the Plaintiffs herein in the amount of One Hundred

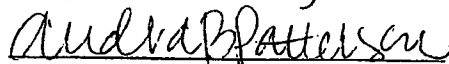
Thousand and 00/100 (\$100,000.00) Dollars and hereby authorizes judgment to be entered pursuant to the terms stipulated herein.

In acknowledgment and agreement, I hereby set my hand and seal this 16th day of May, 2016.

By:  (L.S.)
Daniel B. Albert

SWORN TO AND SUBSCRIBED before me

this 16th day of May, 2016

 (L.S.)

Notary Public for South Carolina

My Commission Expires
My Commission Expires: February 12, 2023

March 13, 2017

Daniel B. Albert
2 Tennwood Dr
Greenville, SC 29609

VIA EMAIL

Elizabeth M. McMillan
MGC Insurance Defense
55 East Camperdown Way, Suite 300
Greenville, SC 29601

Re: Case 2014-CP-23-05031 Oldcastle APG South, Inc. d/b/a Adams Products Company and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern, Plaintiffs, vs Daniel B Albert, Defendant.

Dear Beth,

I am in receipt of your demand letter and exhibits dated March 9, 2017. Your letter and exhibits provide only part of the picture, so I am writing to you to provide my perspective on the sum total of the communications and negotiations regarding the Settlement Agreement and Confession of Judgment. I am transmitting this letter to you by email, and I am attaching a PDF of the documents that I hope will help you to appreciate my perspective and perhaps come to an amicable resolution to our dispute about the Confession of Judgment and the Settlement Agreement and the termination of the litigation of this matter.

As you know, we were in sharp disagreement about the validity of the Confession of Judgment that I signed and emailed to you on May 16, 2016. I thought that we had resolved our disagreement over the Confession of Judgment through the negotiation and execution of the Settlement Agreement along with the execution of consents to the Confession of Judgment by representatives of both of the Plaintiffs in this matter. Unfortunately, it seems that we are now in sharp disagreement about the validity of not only the Confession of Judgment, but also the Settlement Agreement.

My hope is that if you examine the facts, you will see that the responsibility for our disagreement rests squarely in your court, as you failed to deliver on what I had negotiated in the agreements. I realize that you object to my use of the word shenanigans to describe what you have done or failed to do in this matter, but please accept that I lumped together negligence, carelessness or shenanigans in my use of the term shenanigans. When I look at the sum total of all the evidence, I see what I described as shenanigans, and the truth is, if it were not for those shenanigans, we would not be having the sharp disagreement that we are presently having.

The approach that you take in your letter and exhibits seems to rely upon the validity of the Confession of Judgment that I signed on May 16, 2016, and completely ignores the sharp disagreement that we had that led to the reinstatement of the case to the trial roster after you had unilaterally had it removed, and that also led to the execution of consents to the Confession of

Judgment and the execution of the Settlement Agreement. It is still my view that the Confession of Judgment was invalid per our email exchanges between May 16, 2016 and May 23, 2016, and that the execution of the aforementioned documents are absolutely necessary for you to make any assertion that the Confession of Judgment is valid.

A key element for me in the negotiation of the Confession of Judgment and the Settlement Agreement was the pursuit of the opportunity to resume business with Oldcastle. There is much documentation of my intent, and you indeed pointed out that there was no assurance of doing business with Oldcastle in the future. Had you disclosed to me last year what you said to me outside the courtroom last week, that numerous people at Oldcastle have stated to you that they will not do business with me in the future, and if you had been as emphatic in communicating that to me as you were the other day, I would not have offered to execute the Confession of Judgment, but would have rather just accepted your 40(j) Consent Order of Dismissal that you proffered on the morning of May 16, 2016.

Another key element for me in the negotiation of the Confession of Judgment and the Settlement Agreement was that there would be an immediate dismissal of the case, the practical effect of which would take my case out of the hands of the legal department at Oldcastle and reopen the possibility of resuming doing business with Oldcastle. There is much evidence that supports the expectation that I had that the stipulation of dismissal would be filed. There is also much evidence that it was your intent to file a stipulation of dismissal. Your communication with Lyndall Coker included a statement by you that you would be "submitting a stipulation of dismissal shortly." You'll find your statement to this effect and Lyndall's response that she will "remove the case from the trial roster and make a note that the Settlement Agreement will follow" on the page Bates labeled DEF 0044.

As you will see at DEF 0050, I sent you "my piece" based upon certain representations by you about the signature page saying "We Consent" would be forthcoming from Robert, and that the "We Consent" signatures pertained to the Confession of Judgment that I signed on May 16, 2016, which you already had. When you sent the signature page by Robert for the Confession of Judgment consent to me on June 2, 2016, you asked me to send the original pages of my signature lines to you. When I responded to you, I told you that I would send them to you, and I also asked you if there was a stipulation of dismissal or some other document that would be forthcoming. I never received a response from you to that question, and you evidently did not submit the stipulation of dismissal that both Lyndall and I were expecting you to submit. Your failure to follow through with the stipulation of dismissal and all of the resulting ramifications is the sole reason for the current disagreement that we now have.

The Settlement Agreement and Release, which was signed by me, Robert Capellazzi and Colin Clampett clearly states in paragraph five entitled Stipulation of Dismissal that "The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaims in the Litigation. When I mailed full copies of the Confession of Judgment and the Settlement Agreement with my original signatures to you, I also sent you an executed Consent Order of Dismissal, which you will find in DEF 0032-DEF 0035. The signature pages clearly could have been improved upon by eliminating the word processing fields, but I went ahead and executed it and sent it to you.

When we spoke outside the courtroom on March 9, you asked me why I waited and did nothing for almost a year if I thought that we did not have an agreement. I thought that we had an agreement, and that you had done everything that you were supposed to do until I received notification of the status conference on the case, which alerted me that something was clearly wrong. I hope that you will appreciate the ramifications of all of this from my point of view. The stipulation of dismissal was not recorded. The case was not over, and the door was therefore not open for me to resume doing business with Oldcastle, which was the reason why I entered into the Confession of Judgment to begin with. The communications that I had with you and Melinda, which you can find in DEF 0072-DEF 0079, simply reinforced the perspective that I had that by all appearances what I had executed almost a year earlier amounted to nothing more than a free option, which I certainly had no intention of granting.

All of the facts led me to the conclusion that we were not in agreement after all. Whether through your failure to provide full disclosure, misrepresentation, breach of contract, or the failure to come to a meeting of the minds, it is clear to me that we are in a second phase of being in sharp disagreement about whether we actually had a valid agreement. The documentation about our sharp disagreement between May 16, 2016 and May 23, 2016 clearly supports my position that we did not have a valid Confession of Judgment. The documentation of the negotiation and execution of the documents intended to establish a valid agreement, and the documentation of your failure to deliver on what I bargained for supports my position that we still do not have a valid agreement.

All is not lost, Beth, because I have a solution to propose. In light of all the facts and circumstances, I think it would be appropriate and reasonable if we agree that I will make a payment of \$75,000 to completely satisfy all claims by Plaintiffs against my companies and me personally. I think that a \$25,000 haircut for what I refer to as shenanigans is appropriate and reasonable, especially when considering what I am offering to throw in as an added incentive for Oldcastle to give me the green light to resume doing business with them. If we resume doing business, I will make payments on my schedule and my terms as I'm able for the balance of the \$143,000 that I show that Madawaska Hardscape Products, Inc. owes Plaintiffs on my books. I will not be obligated to pay the difference of \$68,000, it is strictly voluntary and subject to my ability to do so and based upon the volume of business that I do with Oldcastle in the future. The shortfall of \$68,000 will be handled in similar fashion to the amounts owed to other vendors by Madawaska Hardscape Products, Inc. that are outside of the statute of limitations-I will pay them if and when I can. First, I have to get back on my feet.

We can effectuate such an agreement by simply declaring the Confession of Judgment and Settlement Agreement null and void upon payment of \$75,000, which will satisfy all claims, and execute a stipulation of dismissal and whatever other documentation is necessary. This can be accomplished within a few days, if Oldcastle is willing, but we must make sure that all documents are duly authorized and executed prior to concluding that the deal is done. I don't want to have a repeat of what happened when you dropped the ball on doing everything you were supposed to last year. I trust that, given the circumstances, you and Oldcastle will find this proposal to be acceptable, otherwise we can fight through the validity of the Confession of Judgment and any appeal that may come forth from that decision by the court, or from any adverse decision at trial.

Let there be no doubt by you or your client that I have operated in good faith in this matter. I rejected your first proposed stipulation of dismissal because I wanted to pursue a resumption of business relations with Oldcastle. I brought up the judgment in the federal case as a way to settle this case without having to go to trial. I have consistently tried to avoid making it difficult for Oldcastle, including not aggressively pursuing deficiencies in your responses to my discovery requests. I informed you that the Fourth Circuit Court of Appeals had made a decision. When Melinda sent me the 41(a) Stipulation of Dismissal with Prejudice, I questioned the whole thing because I was concerned that it was letting me off the hook completely, and I didn't want it to make it difficult to resume doing business with Oldcastle. Finally, I am making what I think is a generous offer, given the circumstances, to resolve our dispute.

I know that you had other cases at the status conference that you had to return to the courtroom to handle, and that there are reasons that you would not have all of the facts of this case at your fingertips, but the way that you misrepresented the facts at the status conference, and the way that you present your demand letter and exhibits with only partial information makes me wonder about the nature of your representations of the facts of our dealings to your client, and the potential damage to my prospects of resuming business with Oldcastle. My concern is magnified by the prejudicial statements that you made to the judge at the status conference, your insinuations about my dealings with other parties which can only be based upon hearsay, and your propensity to make accusations not grounded in fact. For this reason, I will be sending a copy of this letter and the attached documents to Oldcastle counsel so that I may be sure that they have the full picture.

Sincerely,

Dan Albert

cc: Sarah T. Brooks



Dan Albert <dan.albert7@gmail.com>

Response to your demand letter

21 messages

Dan Albert <dan.albert7@gmail.com>

Mon, Mar 13, 2017 at 10:07 AM

To: Beth McMillan <beth.mcmillan@mgclaw.com>, sarah.brooks@oldcastlelaw.com

Please see the attached letter and PDF of relevant documents that pertain to our dispute about the validity of the Confession of Judgment and Settlement Agreement and my proposal to resolve the dispute.

2 attachments

 3.13.17 DBA ltr to EMM.pdf
20K

 DEF 0001-DEF 0079.pdf
1604K

Brooks, Sarah (Oldcastle Law) <Sarah.Brooks@oldcastlelaw.com>

Mon, Mar 13, 2017 at 10:22 AM

To: Dan Albert <dan.albert7@gmail.com>

Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Mr. Albert-

I can assure you that Ms. McMillan's work on this case and whether or not a stipulation of dismissal was filed has no bearing on your relationship with Oldcastle. What, if anything, is affecting the relationship is that we are continuing to incur outside legal expenses in trying to collect on outstanding amounts owed by you. You struck a deal for the \$100k Confession of Judgment and now that the time has come for you to pay, it appears that you have buyer's remorse. The more you fight, the more you damage your relationship with Oldcastle. The \$100k settlement represented a significant "haircut" to Oldcastle and we will not offer further reductions. Please forward payment and all parties can move on. Thank you for your cooperation and please contact me with any questions.

Regards,

Sarah T. Brooks
Assistant General Counsel
Oldcastle, Inc.

900 Ashwood Parkway, Suite 600
Atlanta, GA 30338
(770) 392-5308 (Direct)

(678) 595-4949 (Cellular)
(770) 392-5305 (Facsimile)

sarah.brooks@oldcastlelaw.com

OMG Legal Resource Site: <http://omgintranet/legal/Pages/default.aspx>

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From: Dan Albert [mailto:dan.albert7@gmail.com]

Sent: Monday, March 13, 2017 10:07 AM

To: Beth McMillan <beth.mcmillan@mgclaw.com>; Brooks, Sarah (Oldcastle Law) <Sarah.Brooks@oldcastlelaw.com>

Subject: [EXT] Response to your demand letter

Please see the attached letter and PDF of relevant documents that pertain to our dispute about the validity of the Confession of Judgment and Settlement Agreement and my proposal to resolve the dispute.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you are expecting this email and know the contents are safe. ATTENTION: Ce courriel vient de l'exterieur de l'entreprise. Ne cliquez pas sur les liens, et n'ouvrez pas les pièces

jointes, à moins que vous ne connaissiez l'expéditeur du courriel et savez que le contenu est sécuritaire.

Dan Albert <dan.albert7@gmail.com>
To: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>
Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, Mar 17, 2017 at 12:11 PM

Sarah,

Thank you for taking the time to speak to me today. I forgot to wish you a happy St. Patrick's Day, as Oldcastle is an Irish company, and I know it's important to the company and its culture.

As I mentioned, everything would have wrapped up by now if Ms. McMillan had done what the settlement agreement called for her to do. I know that neither one of you see the magnitude of the problem the same way that I do, but in my view, her failure to file the stipulation of dismissal and the subsequent refusal to accept responsibility for the misdeed substantiates my concerns about the many implications of our current situation. In short, Ms. McMillan has blown our Settlement Agreement and Confession of Judgment out of the water. In my letter with attachments transmitted by my email above, I have tried to set forth the facts so that you and Ms. McMillan can understand where I'm coming from. I find Ms. McMillan's demand letter with exhibits to be a most egregious attempt to completely ignore the Settlement Agreement and the consents given to the Confession of Judgment that are necessary parts of the agreement that we had negotiated and that she has violated.

My position that we do not have a valid agreement does not mean that we cannot resolve this case. As attorneys, I know it is impossible for you and Ms. McMillan to admit any wrongdoing or to accept any responsibility for any actions or inactions by Ms. McMillan, but it is not necessary for you to do so, or to agree that Ms. McMillan has effectively nullified our prior Settlement Agreement and Confession of Judgment in order to resolve this case. As we discussed this morning, I propose one of the following two options for settling this case:

1. A payment of \$75,000 is made immediately with the remaining balance on my books of \$68,000 paid down over time as I am able, on my terms after the resumption of business between me or my companies and Plaintiffs. I understand that your perspective is that there is no value in the potential for the haircut in this scenario growing back, but if either of the Plaintiffs find it to be an attractive option, we could do it.

2. Madawaska Hardscape Products, Inc. makes an immediate payment of \$100,000 on account which will settle all claims Plaintiffs have against Madawaska or against me personally. As you know, the shortfall between what you assert is owed and the payment of \$100,000 will become a permanent haircut, never to be repaid. I ask for a simple letter from you that memorializes the commitment that, upon making the payment of \$100,000, the haircut granted will not be used as a reason by either of the Plaintiffs to refuse to do business with me. Since they can refuse to do business because they don't like me or the way I comb my hair, the lack of such a letter will not be a dealbreaker, but it would be nice to have. What I must have from each of the Plaintiffs is a simple, single page document that in essence sells any remaining balance owed to each Plaintiff by Madawaska Hardscape Products, Inc. to MHP Restructure, LLC for one dollar. Since you will write off the balance showing on your books, you do not need such a document selling the remaining interest, but for tax reasons, I need it. If you don't want to put these together, I can do so if you'll simply give me the dollar amount that you allocate to each Plaintiff from the \$100,000 payment.

Since Ms. McMillan did not follow through with the stipulation of dismissal, I am sure that you understand the need to simultaneously execute all relevant documents and exchange those documents for payment. If either of these scenarios are acceptable to you, I could meet with Ms. McMillan when she has assembled the documents for execution, and I can present bank checks payable to her trustee account, to Oldcastle, or to the individual Plaintiffs. Let me know if you find either of these two scenarios acceptable.

Dan
[Quoted text hidden]

Brooks, Sarah (Oldcastle Law) <Sarah.Brooks@oldcastlelaw.com>
To: Dan Albert <dan.albert7@gmail.com>
Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, Mar 17, 2017 at 1:52 PM

Dan-

As I explained this morning, the issue with a dismissal is immaterial. You entered into a settlement agreement to resolve the debt owed to Oldcastle by paying an amount less than the total amount owed if a certain contingency occurred (your success in your other lawsuit). The contingency occurred and now you owe to Oldcastle the \$100k. You cannot now add additional terms to the agreement. I expect to receive payment of the \$100k immediately and we can all move forward. Driving up our outside legal costs further is not productive for any of us and certainly does not positively impact the possibility of future business with Oldcastle.

Regards,

Sarah T. Brooks
Assistant General Counsel
Oldcastle, Inc.

900 Ashwood Parkway, Suite 600
Atlanta, GA 30338
(770) 392-5308 (Direct)

(678) 595-4949 (Cellular)
(770) 392-5305 (Facsimile)

sarah.brooks@oldcastlelaw.com

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From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Friday, March 17, 2017 12:11 PM
To: Brooks, Sarah (Oldcastle Law) <Sarah.Brooks@oldcastlelaw.com>
Cc: Beth McMillan <beth.mcmillan@mgclaw.com>
Subject: Re: [EXT] Response to your demand letter

[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>
To: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>
Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, Mar 17, 2017 at 3:38 PM

Sarah,

You reference the Settlement Agreement that we entered into, but you don't seem to understand my concern that Beth's demand letter and exhibits do not include that Settlement Agreement, which has been violated by Beth's actions and inaction. That all becomes a moot point if we simply generate a very simple settlement agreement that reflects the current set of circumstances. The original Settlement Agreement had a confession of judgment that anticipated the possibility of receiving funds from the federal lawsuit. All we need now is a settlement agreement that is based upon the payment of \$100,000 and the mutual release of all claims without all of the additional complication added to it. That new simple Settlement Agreement will supersede all other agreements, ending our dispute about the validity of those agreements.

As far as the sale of the residual balance on the accounts, that can be taken care of in a paragraph or two for each of the Plaintiffs. The original complaint listed the amount asserted being owed to Adams by Madawaska was \$127,212.13, and the amount asserted as being owed to Foster-Southeastern was \$27,739.10. The pro rata share of the \$100,000 payment would then translate to \$82,098.17 to Adams and \$17,901.83 to Foster-Southeastern. All I need is a paragraph each from Adams and Foster that says something like:

Upon receipt of payment of \$100,000 by Oldcastle or its attorney, \$82,098.17 will be applied to the balance owed to Adams Products Company by Madawaska Hardscape Products, Inc. The balance of money owed to Adams Products Company by Madawaska Hardscape Products, Inc. after the aggregate payment of \$100,000, is hereby sold and transferred to MHP Restructure, LLC for the sum of one dollar plus other valuable considerations.

Upon receipt of payment of \$100,000 by Oldcastle or its attorney, \$17,901.83 will be applied to the balance owed to Foster-Southeastern by Madawaska Hardscape Products, Inc. The balance of money owed to Foster-Southeastern by Madawaska Hardscape Products, Inc. after the aggregate payment of \$100,000 is hereby sold and transferred to MHP Restructure, LLC for the sum of one dollar plus other valuable considerations.

Like I said before, you don't need this kind of document as you are writing off the balance, but something simple like this executed unilaterally by each of the Plaintiffs will be a help to me. These are structured like a bill of sale, with no need for a signature by a representative of MHP Restructure, LLC.

I don't know how you can conclude that a new settlement agreement and these two minor one-page documents and the preparation of the stipulation of dismissal (which is necessary for any resolution of this case) can be characterized as driving up outside legal fees. I see these as very minor steps that you can take to rectify the mess made by Beth not fulfilling the terms of our Settlement Agreement. Perhaps Beth will see that some of the outside legal expenses that you have incurred or will incur are because she dropped the ball on fulfilling the Settlement Agreement, and she will provide the minor drafting at no additional cost to Oldcastle.

I trust that you will see that I propose a path to quickly and efficiently resolve this matter and that you will agree to do so quickly.

Dan

[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>
To: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>
Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Mon, Mar 20, 2017 at 6:53 PM

Sarah and Beth,

I have taken the liberty of redrafting the Settlement Agreement that we previously executed to reflect what I am proposing above. I converted your PDF to a Word document in order to edit, so it is a little bit rough. As you can see, I have incorporated the language I would like to see that transfers the remaining balances on the account owned by Madawaska Hardscape Products, Inc. into the proposed Settlement Agreement. All we have to do is execute this revised Settlement Agreement, which supersedes all prior Settlement Agreements and Confessions of Judgment, and file the stipulation of dismissal that I have already sent to you on February 4, 2017.

Unless you have some accounting or tax reason to object to the sale of the remaining balances on the accounts, what I am proposing is simple and straightforward and will eliminate any disputes about the validity of the prior agreements. Although you breached the Settlement Agreement that we executed previously, what I am proposing gives you exactly what you were hoping to have if you had not breached the agreement.

Please let me know if you think this will work for you.

Dan

[Quoted text hidden]

2 attachments



3.21.17 Proposed settlement.docx

21K



A 2.3.17.3 Executed 41(a) Dismissal.pdf

19K

Dan Albert <dan.albert7@gmail.com>

Mon, Apr 3, 2017 at 3:52 PM

To: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>

Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Sarah and Beth,

Can we execute the revised settlement agreement that I proposed above and put this matter to rest?

Dan

[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>

Mon, Apr 3, 2017 at 3:55 PM

To: Dan Albert <dan.albert7@gmail.com>, "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>

Dan,

No we will not sign a revised settlement agreement. We will proceed with entering the Confession of Judgment and will begin supplemental proceedings to collect that judgment.

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com]

Sent: Monday, April 03, 2017 3:53 PM

To: Brooks, Sarah (Oldcastle Law)

Cc: Beth McMillan

[Quoted text hidden]

[Quoted text hidden]



Beth McMillan, Attorney

beth.mcmillan@mgclaw.com

55 E. Camperdown Way Suite 300

Greenville, SC 29601

Main:864-239-4000 | Direct:864-239-4037 | Fax:864-242-3199

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Please consider the environment before printing this email.

Dan Albert <dan.albert7@gmail.com>

Thu, Apr 6, 2017 at 6:28 PM

To: Beth McMillan <beth.mcmillan@mgclaw.com>

Cc: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>

Beth,

When you say that you will not sign a revised settlement agreement, are you acknowledging that we executed a settlement agreement? If you acknowledge that we executed a settlement agreement, then you must acknowledge that you failed to meet a key term of that settlement agreement by not filing a stipulation of dismissal that was called for in that agreement. The settlement agreement that we executed specifically references the confession of judgment, which is invalid apart from the settlement agreement that we signed.

Sending me your demand letter without any reference or acknowledgment of the settlement agreement is an example of what I have called shenanigans on your part. Many of your statements and actions fall into that category that I call shenanigans, and instead of fighting over the validity of the Confession of Judgment or your breach of the Settlement Agreement, we have an opportunity to clean the slate of all shenanigans and any continuing dispute over the Confession of Judgment, Settlement Agreement and underlying claims and counterclaims in this action. I believe that what I have proposed for a revised settlement agreement coupled with the execution of a stipulation of dismissal by both parties is a simple and straightforward way to wrap this matter up without further delay and cost. I don't understand why you reject my proposed solution, but I am open to any reasonable or logical explanation that you can give me to justify what seems to be an irrational determination to continue fighting.

Dan

[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>

Wed, Apr 12, 2017 at 5:01 PM

To: Dan Albert <dan.albert7@gmail.com>

Cc: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>

Dan,

I do not agree with your position at all. Pursuant to the agreement you signed, you are obligated to pay the \$100,000 and if you don't we enter the Confession of Judgment. No Stipulation of Dismissal is filed if you fail to honor the terms of the agreement. We reject your proposal and are entering the Confession of Judgment.

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com]

Sent: Thursday, April 06, 2017 6:29 PM

To: Beth McMillan

Cc: Brooks, Sarah (Oldcastle Law)

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>

Wed, Apr 12, 2017 at 7:17 PM

To: Beth McMillan <beth.mcmillan@mgclaw.com>

Cc: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>

Beth,

By stating that you do not agree with my position at all, you are stating that you do not agree with any aspect of my position, so I would like to present you with the following sub-points of my position so that you may clarify that you do not agree with any of the sub-points of my position, or that you agree with some and disagree with others.

1. My position is that the original confession of judgment that I signed on May 16, 2016 was an invalid agreement for the reasons presented in our email correspondence.
2. My position is that you conceded that the original confession of judgment was not valid by restoring the case to the trial roster and negotiating the execution of consents to the confession of judgment and the execution of the Settlement Agreement dated May 23, 2016.
3. My position is that the execution of the consents to the confession of judgment and the execution of the Settlement Agreement were necessary to make the Confession of Judgment valid.
4. My position is that the immediate execution and filing of a stipulation of dismissal was an important part of the Settlement Agreement.
5. My position is that you breached the Settlement Agreement by not filing the Stipulation of Dismissal in a timely fashion.
6. My position is that I did not get what I bargained for in the Settlement Agreement.
7. My position is that upon the execution of the Settlement Agreement and the consents to the Confession of Judgment, that the litigation would be completely over, and that my status of being in litigation with Oldcastle and its subsidiaries would come to an immediate end.

8. My position is that by breaching the Settlement Agreement, you make the Confession of Judgment null and void.
9. My position is that you do not recognize the Settlement Agreement executed on May 23, 2016.
10. My position is that through misrepresentation, nondisclosure, fraud, negligence or other shenanigans that you did not intend to deliver the benefits that I bargained for in our agreement.
11. My position is that I have shown forbearance in offering a solution that will resolve our dispute.
12. My position is that my proposed solution gives you exactly what you bargained for in the Settlement Agreement, even though you breached the agreement.
13. My position is that your posture in this matter proves the validity of my concerns and your lack of performance in the terms of our agreement.
14. My position is that you refuse to take any responsibility for your misdeeds, even though I am letting you off the hook so easily.
15. My position is that you prove the validity of my concerns by refusing to offer any reasonable or logical explanation as to why you cannot accept my proposed solution.
16. My position is that it would be best for all if you give me the benefit of the doubt that I have legitimate concerns and accept the reasonable resolution that I propose.
17. My position is that the minor modifications that I propose in my revised Settlement Agreement are of no detriment to you or your client, but provide some measure of relief for me from the tax consequences of the settlement of this matter. You have given no legal or accounting reason for denying me the minor modification that transfers the remaining balances owed by Madawaska Hardscape Products, Inc. You seem spiteful.

Please let me know if you do not agree with all of the above sub-points of my position, or if there are some of them that you agree with. I feel like I am the only one that is trying to be reasonable and productive in resolving our dispute. I don't know how I could make it any easier for you.

Dan
[Quoted text hidden]

Brooks, Sarah (Oldcastle Law) <Sarah.Brooks@oldcastlelaw.com>
To: Dan Albert <dan.albert7@gmail.com>
Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Wed, Apr 12, 2017 at 7:23 PM

Dan-

We are clear on all of your points and respectfully disagree. Beth will proceed as outlined. There is no need for further discussion.

Regards,

Sarah
[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

<117041217015001241.png>

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
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<117041217015000741.png>

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4 attachments

mgc 117041217015001241.png
3K

mgc image001.png
3K

Dan Albert <dan.albert7@gmail.com>

Fri, May 5, 2017 at 3:12 PM

To: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>

Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Beth and Sarah:

I would like to make one more attempt to clear the logjam that has me completely exasperated. Please try to understand that, in order to give you a bank check for \$100,000, I need assurance that the litigation will come to an immediate end through the execution of an appropriate stipulation of dismissal, and that all claims against me personally and Madawaska Hardscape Products, Inc. are satisfied. Your failure to acknowledge the Settlement Agreement, the necessity of the Settlement Agreement in making the Confession of Judgment valid, and the fact that the failure to execute a stipulation of dismissal required by the Settlement Agreement is a breach of the Settlement Agreement makes me concerned that there is some possibility that you could initiate further legal action against me or my company in the future. I trust that is not a real possibility, but please work with me to eliminate all doubt.

I will not require that you include the sale of the residual balance that Madawaska Hardscape Products, Inc. owes to Foster and Adams for one dollar to a friendly entity in order to get this thing wrapped up. If you don't want to execute something like the revised Settlement Agreement that would accomplish this, I would like to ask that you consider giving me a paragraph on Oldcastle letterhead that simply states that Oldcastle is selling the excess receivable balance for one dollar. This will help me with the tax ramifications of this settlement, and as best I know, it will cost you nothing more than a few minutes to generate a paragraph or the time to execute the new Settlement Agreement. I would like to end the litigation phase of my life and get back on my feet. I'm simply asking for a favor that will help me with the tax ramifications of the settlement.

Please meet me halfway and try to figure out how to put things together so that we can have a brief meeting where we execute a stipulation of dismissal that clearly waives any continuing liability so that I can put a check for \$100,000 in your hand. All you have to do is email the stipulation of dismissal to me for my review and tell me who to make the check payable to.

Dan

[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, May 5, 2017 at 3:22 PM

To: Dan Albert <dan.albert7@gmail.com>, "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>

Dan,

With the filing of the Confession of Judgment, once you pay the \$100,000, I will enter a Satisfaction of Judgment and the entire case will be over. That will serve to forever end the case as a Stipulation of Dismissal would. We will not file a Stipulation of Dismissal because we are entering a Judgment against you which is exactly what was agreed to.

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com]

Sent: Friday, May 05, 2017 3:12 PM

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>

Fri, May 5, 2017 at 3:30 PM

To: Beth McMillan <beth.mcmillan@mgclaw.com>

Cc: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>

Have you filed the confession of judgement yet?

[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, May 5, 2017 at 3:32 PM

To: Dan Albert <dan.albert7@gmail.com>

Cc: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>

We are in the process of filing it. You should receive it on Monday.

From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Friday, May 05, 2017 3:30 PM
To: Beth McMillan
Cc: Brooks, Sarah (Oldcastle Law)
Subject: RE: [EXT] Response to your demand letter

[Quoted text hidden]
[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>
Cc: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>

Fri, May 5, 2017 at 3:50 PM

You might want to pull it back. If it is consistent with what you have been saying, I think you're taking the wrong approach. I have given you a more sure and more amicable path.

[Quoted text hidden]

Brooks, Sarah (Oldcastle Law) <Sarah.Brooks@oldcastlelaw.com>
To: Dan Albert <dan.albert7@gmail.com>, Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, May 5, 2017 at 3:52 PM

Dan-

Please stop dragging this out and let's get it resolved through the proper and previously agreed upon channels. You'll get the confession of judgment, you make the payment of \$100k, and we enter the satisfaction of judgment and the case is closed.

Regards,

Sarah T. Brooks
Assistant General Counsel
Oldcastle, Inc.

900 Ashwood Parkway, Suite 600
Atlanta, GA 30338
(770) 392-5308 (Direct)

(678) 595-4949 (Cellular)
(770) 392-5305 (Facsimile)

sarah.brooks@oldcastlelaw.com

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From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Friday, May 05, 2017 3:51 PM
To: Beth McMillan <beth.mcmillan@mgclaw.com>
Cc: Brooks, Sarah (Oldcastle Law) <Sarah.Brooks@oldcastlelaw.com>

[Quoted text hidden]

[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>
To: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>
Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, May 5, 2017 at 4:13 PM

Sarah,

I'm all for proper and previously agreed-upon channels. The only agreement we have is the Settlement Agreement, which you have breached and I am showing forbearance in working around that breach. What Beth wants to do is re-litigate the stand alone Confession of Judgment that was never a valid agreement. We litigated that issue last year, which resulted in the Settlement Agreement. If you don't have Beth pull it back and pursue my proposed path, I will have to look at what she files and decide what to do about it. Meanwhile, please consider my request for at least one paragraph document that I can put in my file that will help you with the tax ramifications of the settlement.

Dan

[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>
To: "Brooks, Sarah (Oldcastle Law)" <Sarah.Brooks@oldcastlelaw.com>
Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, May 5, 2017 at 4:17 PM

Corrections to the above: I'm showing forbearance in trying to work around the breach. The one paragraph document that will help me with the tax ramifications of the settlement.

[Quoted text hidden]

Brooks, Sarah (Oldcastle Law) <Sarah.Brooks@oldcastlelaw.com>
To: Dan Albert <dan.albert7@gmail.com>
Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, May 5, 2017 at 5:10 PM

Dan-

Enough. We've been through these arguments several times. The more you fight us the less amenable we are with doing business with you in the future. This back and forth needs to end. You will receive the confession of judgment. I hope that you will simply pay it and we will be done with this. If you don't, that is obviously your decision, but please know that all of my business folks are watching as well.

Have a good weekend.

Regards,

Sarah T. Brooks
Assistant General Counsel
Oldcastle, Inc.

900 Ashwood Parkway, Suite 600
Atlanta, GA 30338
(770) 392-5308 (Direct)

(678) 595-4949 (Cellular)
(770) 392-5305 (Facsimile)

sarah.brooks@oldcastlelaw.com

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From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Friday, May 05, 2017 4:18 PM

[Quoted text hidden]

[Quoted text hidden]



Dan Albert <dan.albert7@gmail.com>

Discovery Issues

2 messages

Dan Albert <dan.albert7@gmail.com>
 To: Beth McMillan <beth.mcmillan@mgclaw.com>

Thu, Apr 7, 2016 at 7:56 PM

Hi Beth,

I would like to address the following discovery issues in an effort to narrow the issues that we must take up with the judge in an informal discovery conference or Motion to Compel. I propose that we quickly identify the issues that we can agree upon, limiting the issues that we must take up with the judge.

1. Plaintiffs' answers to Defendant's First Set of Interrogatories was signed by you instead of being attested to by a representative of Plaintiffs with personal knowledge of the answers. Does Plaintiff plan to resubmit answers attested to by representatives of Plaintiffs?

2. Some of Plaintiffs' answers provide answers involving Defendant instead of Madawaska Hardscape Products, Inc. (Madawaska). For example, Interrogatory #4 asks Plaintiff to provide the names of the individuals involved in the decision of Oldcastle APG South, Inc. to extend credit to Madawaska, and Plaintiff answers by stating that Mitch O'Neal was the credit manager who initially approved the credit limit for Defendant. Defendant asks that Plaintiffs answer the interrogatories as posed, with proper distinction being given to the difference between Defendant and Defendant's company.

3. Plaintiff has not answered Interrogatories 7, 8, 16, and 17, choosing to direct the attention of Defendant to documents that have previously been produced which Plaintiffs erroneously assert "contain this information for the applicable years relevant to the claims in this lawsuit." Defendant seeks definitive answers from Plaintiffs as to calendar year end account balances and total annual purchases by Madawaska for the years 2007-2012.

4. Plaintiff provides nearly identical answers to interrogatories 10 and 19. These are additional examples of a question being posed about Madawaska that Plaintiff answers with reference to Defendant. Plaintiff is generally nonresponsive, but makes reference to "numerous agreements with Defendant's companies about payment arrangements". Plaintiff should answer the interrogatories for each alleged agreement involving Madawaska for which Plaintiffs became aware of Madawaska's inability to make payments on account under the terms of any such alleged agreement. Plaintiffs should amend their answers to provide detail as to what is meant when Plaintiffs answer by referencing Defendant's "companies", or limit Plaintiffs references to Defendant's company as Madawaska. If Plaintiffs assert that the inability of Madawaska to pay on account as agreed led to any other agreement with Madawaska, Plaintiffs should set forth the relevant information requested by the interrogatory, including a description of each agreement, the parties involved, as well as any internal communication, actions or contemplated actions discussed.

5. Plaintiffs answer interrogatories 14 and 15 by referring Defendant to Plaintiff's responses to interrogatories 5 and

6. Defendant should not be required to infer or assume anything about Plaintiffs' responses to these interrogatories. For example, if Plaintiffs intended response to interrogatory fourteen is verbatim to interrogatory five, Plaintiff should be very clear by cutting and pasting the exact language.

6. I question whether Plaintiff has fully responded to item number three of my first set of requests for production. I have put forth the same request for emails to or from specific individuals in my second set of requests for production. The individuals I list are based upon Plaintiffs' responses to my first set of interrogatories, therefore production of documents from these individuals should have been forthcoming in Plaintiffs' responses from the first set of requests.

Please provide your intentions on addressing these discovery issues as soon as possible so that we may inform the court about the necessity and scope of an informal discovery conference with the judge.

Dan

DEF 0006

Beth McMillan <beth.mcmillan@mgclaw.com>
To: Dan Albert <dan.albert7@gmail.com>

Thu, May 5, 2016 at 9:35 AM

Dan,

Please give me a call as soon as you get a chance.

Beth

Sent from my iPhone
[Quoted text hidden]

mgc

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3189
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DEF 0007

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

Oldcastle APG South, Inc. and Oldcastle APG
Northeast, Inc.

Plaintiff,

vs.

Daniel B. Albert

Defendant.

IN THE COURT OF COMMON PLEAS
CIVIL JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

Case No.: 2014-CP-23-05031

2017 MAY 15 PM 3:33
FILED-CLERK OF COURT
PAUL B. WICKES
GREENVILLE, SC

I certify that on this date, I served a copy of Defendant's Motion for Relief of Judgment and for
Reinstatement to Trial Roster_ in this action, dated

May 15, 2017, on McAngus, Goudelock & Courie LLC by

- ☒ Delivering it to him/her personally;
☐ Mailing it to him/her, at his/her last known address, by depositing it in the U.S.

Mail, in an envelope with sufficient postage affixed, addressed as follows:

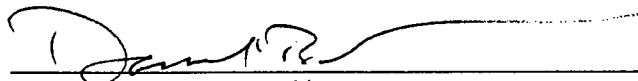
McAngus Goudelock & Courie, PO Box 2980, Greenville, SC 29602

☐ Delivering it by commercial delivery service in accordance with Rule 4(d)(9),
SCRCF, addressed as follows: ; or,

☐ Other:

5.15.17

Date


Signature

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CIVIL JUDICIAL CIRCUIT

2017 MAY 15 PM 3:32

CASE NO.: 2014-CP-23-05031

Oldcastle APG South Inc., et al

vs.

Daniel B. Albert

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

McAngus, Goudelock & Courie, Bar No. _____

Address:

55 E. Camperdown Way, Suite 300,
Greenville, SC 29601

Phone: 864-239-4000 Fax 864-242-3199

E-mail: beth.mcmillan@mgclaw.com Other: _____

Defendant's Attorney:

Daniel B. Albert, pro se, Bar No. _____

Address:

2 Tennwood Dr., Greenville, SC 29609

Phone: 321-474-9189 Fax _____

E-mail: dan.albert7@gmail.com Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion for Relief of Judgment and for Reinstatement to Trial Roster

Estimated Time Needed: 60 minutes

Court Reporter Needed: ☒ YES/ ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

May 15, 2017

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: *DN*

Date Filed: _____

☒ **MOTION FEE COLLECTED: \$ 25.00 (Cash)**

☐ **CONTESTED - AMOUNT DUE: \$ _____**

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
 ADAMS PRODUCTS COMPANY AND
 OLDCASTLE APG NORTHEAST, INC.
 D/B/A FOSTER-SOUTHEASTERN,

Civil Action No. 2014-CP-23-05031

Plaintiff,

v.

DANIEL B. ALBERT,

Defendant.

**PLAINTIFF'S MEMORANDUM IN
 OPPOSITION TO DEFENDANT'S
 MOTION FOR RELIEF AND
 REINSTATEMENT TO
 TRIAL ROSTER**

Plaintiff, Oldcastle APG South, Inc. d/a/a Adams Products Company and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern ("Oldcastle"), by and through its undersigned attorneys, files this memorandum in opposition to Defendant's Motion for Relief and Reinstatement to Trial Roster.

STATEMENT OF FACTS

Plaintiff initiated this action by filing a Complaint on September 11, 2014, asserting claims for breach of contract, unjust enrichment, breach of guarantee, and quantum meruit against Defendant. In short, Plaintiff alleges that it extended approximately \$127,212.13 in credit to Defendant, which Defendant has failed to pay.

Trial was initially set for May 23, 2016. However, as it appeared that the case would be settled, Plaintiff offered to dismiss the case pursuant to Rule 40(j), SCRCF, in order to try and resolve the case prior to trial. Plaintiff provided Defendant a proposed consent order to dismiss the cases pursuant to Rule 40(j) on May 16, 2016. (Exhibit A). After reviewing the proposed Order, Defendant decided that he would like to end the litigation. He proposed to execute a

confession of judgment in the amount of \$100,000. (Exhibit B). As requested, Plaintiff provided Defendant a proposed confession of judgment in the amount of \$100,000, which Defendant executed on May 16, 2016. (Exhibit C). Plaintiff's counsel advised Defendant that she would inform the court that the case has been dismissed, as Defendant had requested an end to the litigation. (Exhibit D). The Confession of Judgment states that Defendant obtained a judgment in a United States District Court case in the amount of \$928,915.00. In the event Defendant received payment from that case, Defendant agreed to pay Plaintiff \$100,000. If within ten days after receiving payment in the District Court case, Defendant failed to make a payment to Defendant, then Defendant would file the Confession of Judgment with the court. After executing the Confession of Judgment, Defendant requested a settlement agreement and that the case be put back on the trial roster. (Exhibit E). Plaintiff informed the court to place the case back on the roster. (Exhibit F). After some disagreement, Plaintiff agreed to also prepare a settlement agreement and release which was sent to Defendant on May 21, 2016. (Exhibit G). Defendant agreed to the Settlement Agreement and Release, and executed the same on May 23, 2016. (Exhibit H). Plaintiff then again informed the court of the settlement and requested the case be removed from the trial roster. (Exhibit I).

On January 31, 2017, Defendant was awarded \$361,559.00 in his United States District Court case. On February 3, 2017, Plaintiff sent a proposed stipulation of dismissal pursuant to Rule 40(j), SCRCP, stating that the case would be removed from the docket and only reinstated in the event the Confession of Judgment had to be entered. (Exhibit J). Defendant then demanded that a stipulation of dismissal pursuant to Rule 41(a), SCRCP be entered instead of one pursuant to Rule 40(j), SCRCP. (Exhibit J). Plaintiff agreed to bring the issue before the court at the pending status conference. (Exhibit J).

Subsequently, on March 9, 2017, Plaintiff made a formal demand of the \$100,000 agreed to in the Settlement and Confession of Judgment, and informed Defendant that if payment was not received within ten days of the date of the letter, Plaintiff would file the Confession of Judgment with the court. (Exhibit K). The Confession of Judgment was filed on May 5, 2017. (Exhibit L). In response to the letter, Defendant argued that the Confession of Judgment and settlement agreement and release were invalid because a stipulation of dismissal had not yet been filed. Defendant then proposed a new settlement agreement of \$75,000 and a declaration that the Confession of Judgment and Release are null and void. (Exhibit M). When Plaintiff declined to enter into a new settlement agreement, Defendant filed the present motion.

ARGUMENT

A. Defendant Agreed to the Confession of Judgment and Settlement Agreement

Defendant executed the Confession of Judgment on May 16, 2016. He also executed the Settlement Agreement and Release, which he requested, on May 23, 2016. In South Carolina, where a judgment or order is entered by consent, it is binding and conclusive and cannot be attacked by the parties either by direct appeal or in a collateral proceeding. Johnson v. Johnson, 310 S.C. 44, 425 S.E.2d 46 (Ct.App. 1992). Absent fraud or mistake, where attorneys of record for a party agree to settle a case, the party cannot later repudiate the agreement. Shelton v. Bressant, 312 S.C. 208, 439 S.E.2d 833 (1993). Where there is settlement, litigation is ended. South Carolina State Highway Dep't v. McKeown Food Store, 254 S.C. 180, 174 S.E.2d 342 (1970). When entering into a settlement, whatever a party was entitled to is fixed by that agreement, and he is entitled to nothing except as provided for in that agreement. Poore v. Poore, 105 S.C. 206, 89 S.E. 569 (1916). An agreement, consented to by parties, is binding and conclusive and can only be set aside for fraud. Beck v. Northwestern R. Co., 99 S.C. 310, 83 S.E.

335 (1914).

Here, Defendant is *pro se* and accepted the settlement on his own accord. There is no evidence, nor allegations, that an attorney entered into the settlement on Defendant's behalf under fraud or mistake. Defendant knowingly entered into the settlement, which ended the litigation. He cannot now argue that the settlement should be relieved under Rule 60, SCRCP. Defendant has not presented any evidence supporting why the settlement agreement should be vacated. However, to the extent the court allows Defendant's argument, the below portion of the memorandum is responsive to his motion.

B. Applicable Law Regarding Rule 60, SCRCP

Defendant has moved for relief from judgment or order pursuant to Rule 60, SCRCP. Rule 60(a), SCRCP provides that clerical mistakes in judgments or orders may be corrected by the court. Defendant does not allege that a clerical mistake exists in the judgment in this case. Therefore, Rule 60(a), SCRCP does not apply here. Rule 60(b), SCRCP provides that the court may relieve a party from final judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. The motion shall be made within a reasonable time, but not more than a one year after the judgment was entered or taken for reasons (1), (2), and (3). Defendant does not specifically state which portion of Rule 60(b) is applicable in this case, but he does argue that "through negligence, breach of contract, fraud, misrepresentation of other misconduct of

Plaintiff, Defendant has been denied the benefit of his bargain, therefore this court should rule that the Confession of Judgment is null and void, and without any continuing effect.” Therefore, it appears that Defendant is referring to Rule 60(b)(3) and (4), which is what will be discussed in this memorandum.

The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct.App. 2008). In considering a motion for relief under Rule 60(b), SCRCF, the court should consider four factors: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other parties. South Carolina courts have held that in order to obtain relief from a judgment under Rule 60(b)(3), not only must the movant make a proper showing he is entitled to relief based upon one of the specified grounds, he must also make a prima facie showing of a meritorious defense. Id at 574.

C. The Judgment was not Procured Through Fraud, Misrepresentation, or Other Misconduct by Plaintiff

When a party asserts grounds for relief because of fraud, misrepresentation, or other misconduct of an adverse party under Rule 60(b)(3), SCRCF, the movant must prove his entitlement by clear and convincing evidence. Chewing v. Ford Motor Co., 354 S.C. 72, 578 S.E.2d 605 (2003). In South Carolina, in order to obtain relief from a judgment on the basis of fraud, the fraud must be extrinsic. Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Raby Constr., LLP v. Orr, 358 S.C. 10, 594 S.E.2d 478 (2004). Fraud is intrinsic, and not a valid ground for setting aside a judgment, when a party has been given notice of the action and has had an opportunity to present his case and to protect himself from any mistake or fraud of his adversary but has unreasonably neglected to do so. Sessions v. Withers, 327 S.C. 409, 488 S.E.2d 888 (Ct.App. 1997). A party asserting

the fraudulent nature of a statement must demonstrate: (1) a representation; (2) the falsity of the representation; (3) the materiality of the representation; (4) knowledge of its falsity, or reckless disregard for its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 451 S.E.2d 907 (Ct.App. 1994).

Defendant's argument centers on the claim that Plaintiff has not yet filed the Stipulation of Dismissal. The fact that a dismissal has not been filed in this case certainly did not induce Defendant not to present a case or deprive him of the opportunity to be heard. If anything, it has prolonged Defendant's timeframe to do so. Further, Defendant has failed to establish, with clear and convincing evidence, any of the elements of a fraudulent statement or misrepresentation. Therefore, there is no evidence of fraud or misrepresentation in the settlement, and relief from the judgment should not be granted on those grounds.

Similarly, the misconduct standard in Rule 60(b)(3), SCRCP provides relief only where the misconduct prevents the party from fully presenting its case. The challenged behavior must substantially have interfered with the aggrieved party's ability to fully and fairly present its case or defense. Bowman v. Bowman, 357 S.C. 146, 591 S.E.2d 654 (Ct.App. 2004). Again, not yet filing the Stipulation of Dismissal has not prevented Defendant from fully presenting his case. Defendant has not provided any evidence that relief should be granted from the judgment because of misconduct.

D. Defendant has not shown he has a Meritorious Defense

In order to recover under Rule 60(b)(3), SCRCP, Defendant must make a prima facie case showing of a meritorious defense. Here, Defendant has not provided any evidence in his

motion of a meritorious defense. Therefore, he should be denied relief under Rule 60(b)(3), SCRCp. The Rule allows the court to relieve a party from a judgment if an adverse party engages in fraud, misrepresentation, or other misconduct, but the moving party must establish, among other things, that it has a meritorious defense. Schultz v. Butcher, 24 F.3d 626 (4th Cir. 1994). See also Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct.App. 1991) (affirming the denial of a motion to set aside pursuant to Rule 60(b)(3) based solely on the movant's failure to present a meritorious defense). The party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essential to entitle him to relief. McClurg at 575. Here, Plaintiff has not presented any evidence, by affidavit or otherwise, to make a prima facie case that he has a meritorious defense.

E. The Judgment is not Void under Rule 60(b)(4), SCRCp

Rule 60(b)(4), SCRCp, allows the court to relieve a party from a final judgment where the judgment is void. Void, under the Rule, only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct.App. 2002). A judgment is not rendered void by irregularities which do not involve jurisdiction. Ware v. Ware, 404 S.C. 1, 743 S.E.2d 817 (2013). There are no allegations, neither is there evidence of, that proper due process was not provided or that the court does not have jurisdiction in this case. Consequently, relief from judgment should not be granted under Rule 60(b)(4), SCRCp.

CONCLUSION

Defendant has not proved that he is entitled to relief under Rule 60 by clear and convincing evidence. For the reasons set forth herein, Plaintiff respectfully requests that

Defendant's Motion for Relief from Judgment be denied.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Elizabeth M. McMillan

Elizabeth M. McMillan (S.C. Bar No.: 15049)

Jeanmarie Tankersley (S.C. Bar No.: 101068)

Post Office Box 2980

55 East Camperdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

Phone: (864) 239-4000

Email: beth.mcmillan@mgclaw.com

Email: jeanmarie.tankersley@mgclaw.com

ATTORNEYS FOR PLAINTIFF, OLDCASTLE
APG SOUTH, INC. D/B/A ADAMS PRODUCTS
COMPANY AND OLDCASTLE APG
NORTHEAST, INC. D/B/A FOSTER-
SOUTHEASTERN

June 14, 2017

EXHIBIT A



Dan Albert <dan.albert7@gmail.com>

Oldcastle v. Daniel Albert

2 messages

Beth McMillan <beth.mcmillan@mgclaw.com>
To: "Dan Albert (dan.albert7@gmail.com)" <dan.albert7@gmail.com>

Mon, May 16, 2016 at 11:21 AM

Dan,

As we discussed, attached is the proposed consent order to dismiss the case without prejudice pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. This basically allows the case to be frozen in time for a period of one year and all claims and defenses are preserved during that time. Either party may restore the case within 12 months of the filing of this order, and if no one does then the case will be dismissed with prejudice.

If you don't have any questions, please sign it and scan it back to me as soon as possible and I will file it with the court.

Thanks,

Beth

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Campdown Way Suite 300
Greenville, SC 29601
Main: 804-238-4000 | Direct: 804-238-4037 | Fax: 804-242-3199
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
OLDCASTLE APG SOUTH, INC. D/B/A	)	Civil Action No. 2014-CP-23-05031
ADAMS PRODUCTS COMPANY AND	)	
OLDCASTLE APG NORTHEAST, INC.	)	
D/B/A FOSTER-SOUTHEASTERN,	)	
	)	CONSENT ORDER STRIKING CASE
Plaintiff,	)	FROM DOCKET PER RULE 40(J)
	)	
vs.	)	
	)	
DANIEL B. ALBERT,	)	
	)	
Defendant.	)	

Upon consent of all parties, by and through the undersigned, and pursuant to the provisions of Rule 40(j) of the South Carolina Rules of Civil Procedure, the above-referenced action is hereby stricken from the docket. The parties further agree that this matter may be restored to the active trial docket upon Motion made within one year of the date stricken.

IT IS SO ORDERED.

Presiding Judge
Thirteenth Judicial Circuit

Date: _____

WE SO MOVE:

I CONSENT:

Elizabeth M McMillan, Esquire
McAngus Goudelock & Courie, LLC
55 E. Camperdown Way, Suite 300 (29601)
Post Office Box 2980
Greenville, SC 29602
(864) 239-4000

Daniel B. Albert
2 Tennwood Drive
Greenville, SC 29609
(321) 474-9189

PRO SE DEFENDANT

ATTORNEYS FOR PLAINTIFF

EXHIBIT B

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>

Mon, May 16, 2016 at 12:45 PM

Beth,

After reviewing the proposed Order of Dismissal Without Prejudice, I can't help but conclude that agreeing to it would virtually guarantee another year of no opportunity to do business with Oldcastle instead of enhancing the opportunity to resume doing business with Oldcastle in the near future. Going to trial next week would clarify matters and bring closure to the litigation phase of my relationship with Oldcastle. Dismissal without prejudice would technically continue litigation for another year plus the additional time to go through a new trial phase.

Another way to bring closure to the matter is to revise your confession of judgment to \$100,000 and get it executed today so that you and Oldcastle don't have to prepare for trial next week. Madawaska Hardscape Products, Inc. owes Oldcastle approximately \$143,000, all of it outside of the statute of limitations. The lawsuit is against me personally as the guarantor, which I believe will

result in potentially Oldcastle receiving nothing at trial due to the statute of limitations barring success on their claim. In light of the risk that Oldcastle has of getting nothing or a partial judgment, I think that a \$100,000 confession of judgment is reasonable. If they can agree to this, we can be finished with this litigation immediately.

If Oldcastle is willing to put the litigation behind us and resume a business relationship, I am confident that the mutual benefit derived from future business will dwarf any perceived loss that Oldcastle has coming out of this litigation. As you have made clear, there would be no commitment to doing business on the part of Oldcastle if we agree to a confession of judgment. If Oldcastle is in agreement, simply revise the confession of judgment to reflect an amount of \$100,000 and send it over to me and I will sign it, scan it and send it back to you today.

Dan

[Quoted text hidden]

A

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Civil Action No. 2014-CP-23-05031

CONFESSION OF JUDGMENT

Plaintiff,

vs.

DANIEL B. ALBERT,

Defendant.

Pursuant to SC Code Ann. §§15-35-350 and 15-35-360, this **CONFESSION OF JUDGMENT** is made and entered into as of this, the 16th day of May, 2016, by and between **Daniel B. Albert ("Defendant")** and **Oldcastle APG South, Inc. and Oldcastle APG Northeast, Inc. (collectively referred to as "Plaintiffs")**.

WHEREAS, Defendant's company, Madawaska Hardscape Products, Inc. ("Madawaska") has previously purchased supplies from Plaintiffs and Defendant signed a personal guaranty for the purchase of those products and the extension of credit by Plaintiffs;

WHEREAS, Madawaska failed to pay for certain supplies sold and delivered to Madawaska as evidenced by the invoices and other documents produced by Plaintiffs; and

WHEREAS, there is presently due and owing to the Plaintiffs by Defendant, as the personal guarantor for Madawaska, the sum of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars;

WHEREAS, Plaintiffs have declared the entire balance due and payable, and has demanded payment of the same, but the Defendant has failed to pay the amount due, or any of it; and

WHEREAS, Defendant or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case"); and

WHEREAS, upon his or his company's receipt of funds that are paid either as a judgment or as a settlement of the Federal Court Case, Defendant agrees to pay Plaintiffs the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars within ten days of receipt of the payment of the judgment in the Federal Court Case.

NOW, THEREFORE, this Confession of Judgment is made to Plaintiffs in the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Judgment is to be held by counsel for the Plaintiffs and remain unrecorded unless the Defendant fails to pay the settlement within ten days of his or his company receiving payment from the judgment or the settlement awarded in the Federal Court Case.

The Plaintiffs hereby agree to mark the Confession of Judgment "paid and satisfied" and return it to the Defendant upon payment of the complete settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Confession of Judgment shall be recorded with the court to allow enforcement by the Plaintiffs only if the Defendant fails to make payments and satisfy the settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars upon the terms as set forth in this Confession of Judgment. Defendant hereby confesses judgment in favor of the Plaintiffs herein in the amount of One Hundred

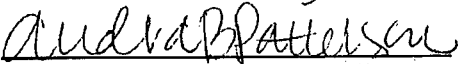
Thousand and 00/100 (\$100,000.00) Dollars and hereby authorizes judgment to be entered pursuant to the terms stipulated herein.

In acknowledgment and agreement, I hereby set my hand and seal this 16th day of May, 2016.

By:  (L.S.)
Daniel B. Albert

SWORN TO AND SUBSCRIBED before me

this 16th day of May, 2016

 (L.S.)

Notary Public for South Carolina

My Commission Expires
My Commission Expires: February 12, 2023

EXHIBIT D



Dan Albert <dan.albert7@gmail.com>

Oldcastle v. Daniel Albert

2 messages

Beth McMillan <beth.mcmillan@mgclaw.com>

Mon, May 16, 2016 at 2:26 PM

To: "Dan Albert (dan.albert7@gmail.com)" <dan.albert7@gmail.com>

Dan,

I received your response to my proposed Consent Order dismissing the case pursuant to Rule 40(j). My client is willing to accept a compromised Confession of Judgment from you in the amount of \$100,000 and I have attached the revised document for your signature. As we discussed at length last week, my client is not willing to agree to anything beyond this Confession of Judgment.

Please sign it as indicated and have it notarized and send it back to me and I will then advise the court of the dismissal of the case.

Thanks,

Beth

**Beth McMillan, Attorney**

beth.mcmillan@mgclaw.com

85 E. Camperdown Way Suite 300

Greenville, SC 29601

Main:864-239-4000 | Direct:864-239-4037 | Fax:864-242-3199

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EXHIBIT E



Dan Albert <dan.albert7@gmail.com>

Confession of Judgment

12 messages

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>

Mon, May 16, 2016 at 5:29 PM

Attached is the executed, notarized Confession of Judgment.

Confession of Judgment 5.16.16.pdf
122K

Beth McMillan <beth.mcmillan@mgclaw.com>
To: Dan Albert <dan.albert7@gmail.com>

Wed, May 18, 2016 at 3:40 PM

Dan,

Can you please send me the original Confession of Judgment by mail?

Thanks,

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Monday, May 16, 2016 5:30 PM
To: Beth McMillan
Subject: Confession of Judgment

Attached is the executed, notarized Confession of Judgment.



Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
65 E. Campdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
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Please consider the environment before printing this email.

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>

Wed, May 18, 2016 at 4:46 PM

Beth,

It seems to me that we should draft a simple settlement agreement that is signed by both parties that spells out without ambiguity the intent of the agreement. As we have discussed, my intent in entering into this agreement is that:

1. Oldcastle will be paid only from net proceeds paid to Keystone Northeast, Inc. or to me personally as a result of the judgment or settlement arising from the federal case that you have cited in the confession of judgment. By definition, proceeds from the federal case to Keystone Northeast, Inc. or to me personally are logically defined as what Keystone Northeast, Inc. or I actually receive in hand. I have made my intent clear in this, but I think it would be best to make it clear in writing.

2. Net proceeds from the federal case is the gross payment amount less legal fees and legal costs that have already been predetermined by my contract with counsel in that case. You would be able to verify with counsel in that case that no proceeds have been diverted from the judgment or settlement in the case.

3. If the net proceeds that I or Keystone Northeast, Inc. receives is less than \$100,000, the entirety of the net proceeds will be payable to Oldcastle, and the difference between the net proceeds and the \$100,000 amount agreed to in the confession of judgment will not be collectible by Oldcastle, nor will there be a partial judgment recorded with the court.

4. If there are no proceeds from the federal case, there will be no judgment or collection action on the part of Oldcastle. I know that you have represented that the language of the confession of judgment accomplishes that intent, but it wouldn't hurt to plainly state the intent in a settlement agreement.

After I emailed you the confession of judgment the other day I realized that there was no provision for executing an agreement by Oldcastle, even though the confession of judgment has language that says "Plaintiffs hereby agree". I don't see how what you have put together is binding upon Oldcastle. I emailed the confession of judgment to an attorney to look at, but based upon a brief conversation over the phone it seems that a simple settlement agreement executed by both parties would establish a legally binding agreement. Let me know your thoughts.

Dan

(Quoted text hidden)

EXHIBIT F



Dan Albert <dan.albert7@gmail.com>

Old castle V. Daniel Albert

3 messages

Beth McMillan <beth.mcmillan@mgclaw.com>
To: "LCoker@greenvillecounty.org" <LCoker@greenvillecounty.org>
Cc: Dan Albert <dan.albert7@gmail.com>

Fri, May 20, 2016 at 5:00 PM

Lyndal,

Unfortunately,

This case did not resolve as I believed it had. Please put it back on the trial roster. We will be present at the roster meeting on Monday at 9:15.

Thanks,

Beth

Sent from my iPhone



Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 800
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
VCARD | BIO

This electronic mail may contain information that is confidential, attorney/client and/or work product privileged, prepared in anticipation of litigation and/or exempt from disclosure under applicable law. This transmission is intended solely for the individual or entity designated above. If you are not the intended recipient, you should understand that any distribution, copying, or use of the information is unauthorized and strictly prohibited. If you have received this electronic mail in error, please immediately notify the sender and destroy all copies which you may have of this communication.

Please consider the environment before printing this email.

Coker, Lyndal <LCoker@greenvillecounty.org>
To: Beth McMillan <beth.mcmillan@mgclaw.com>
Cc: Dan Albert <dan.albert7@gmail.com>

Fri, May 20, 2016 at 5:52 PM

Beth,

Thank you. I will place the case back on the trial roster when I return to work on Monday.

Judge Gee isn't going to begin court until Tuesday due to scheduling issues. The roster will be at 9:15 a.m. in courtroom 7. We will have juror qualification about 10:00 a.m.

Thanks,

Lyndal

From: Beth McMillan [beth.mcmillan@mgclaw.com]
Sent: Friday, May 20, 2016 5:00 PM
To: Coker, Lyndal
Cc: Dan Albert
Subject: Old castle V. Daniel Albert

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Lyndal,

Unfortunately,

This case did not resolve as I believed it had. Please put it back on the trial roster. We will be present at the roster meeting on

EXHIBIT G



Dan Albert <dan.albert7@gmail.com>

Oldcastle v. Albert

3 messages

Beth McMillan <beth.mcmillan@mgclaw.com>
To: "Dan Albert (dan.albert7@gmail.com)" <dan.albert7@gmail.com>

Sat, May 21, 2016 at 12:06 PM

Dan,

Attached is a Settlement Agreement and Release that incorporates the terms of our settlement agreement and which addresses the points you raised in your email to me of yesterday.

Please review this agreement and let me know if you have any questions.

Thanks,

Beth



Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
65 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
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Please consider the environment before printing this email.

 14517380.doc
38K

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>

Sat, May 21, 2016 at 3:05 PM

This looks good to me Beth. I think it would be good to have the representative of each plaintiff that will sign the Settlement Agreement to also agree to and acknowledge the Confession of Judgment, as that document states that "Plaintiffs hereby agree to mark..." Each representative of Oldcastle can sign independently of the other and scan and send it back to you without a notary, and that will be fine with me. I assume that you will collect the signatures and send executed copies to me, and I execute and send mine to you, and that we will then inform the court that the case has been settled. If you have access to the Oldcastle folks today, you can take care of it today, otherwise we can wait until Monday.

[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>
To: Dan Albert <dan.albert7@gmail.com>

Sat, May 21, 2016 at 6:13 PM

EXHIBIT H

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
OLDCASTLE APG SOUTH, INC. D/B/A	)	Civil Action No. 2014-CP-23-05031
ADAMS PRODUCTS COMPANY AND	)	
OLDCASTLE APG NORTHEAST, INC.	)	
D/B/A FOSTER-SOUTHEASTERN,	)	
	)	SETTLEMENT AGREEMENT AND
Plaintiff,	)	RELEASE
	)	
v.	)	
	)	
DANIEL B. ALBERT,	)	
	)	
Defendant.	)	

This Settlement Agreement ("Agreement") is entered into effective on the date set forth upon execution by and between Plaintiffs Oldcastle APG South, Inc. d/b/a Adams Products Company ("Adams Products") and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern ("Foster-Southeastern") (collectively referred to as "Oldcastle") and the Defendant Daniel Albert ("Albert").

Oldcastle and Albert are to be denominated as the "Parties".

RECITALS

1. WHEREAS, Adams Products and Foster-Southeastern are corporations organized and existing under the laws of one of the states of the United States and regularly conduct business in South Carolina.

2. WHEREAS, Albert is a South Carolina resident.

3. WHEREAS, Oldcastle, through its various entities, supplied Defendant's company Madawaska Hardscape Products, Inc. with supplies and hardscape products, and Defendant signed a personal guaranty for the purchase of those products and the extension of

credit by Oldcastle. Oldcastle contends there is an outstanding balance owed it in the amount of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars. Albert disputes this amount and has asserted counterclaims against Oldcastle.

4. WHEREAS, Adams Products and Foster-Southeastern filed a Complaint in the Court of Common Pleas for the County of Greenville, South Carolina captioned Oldcastle APG South, Inc. d/b/a Adams Products company and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeaster v. Daniel Albert, Case No. 2014-CP-23-05031 ("Litigation"), alleging, inter alia, breach of contract naming Albert as the Defendant.

5. WHEREAS, Albert or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case").

6. WHEREAS, to avoid further expenses, burden, and delay inherent in litigation, the parties have agreed to enter into this Agreement in full settlement and discharge of all claims by and between the Parties, upon the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises and consideration set forth herein, and with the intent to be bound, the parties agree upon the following terms and conditions:

1. **Payment.** Albert agrees to pay the sum of \$100,000 to Oldcastle when and only if he or one of his companies receives money from the Federal Court Case ("Settlement Amount"). Albert is only obligated to pay the Settlement Amount solely from the

money he receives from the Federal Court Case.

2. **Confession of Judgment.** Albert has agreed to enter into a Confession of Judgment in the amount of \$100,000.00 which is attached hereto and which will only be recorded if Albert fails to pay Oldcastle from the funds he or one of his companies receives from the Federal Court Case. If Albert or one of his companies does not receive any money from the Federal Court Case, the Confession of Judgment will not be recorded and will have no effect. If Albert or one of his companies receives less than \$100,000 from the Federal Court Case and he remits payment to Oldcastle of all of the funds he receives, the Confession of Judgment will not be recorded and will have no continuing effect.
3. **Effect of Payment.** Old Castle agrees to accept the Settlement Amount to be paid as specified above, and if such amount is paid, the payment shall act as a release of all claims with prejudice. The Parties waive and forever relinquish any and all claims they may have against each other prior to the execution of this Agreement, regardless of their nature and extent. This waiver extends to known or unknown claims, which may directly or indirectly relate to events that occurred prior to the execution of this agreement.
4. **Release of All Claims.** The parties understand and agree that of this Agreement is followed, it shall act as a full and final release of all Claims. Each party fully understands that if the facts in respect to which this Agreement are executed are found hereafter to be different from facts now believed by any party to be true, each party expressly accepts and assumes the risks of such a difference and agrees that this Agreement shall remain effective, notwithstanding such difference. Oldcastle and

Albert do hereby fully release each other, each others' partners, officers, directors, guarantors, agents, employees, representatives, successors and assigns and all other persons and associations, including but not limited to Madawaska Hardscape Products, Inc., from all claims and causes of action by reason of any damages, injuries or losses which may have been sustained or may be sustained in the future, arising out of, or in any way concerning the past business relationship between Oldcastle and Albert whereby Oldcastle sold products to Albert and his company or companies and concerning the claims asserted by Oldcastle in the Litigation and the counterclaims asserted by Albert in the Litigation. Obligations created by this Agreement, including the obligations set forth in the Confession of Judgment, are exempt from the coverage of this release.

5. **Stipulation of Dismissal**. The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaims in the Litigation.

IN WITNESS WHEREOF, Adams Products, Foster-Southeastern and Albert have executed this Agreement as of the day and year subscribed below. This agreement may be executed in counterparts.

Agreed and Accepted:

OLDCASTLE APG SOUTH, INC.

By: _____

Its: _____

Date: _____

VICE PRESIDENT

05/23/2016

OLDCASTLE APG NORTHEASTERN, INC.

By: _____

Its: _____

Date: _____

DANIEL ALBERT

Albert do hereby fully release each other, each others' partners, officers, directors, guarantors, agents, employees, representatives, successors and assigns and all other persons and associations, including but not limited to Madawaska Hardscape Products, Inc., from all claims and causes of action by reason of any damages, injuries or losses which may have been sustained or may be sustained in the future, arising out of, or in any way concerning the past business relationship between Oldcastle and Albert whereby Oldcastle sold products to Albert and his company or companies and concerning the claims asserted by Oldcastle in the Litigation and the counterclaims asserted by Albert in the Litigation. Obligations created by this Agreement, including the obligations set forth in the Confession of Judgment, are exempt from the coverage of this release.

5. **Stipulation of Dismissal.** The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaims in the Litigation.

IN WITNESS WHEREOF, Adams Products, Foster-Southeastern and Albert have executed this Agreement as of the day and year subscribed below. This agreement may be executed in counterparts.

Agreed and Accepted:

OLDCASTLE APG SOUTH, INC.

By: _____

Its: _____

Date: _____

OLDCASTLE APG NORTHEASTERN, INC.

By: Robert Capellazzo

Its: Credit Manager

Date: 5/23/16

DANIEL ALBERT

EXHIBIT I

Beth McMillan <beth.mcmillan@mgclaw.com>
To: "Coker, Lyndall" <LCoker@greenvillecounty.org>
Cc: Dan Albert <dan.albert7@gmail.com>

Mon, May 23, 2016 at 4:30 PM

Lyndall,

This email is to advise you that we have settled this case and have executed a Settlement Agreement. I will be submitting a stipulation of dismissal shortly. Please remove this case from the trial roster. If you have any questions, please let me know.

Thank you,

Beth

From: Coker, Lyndall [mailto:LCoker@greenvillecounty.org]
Sent: Monday, May 23, 2016 9:20 AM
To: Beth McMillan
Cc: Dan Albert
Subject: RE: Old castle V. Daniel Albert 2014-CP-23-5031

[Quoted text hidden]
[Quoted text hidden]

Coker, Lyndall <LCoker@greenvillecounty.org>
To: Beth McMillan <beth.mcmillan@mgclaw.com>
Cc: Dan Albert <dan.albert7@gmail.com>

Mon, May 23, 2016 at 4:48 PM

Thanks Beth,

I will remove the case from the trial roster and make a note that the Settlement Agreement will follow.

Lyndall

From: Beth McMillan [mailto:beth.mcmillan@mgclaw.com]
Sent: Monday, May 23, 2016 4:30 PM
To: Coker, Lyndall
Cc: Dan Albert
Subject: RE: Old castle V. Daniel Albert 2014-CP-23-5031

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

[Quoted text hidden]
[Quoted text hidden]

DEF 0044

EXHIBIT J

Melinda Owens

From: Melinda Owens
Sent: Friday, February 03, 2017 11:55 AM
To: 'dan.albert7@gmail.com'
Cc: Beth McMillan
Subject: Oldcastle APG South, Inc. d/b/a Adams Products Company and Oldcastle (Claim No.: n/a)
Attachments: Consent Order Striking Case re Rule 40J.pdf

Mr. Albert,

Attached please find a Consent Order striking this case pursuant to Rule 40(j). Per your emails with Beth, the case will be removed from the trial docket and we will reinstate only if the Confession of Judgment has to be entered. If the Confession of Judgment does not have to be entered, then the case will not be restored and it is over. We have a period of one year to restore the case. If we do not refile it within one year, then the case is barred. Please sign your name on the line indicated and return the form to us via email and via U.S. Mail at your earliest convenience. If you have any questions, please don't hesitate to contact us.

Thank you,

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
OLDCASTLE APG SOUTH, INC. D/B/A	)	Civil Action No. 2014-CP-23-05031
ADAMS PRODUCTS COMPANY AND	)	
OLDCASTLE APG NORTHEAST, INC.	)	
D/B/A FOSTER-SOUTHEASTERN,	)	
	)	CONSENT ORDER STRIKING CASE
Plaintiff,	)	FROM DOCKET PER RULE 40(J)
	)	
vs.	)	
	)	
DANIEL B. ALBERT,	)	
	)	
Defendant.	)	

Upon consent of all parties, by and through the undersigned, and pursuant to the provisions of Rule 40(j) of the South Carolina Rules of Civil Procedure, the above-referenced action is hereby stricken from the docket. The parties further agree that this matter may be restored to the active trial docket upon Motion made within one year of the date stricken.

IT IS SO ORDERED.

Presiding Judge
Thirteenth Judicial Circuit

Date: _____

WE SO MOVE:

I CONSENT:

Elizabeth M McMillan, Esquire
McAngus Goudelock & Courie, LLC
55 E. Camperdown Way, Suite 300 (29601)
Post Office Box 2980
Greenville, SC 29602
(864) 239-4000

Daniel B. Albert
2 Tennwood Drive
Greenville, SC 29609
(321) 474-9189

PRO SE DEFENDANT

ATTORNEYS FOR PLAINTIFF

Melinda Owens

From: Dan Albert <dan.albert7@gmail.com>
Sent: Friday, February 03, 2017 4:04 PM
To: Melinda Owens
Cc: Beth McMillan
Subject: Re: Oldcastle APG South, Inc. d/b/a Adams Products Company and Oldcastle (Claim No. n/a)
Attachments: OC v DBA Stipulation of Dismissal 2.4.17.pdf

Beth,

Here is the 41(a) Stipulation of Dismissal, which under the circumstances, is the correct one to bring closure to this action. The 40(j) Stipulation of Dismissal that we contemplated in May of last year is not something that I will agree to now, since so much time has passed. If Oldcastle is willing to have you execute the attached 41(a) Stipulation of Dismissal on their behalf, please do not delay in executing it and getting it over to the court. If need be, we can go before the judge on March 9th to sort things out.

Dan

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Civil Action No. 2014-CP-23-05031

Plaintiff,

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

vs.

DANIEL B. ALBERT,

Defendant.

Pursuant to Rule 41(a) of the *South Carolina Rules of Civil Procedure*, Plaintiffs in the above-captioned case, by and through the undersigned counsel, hereby dismiss this case with prejudice. *Pro se* Defendant consents to this dismissal with prejudice. The parties agree to bear their own respective costs.

WE SO STIPULATE:

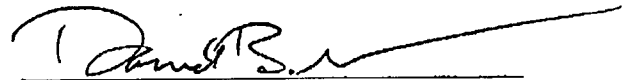
I CONSENT:

MCANGUS GOUDELOCK & COURIE, LLC

Elizabeth M. McMillan, S.C. Bar No. 15049
Jeanmarie Tankersley, SC Bar No. 101068
Post Office Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000

ATTORNEYS FOR PLAINTIFFS

Date: _____



Daniel B. Albert
2 Tennwood Drive
Greenville, SC 29609
(321) 474-9189
Email: dan.albert7@gmail.com

PRO SE DEFENDANT

Date: 2.4.17

Melinda Owens

From: Beth McMillan
Sent: Tuesday, February 07, 2017 5:52 PM
To: 'Dan Albert'; Melinda Owens
Subject: RE: Oldcastle APG South, Inc. d/b/a Adams Products Company and Oldcastle (Claim No. n/a)

Dan,

I am content to bring this matter before the court at the status conference.

I also would like to be kept updated as to when you receive payment from the award in federal court.

Beth

EXHIBIT K

Reply To
ELIZABETH M. McMILLAN
Direct Dial: (864) 239-4037
beth.mcmillan@mgclaw.com

March 9, 2017

VIA U.S. MAIL & EMAIL

Daniel B. Albert
2 Tennwood Drive
Greenville, SC 29609

RE: Oldcastle APG South, Inc. d/b/a Adams Products Company and
Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern v. Madawaska
Hardscape Products, Inc. and Daniel B. Albert
Civil Action No.: 2014-CP-23-05031 (Greenville)
MGC File No.: 20799.14001

Dear Dan:

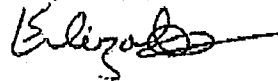
This letter is to make formal demand on you for the payment of \$100,000 as you agreed to pay in the settlement of the above-referenced case. This amount is now due as final judgment was rendered in the Federal Court case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720 on 1/31/17 in which your company Keystone Northeast, Inc. was awarded \$248,957 as past damages under the Transfer Agreements which were the subject of that action and \$112,602 in pre-judgment interest for a total award of \$361,559. (A copy of the Judgment is attached hereto as Exhibit A.)

Pursuant to our agreement, you have agreed to pay \$100,000 to Oldcastle APG South, Inc. and APG Northeast, Inc. out of the proceeds from the Federal judgment. As further clarification of our settlement, I am attaching hereto as Exhibit B the specific emails between you and me in which you agreed to the terms of our settlement.

If you do not deliver the \$100,000 to our office within 10 days of your receipt of the proceeds from the federal judgment, or if you have already received the funds, within 10 days of the date of this letter, I will be forced to file the Confession of Judgment that you signed which is attached hereto as Exhibit C.

With regards, I am

Very truly yours,



Elizabeth M. McMillan

EMM/emm
Attachments
cc: Sarah T. Brooks, Oldcastle, Inc.

McANGUS GOUDELOCK & COURIE LLC

55 EAST CAMPERDOWN WAY
SUITE 300 (29601)
POST OFFICE BOX 2980
GREENVILLE, SC 29602

864.239.4000 PHONE
864.242.3199 FAX
WWW.MGCLAW.COM

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Keystone Northeast, Inc., f/k/a Pavers) Civil Action No.: 6:12-cv-720-BHH
Plus GSP, Inc., assignee of Madawaska)
Brick and Block Corp.,)

Plaintiff,)

vs.)

Order

Keystone Retaining Wall Systems, LLC,)
f/k/a Keystone Retaining Wall Systems)
Inc., a division and wholly owned)
subsidiary of Contech Construction)
Products, Inc.,)

Defendants.)

This matter is before the Court following the Fourth Circuit Court of Appeals' issuance of an Opinion (ECF No. 161) affirming in part and vacating in part this Court's prior rulings (ECF Nos. 131 & 141) on the parties' motions for summary judgment. Specifically, the Fourth Circuit concluded that the Court erred in holding that the Transfer Agreements imposed independent and continuing obligations beyond the termination of the License Agreement and reversed the Court's ruling in that regard.¹ (ECF No. 161 at 15.) Accordingly, the Fourth Circuit vacated the Court's award of damages and the order of specific performance and remanded for the recalculation of damages, limiting damages to the period ending December 31, 2010. (*Id.* at 15, 16-17.)

¹ The Court assumes familiarity with the facts of this case, the terminology referencing the parties' agreements, and the relevant provisions contained therein. All of these matters are thoroughly set forth in the Court's prior orders. (See ECF Nos. 131 & 141.) Accordingly, the Court says here only what is necessary to comply with the directives laid out in the Fourth Circuit's January 18, 2017 Opinion (ECF No. 161).

The Court's conclusion that Defendants breached their obligation to make payments to Plaintiff under the Transfer Agreements remains undisturbed. Regarding damages for the breach, the express terms of the Transfer Agreements required Defendants to pay to Plaintiff fees "based on sales of units manufactured" in the transferred territories. See, e.g., Gagne Transfer Agreement, § 3; Jandris Transfer Agreement, § 4; Hiway Transfer Agreement, § 3.²

As noted in the Court's March 31, 2015 Order (ECF No. 147), the parties do not dispute the square footage sales from January 1, 2009, to February 28, 2015, for products sold by Gagne, Jandris, and Hiway. The Court will now limit the damages calculation to that period extending from January 1, 2009, to December 31, 2010, based upon the evidence presented at the March 26, 2015 damages hearing. Again, for retaining wall products not identified on the respective Schedules C of the Transfer Agreements, the Court has, consistent with the parties' course of performance, used a 50% allocation of the royalties charged to the local manufacturers pursuant to the terms of the Transfer Agreements. The Court has not included non-retaining wall products, such as pavers or edgers, as part of the damages. Based on the above, the annual fees are:

a. Gagne Transfer Agreement:

2009	2010	GAGNE TOTAL
\$42,345	\$51,325	\$93,670

² The Transfer Agreements also each contain an "Exhibit C" setting forth the allocation of fees between the parties for the specific products.

b. Jandris Transfer Agreement:

2009	2010	JANDRIS TOTAL
\$39,139	\$37,816	\$76,955

c. Hiway Transfer Agreement:

2009	2010	HIWAY TOTAL
\$35,545	\$42,787	\$78,332

The calculations above result in a total of \$248,957 in past damages under the three Transfer Agreements.

Furthermore, the Court concludes that pre-judgment interest should apply to these damages. Because the Transfer Agreements lack a choice of law provision, the Court will apply South Carolina substantive law, including its law on pre-judgment interest. South Carolina Code § 34-31-20 applies a rate of 8.75% to the fees under Exhibit C, as they are "capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties." *Dixie Bell, Inc. v. Redd*, 656 S.E.2d 765, 769 (S.C. Ct. App. 2007) (citations omitted). To arrive at the amount of interest for each year, the Court adopts the "South Carolina interest factor" submitted by Plaintiff's expert in his most recent report.³ The calculation of interest is set forth below:

³ Although the Court elects to use the expert's interest factor, the Court declines to use the expert's calculation of proposed lost royalties. The parties agreed that fees would only be due "based on sales of units manufactured" in the transferred territories. See, e.g., Gagne Transfer Agreement, § 3; Jandris Transfer Agreement, § 4; Hiway Transfer Agreement, § 3.

Year	Total Fees	SC Interest Factor	Interest Calculation
2009	\$117,029	0.4949	\$57,918
2010	\$131,928	0.4145	\$54,684
TOTAL INTEREST			\$112,602

At the damages hearing, Defendants argued that future damages were wholly speculative because Plaintiff's future damages would largely depend upon a continuing relationship between Keystone Retaining Wall Systems, LLC ("KRWS") and Gagne, Hi-Way, and Jandris – the duration and details of which could not have been forecasted to a reasonable certainty. Defendants further argued that specific performance, vis-à-vis reinstatement of Plaintiff's Transfer Agreements, would be a more appropriate remedy. The Court initially agreed and ordered specific performance accordingly. (See ECF No. 147 at 4-5.)

However, the Fourth Circuit held that the Court erred in its predicate finding that the Transfer Agreements constituted separate contracts that imposed independent and continuing obligations on KRWS to pay royalties to Plaintiff. (ECF No. 161 at 13.) Rather, as stated by the Fourth Circuit, the Transfer Agreements were amendments to the License Agreement, and when the License Agreement expired at the end of 2010, so did the Transfer Agreements. (See *id.* at 13-15.) Therefore, the specific performance portion of the Court's March 15, 2015 Order has been vacated (*id.* at 16-17) and needs no further treatment here. As to any amounts representing continuing payments under the Transfer Agreements deposited by Defendants into an escrow account, in accordance with the Court's Order (see ECF No. 147 at 5), during the pendency of the

appeal, those funds are now released and may be recovered by Defendants without reservation.

WHEREFORE, the Court ORDERS:

1. Plaintiff shall be entitled to a judgment of \$248,957 in past damages under the three Transfer Agreements;
2. Plaintiff shall be entitled to prejudgment interest in the amount of \$112,602.
3. Plaintiff's remaining claims are dismissed *with prejudice*.
4. The Parties shall bear their own costs.

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

January 31, 2017
Greenville, South Carolina

EXHIBIT B

Beth McMillan

From: Dan Albert <dan.albert7@gmail.com>
Sent: Monday, May 16, 2016 12:46 PM
To: Beth McMillan
Subject: Re: Oldcastle v. Daniel Albert

Beth,

After reviewing the proposed Order of Dismissal Without Prejudice, I can't help but conclude that agreeing to it would virtually guarantee another year of no opportunity to do business with Oldcastle instead of enhancing the opportunity to resume doing business with Oldcastle in the near future. Going to trial next week would clarify matters and bring closure to the litigation phase of my relationship with Oldcastle. Dismissal without prejudice would technically continue litigation for another year plus the additional time to go through a new trial phase.

Another way to bring closure to the matter is to revise your confession of judgment to \$100,000 and get it executed today so that you and Oldcastle don't have to prepare for trial next week. Madawaska Hardscape Products, Inc. owes Oldcastle approximately \$143,000, all of it outside of the statute of limitations. The lawsuit is against me personally as the guarantor, which I believe will result in potentially Oldcastle receiving nothing at trial due to the statute of limitations barring success on their claim. In light of the risk that Oldcastle has of getting nothing or a partial judgment, I think that a \$100,000 confession of judgment is reasonable. If they can agree to this, we can be finished with this litigation immediately.

If Oldcastle is willing to put the litigation behind us and resume a business relationship, I am confident that the mutual benefit derived from future business will dwarf any perceived loss that Oldcastle has coming out of this litigation. As you have made clear, there would be no commitment to doing business on the part of Oldcastle if we agree to a confession of judgment. If Oldcastle is in agreement, simply revise the confession of judgment to reflect an amount of \$100,000 and send it over to me and I will sign it, scan it and send it back to you today.

Dan

On Mon, May 16, 2016 at 11:21 AM, Beth McMillan <beth.mcmillan@mgclaw.com> wrote:

Dan,

As we discussed, attached is the proposed consent order to dismiss the case without prejudice pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. This basically allows the case to be frozen in time for a period of one year and all claims and defenses are preserved during that time. Either party may restore the case within 12 months of the filing of this order, and if no one does then the case will be dismissed with prejudice.

If you don't have any questions, please sign it and scan it back to me as soon as possible and I will file it with the court.

Thanks,

Beth



Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
VCARD | BIO

This electronic mail may contain information that is confidential, attorney/client and/or work product privileged, prepared in anticipation of litigation and/or exempt from disclosure under applicable law. This transmission is intended solely for the individual or entity designated above. If you are not the intended recipient, you should understand that any distribution, copying, or use of the information is unauthorized and strictly prohibited. If you have received this electronic mail in error, please immediately notify the sender and destroy all copies which you may have of this communication.

Please consider the environment before printing this email.

ELECTRONICALLY FILED - 2017 Jun 14 1:16 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2305031

Beth McMillan

From: Dan Albert <dan.albert7@gmail.com>
Sent: Monday, May 23, 2016 4:00 PM
To: Beth McMillan
Subject: Re: FW: Scan from Adams Products - Greensboro, NC
Attachments: Settlement DBA 5.23.16.pdf

Hi Beth,

Here is my piece. Based upon your representations that these signatures are from duly authorized representatives of Plaintiffs, that the signature page saying "We Consent" will be forthcoming from Robert, and that the "We Consent" signatures pertain to the Confession of Judgment that you already have, I agree that we have settled the matter, and that you may inform the court of that fact.

It is a minor point of clarification, but it looks like the Adams piece was signed by Colin Clampett.

Dan

On Mon, May 23, 2016 at 3:48 PM, Beth McMillan <beth.mcmillan@mgclaw.com> wrote:

Dan,

Here are the signature pages from Todd Ring for Adams Products. I should have the other page from Robert any time now.

Please send me your signed page for the settlement agreement. We will attach the "We Consent" page to the Confession of Judgment.

If you don't have any other questions, I would like to advise the court that we have settled.

Beth

mgc

Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
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Please consider the environment before printing this email.

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Civil Action No. 2014-CP-23-05031

CONFESSION OF JUDGMENT

Plaintiff,

vs.

DANIEL B. ALBERT,

Defendant.

Pursuant to SC Code Ann. §§15-35-350 and 15-35-360, this **CONFESSION OF JUDGMENT** is made and entered into as of this, the 16th day of May, 2016, by and between **Daniel B. Albert ("Defendant")** and **Oldcastle APG South, Inc. and Oldcastle APG Northeast, Inc. (collectively referred to as "Plaintiffs")**.

WHEREAS, Defendant's company, Madawaska Hardscape Products, Inc. ("Madawaska") has previously purchased supplies from Plaintiffs and Defendant signed a personal guaranty for the purchase of those products and the extension of credit by Plaintiffs;

WHEREAS, Madawaska failed to pay for certain supplies sold and delivered to Madawaska as evidenced by the invoices and other documents produced by Plaintiffs; and

WHEREAS, there is presently due and owing to the Plaintiffs by Defendant, as the personal guarantor for Madawaska, the sum of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars;

WHEREAS, Plaintiffs have declared the entire balance due and payable, and has demanded payment of the same, but the Defendant has failed to pay the amount due, or any of it; and

WHEREAS, Defendant or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case"); and

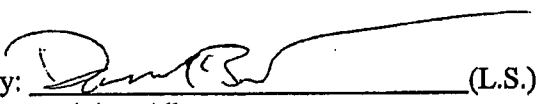
WHEREAS, upon his or his company's receipt of funds that are paid either as a judgment or as a settlement of the Federal Court Case, Defendant agrees to pay Plaintiffs the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars within ten days of receipt of the payment of the judgment in the Federal Court Case.

NOW, THEREFORE, this Confession of Judgment is made to Plaintiffs in the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Judgment is to be held by counsel for the Plaintiffs and remain unrecorded unless the Defendant fails to pay the settlement within ten days of his or his company receiving payment from the judgment or the settlement awarded in the Federal Court Case.

The Plaintiffs hereby agree to mark the Confession of Judgment "paid and satisfied" and return it to the Defendant upon payment of the complete settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Confession of Judgment shall be recorded with the court to allow enforcement by the Plaintiffs only if the Defendant fails to make payments and satisfy the settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars upon the terms as set forth in this Confession of Judgment. Defendant hereby confesses judgment in favor of the Plaintiffs herein in the amount of One Hundred

Thousand and 00/100 (\$100,000.00) Dollars and hereby authorizes judgment to be entered pursuant to the terms stipulated herein.

In acknowledgment and agreement, I hereby set my hand and seal this 16th day of May, 2016.

By:  (L.S.)
Daniel B. Albert

SWORN TO AND SUBSCRIBED before me

this 16th day of May, 2016

 (L.S.)

Notary Public for South Carolina

My Commission Expires

My Commission Expires: February 12, 2023

EXHIBIT L

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Civil Action No. 2014-CP-23-05031

CONFESSION OF JUDGMENT

Plaintiff,

vs.

DANIEL B. ALBERT,

Defendant.

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WHEREAS, Defendant's company, Madawaska Hardscape Products, Inc. ("Madawaska") has previously purchased supplies from Plaintiffs and Defendant signed a personal guaranty for the purchase of those products and the extension of credit by Plaintiffs;

WHEREAS, Madawaska failed to pay for certain supplies sold and delivered to Madawaska as evidenced by the invoices and other documents produced by Plaintiffs; and

WHEREAS, there is presently due and owing to the Plaintiffs by Defendant, as the personal guarantor for Madawaska, the sum of One Hundred Fifty-four Thousand Nine Hundred Fifty-one and 23/100 (\$154,951.23) Dollars;

WHEREAS, Plaintiffs have declared the entire balance due and payable, and has demanded payment of the same, but the Defendant has failed to pay the amount due, or any of it; and

WHEREAS, Defendant or one of his companies has obtained a judgment in the amount of \$928,915.00 in the case captioned Keystone Northeast Inc. v. Keystone Retaining Wall Systems, Inc., et al., case number 6:12-cv-00720, in the United States District Court, District of South Carolina ("Federal Court Case"); and

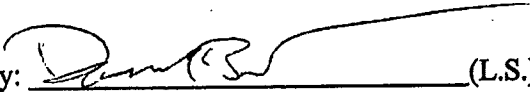
WHEREAS, upon his or his company's receipt of funds that are paid either as a judgment or as a settlement of the Federal Court Case, Defendant agrees to pay Plaintiffs the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars within ten days of receipt of the payment of the judgment in the Federal Court Case.

NOW, THEREFORE, this Confession of Judgment is made to Plaintiffs in the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Judgment is to be held by counsel for the Plaintiffs and remain unrecorded unless the Defendant fails to pay the settlement within ten days of his or his company receiving payment from the judgment or the settlement awarded in the Federal Court Case.

The Plaintiffs hereby agree to mark the Confession of Judgment "paid and satisfied" and return it to the Defendant upon payment of the complete settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars. This Confession of Judgment shall be recorded with the court to allow enforcement by the Plaintiffs only if the Defendant fails to make payments and satisfy the settlement amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars upon the terms as set forth in this Confession of Judgment. Defendant hereby confesses judgment in favor of the Plaintiffs herein in the amount of One Hundred

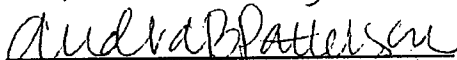
Thousand and 00/100 (\$100,000.00) Dollars and hereby authorizes judgment to be entered pursuant to the terms stipulated herein.

In acknowledgment and agreement, I hereby set my hand and seal this 16th day of May, 2016.

By:  (L.S.)
Daniel B. Albert

SWORN TO AND SUBSCRIBED before me

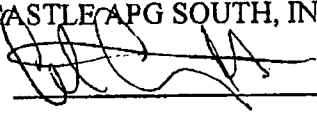
this 16th day of May, 2016

 (L.S.)
Notary Public for South Carolina

My Commission Expires
My Commission Expires: February 12, 2023

WE SO CONSENT:

OLDCASTLE APG SOUTH, INC.

By: 

Its: VICE PRESIDENT

Date: 05/23/2016

OLDCASTLE APG NORTHEASTERN, INC.

By: _____

Its: _____

Date: _____

WE SO CONSENT:

OLDCASTLE APG SOUTH, INC.

By: _____

Its: _____

Date: _____

OLDCASTLE APG NORTHEASTERN, INC.

By: Robert Capellazzi

Its: Credit Manager

Date: 6/02/16

ELECTRONICALLY FILED - 2017 Jun 14 1:16 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2305031
ELECTRONICALLY FILED - 2017 May 05 4:49 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2305031

EXHIBIT M

March 13, 2017

Daniel B. Albert
2 Tennwood Dr
Greenville, SC 29609

VIA EMAIL

Elizabeth M. McMillan
MGC Insurance Defense
55 East Camperdown Way, Suite 300
Greenville, SC 29601

Re: Case 2014-CP-23-05031 Oldcastle APG South, Inc. d/b/a Adams Products Company and Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern, Plaintiffs, vs Daniel B Albert, Defendant.

Dear Beth,

I am in receipt of your demand letter and exhibits dated March 9, 2017. Your letter and exhibits provide only part of the picture, so I am writing to you to provide my perspective on the sum total of the communications and negotiations regarding the Settlement Agreement and Confession of Judgment. I am transmitting this letter to you by email, and I am attaching a PDF of the documents that I hope will help you to appreciate my perspective and perhaps come to an amicable resolution to our dispute about the Confession of Judgment and the Settlement Agreement and the termination of the litigation of this matter.

As you know, we were in sharp disagreement about the validity of the Confession of Judgment that I signed and emailed to you on May 16, 2016. I thought that we had resolved our disagreement over the Confession of Judgment through the negotiation and execution of the Settlement Agreement along with the execution of consents to the Confession of Judgment by representatives of both of the Plaintiffs in this matter. Unfortunately, it seems that we are now in sharp disagreement about the validity of not only the Confession of Judgment, but also the Settlement Agreement.

My hope is that if you examine the facts, you will see that the responsibility for our disagreement rests squarely in your court, as you failed to deliver on what I had negotiated in the agreements. I realize that you object to my use of the word shenanigans to describe what you have done or failed to do in this matter, but please accept that I lumped together negligence, carelessness or shenanigans in my use of the term shenanigans. When I look at the sum total of all the evidence, I see what I described as shenanigans, and the truth is, if it were not for those shenanigans, we would not be having the sharp disagreement that we are presently having.

The approach that you take in your letter and exhibits seems to rely upon the validity of the Confession of Judgment that I signed on May 16, 2016, and completely ignores the sharp disagreement that we had that led to the reinstatement of the case to the trial roster after you had unilaterally had it removed, and that also led to the execution of consents to the Confession of

Judgment and the execution of the Settlement Agreement. It is still my view that the Confession of Judgment was invalid per our email exchanges between May 16, 2016 and May 23, 2016, and that the execution of the aforementioned documents are absolutely necessary for you to make any assertion that the Confession of Judgment is valid.

A key element for me in the negotiation of the Confession of Judgment and the Settlement Agreement was the pursuit of the opportunity to resume business with Oldcastle. There is much documentation of my intent, and you indeed pointed out that there was no assurance of doing business with Oldcastle in the future. Had you disclosed to me last year what you said to me outside the courtroom last week, that numerous people at Oldcastle have stated to you that they will not do business with me in the future, and if you had been as emphatic in communicating that to me as you were the other day, I would not have offered to execute the Confession of Judgment, but would have rather just accepted your 40(j) Consent Order of Dismissal that you proffered on the morning of May 16, 2016.

Another key element for me in the negotiation of the Confession of Judgment and the Settlement Agreement was that there would be an immediate dismissal of the case, the practical effect of which would take my case out of the hands of the legal department at Oldcastle and reopen the possibility of resuming doing business with Oldcastle. There is much evidence that supports the expectation that I had that the stipulation of dismissal would be filed. There is also much evidence that it was your intent to file a stipulation of dismissal. Your communication with Lyndall Coker included a statement by you that you would be "submitting a stipulation of dismissal shortly." You'll find your statement to this effect and Lyndall's response that she will "remove the case from the trial roster and make a note that the Settlement Agreement will follow" on the page Bates labeled DEF 0044.

As you will see at DEF 0050, I sent you "my piece" based upon certain representations by you about the signature page saying "We Consent" would be forthcoming from Robert, and that the "We Consent" signatures pertained to the Confession of Judgment that I signed on May 16, 2016, which you already had. When you sent the signature page by Robert for the Confession of Judgment consent to me on June 2, 2016, you asked me to send the original pages of my signature lines to you. When I responded to you, I told you that I would send them to you, and I also asked you if there was a stipulation of dismissal or some other document that would be forthcoming. I never received a response from you to that question, and you evidently did not submit the stipulation of dismissal that both Lyndall and I were expecting you to submit. Your failure to follow through with the stipulation of dismissal and all of the resulting ramifications is the sole reason for the current disagreement that we now have.

The Settlement Agreement and Release, which was signed by me, Robert Capellazzi and Colin Clampett clearly states in paragraph five entitled Stipulation of Dismissal that "The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaims in the Litigation. When I mailed full copies of the Confession of Judgment and the Settlement Agreement with my original signatures to you, I also sent you an executed Consent Order of Dismissal, which you will find in DEF 0032-DEF 0035. The signature pages clearly could have been improved upon by eliminating the word processing fields, but I went ahead and executed it and sent it to you.

When we spoke outside the courtroom on March 9, you asked me why I waited and did nothing for almost a year if I thought that we did not have an agreement. I thought that we had an agreement, and that you had done everything that you were supposed to do until I received notification of the status conference on the case, which alerted me that something was clearly wrong. I hope that you will appreciate the ramifications of all of this from my point of view. The stipulation of dismissal was not recorded. The case was not over, and the door was therefore not open for me to resume doing business with Oldcastle, which was the reason why I entered into the Confession of Judgment to begin with. The communications that I had with you and Melinda, which you can find in DEF 0072-DEF 0079, simply reinforced the perspective that I had that by all appearances what I had executed almost a year earlier amounted to nothing more than a free option, which I certainly had no intention of granting.

All of the facts led me to the conclusion that we were not in agreement after all. Whether through your failure to provide full disclosure, misrepresentation, breach of contract, or the failure to come to a meeting of the minds, it is clear to me that we are in a second phase of being in sharp disagreement about whether we actually had a valid agreement. The documentation about our sharp disagreement between May 16, 2016 and May 23, 2016 clearly supports my position that we did not have a valid Confession of Judgment. The documentation of the negotiation and execution of the documents intended to establish a valid agreement, and the documentation of your failure to deliver on what I bargained for supports my position that we still do not have a valid agreement.

All is not lost, Beth, because I have a solution to propose. In light of all the facts and circumstances, I think it would be appropriate and reasonable if we agree that I will make a payment of \$75,000 to completely satisfy all claims by Plaintiffs against my companies and me personally. I think that a \$25,000 haircut for what I refer to as shenanigans is appropriate and reasonable, especially when considering what I am offering to throw in as an added incentive for Oldcastle to give me the green light to resume doing business with them. If we resume doing business, I will make payments on my schedule and my terms as I'm able for the balance of the \$143,000 that I show that Madawaska Hardscape Products, Inc. owes Plaintiffs on my books. I will not be obligated to pay the difference of \$68,000, it is strictly voluntary and subject to my ability to do so and based upon the volume of business that I do with Oldcastle in the future. The shortfall of \$68,000 will be handled in similar fashion to the amounts owed to other vendors by Madawaska Hardscape Products, Inc. that are outside of the statute of limitations-I will pay them if and when I can. First, I have to get back on my feet.

We can effectuate such an agreement by simply declaring the Confession of Judgment and Settlement Agreement null and void upon payment of \$75,000, which will satisfy all claims, and execute a stipulation of dismissal and whatever other documentation is necessary. This can be accomplished within a few days, if Oldcastle is willing, but we must make sure that all documents are duly authorized and executed prior to concluding that the deal is done. I don't want to have a repeat of what happened when you dropped the ball on doing everything you were supposed to last year. I trust that, given the circumstances, you and Oldcastle will find this proposal to be acceptable, otherwise we can fight through the validity of the Confession of Judgment and any appeal that may come forth from that decision by the court, or from any adverse decision at trial.

Let there be no doubt by you or your client that I have operated in good faith in this matter. I rejected your first proposed stipulation of dismissal because I wanted to pursue a resumption of business relations with Oldcastle. I brought up the judgment in the federal case as a way to settle this case without having to go to trial. I have consistently tried to avoid making it difficult for Oldcastle, including not aggressively pursuing deficiencies in your responses to my discovery requests. I informed you that the Fourth Circuit Court of Appeals had made a decision. When Melinda sent me the 41(a) Stipulation of Dismissal with Prejudice, I questioned the whole thing because I was concerned that it was letting me off the hook completely, and I didn't want it to make it difficult to resume doing business with Oldcastle. Finally, I am making what I think is a generous offer, given the circumstances, to resolve our dispute.

I know that you had other cases at the status conference that you had to return to the courtroom to handle, and that there are reasons that you would not have all of the facts of this case at your fingertips, but the way that you misrepresented the facts at the status conference, and the way that you present your demand letter and exhibits with only partial information makes me wonder about the nature of your representations of the facts of our dealings to your client, and the potential damage to my prospects of resuming business with Oldcastle. My concern is magnified by the prejudicial statements that you made to the judge at the status conference, your insinuations about my dealings with other parties which can only be based upon hearsay, and your propensity to make accusations not grounded in fact. For this reason, I will be sending a copy of this letter and the attached documents to Oldcastle counsel so that I may be sure that they have the full picture.

Sincerely,

Dan Albert

cc: Sarah T. Brooks

STATE OF SOUTH CAROLINA
County of Greenville

) IN THE COURT OF COMMON PLEAS
)
)
)
)

Oldcastle APG South, Inc. d/b/a Adams
Products Company and Oldcastle APG
Northeast, Inc. d/b/a Foster-Southeastern
PLAINTIFF(s)

) Case NO. 2014-CP-23-05031
)
)

VS.

) **MOTION TO RECONSIDER**
) **RULING ON**
) **DEFENDANT'S MOTION FOR**
) **RELEIF OF JUDGMENT AND**
) **FOR REINSTATEMENT TO**
) **TRIAL ROSTER**
)
)
)

DANIEL B. ALBERT, of GREENVILLE,
IN THE COUNTY OF GREENVILLE,
AND STATE OF SOUTH CAROLINA
DEFENDANT

2017 JUL 20 PM 4:11
FILED-CLERK OF COURT
PAUL B. WICKEN
GREENVILLE, SC

Defendant hereby moves the court to reconsider and reverse its ruling on Defendant's Motion for Relief of Judgment and for Reinstatement to Trial Roster for the following reasons:

1. Defendant testified at the hearing on the motion that the sole purpose for Defendant entering into the Settlement Agreement with Plaintiff was to bring an immediate, complete and final end to the litigation between the parties. Defendant entered into the Settlement Agreement based upon the representations of Plaintiff that, upon entering into the Settlements Agreement, the litigation would be brought to an immediate, complete and final end. Communication between the parties submitted by Defendant as exhibits to the motion support this narrative.
2. Paragraph 5 of the Settlement Agreement, entitled "**Stipulation of Dismissal**" states that "The parties agree to enter into a stipulation of dismissal which will release all claims and counterclaims in this Litigation." As the court observed, this language did not say that the stipulation of dismissal would be entered into immediately. The language also did not say that it was *not* immediate, for it was silent on the timeframe. Defendant understood the timeframe to be immediate, and counsel for Plaintiff testified that "no attorney would file the stipulation of dismissal before receiving payment." The language was therefore clearly

ambiguous if both parties had completely different understandings of the intended timeframe. The court improperly concluded that the Settlement Agreement was not ambiguous.

3. Defendant testified that ambiguity in the agreement must be construed against the drafter of the agreement, which in this case was Plaintiff. Defendant also testified that there were at least three instances when counsel for Plaintiff stated that she would enter a stipulation of dismissal without delay. Each of these statements by counsel for Plaintiff were contained in the exhibits to the motion, as pointed out by Defendant. The court improperly failed to look outside the four corners of the agreement to see the clear evidence that there indeed was an agreement for the immediate cessation of the Litigation, and that Defendant entered into the Settlement Agreement upon reliance upon the statements and representations of counsel for Plaintiff. All of this is plain as day if the court would simply look outside the four corners of the agreement to see what the true intent was of the parties.
4. The court pointed out that the Settlement Agreement did not clearly state that it was the responsibility of Plaintiff to file the Stipulation of Dismissal, but the agreement also did not state that it was *not* the responsibility of Plaintiff to do so. There is ambiguity as to who had the responsibility to file the stipulation, but by looking outside the four corners of the agreement it is clear that counsel for Plaintiff took the responsibility for filing the Stipulation of Dismissal. The court improperly held that it was not clear that Plaintiff had responsibility for filing the Stipulation of Dismissal in spite of the fact that there was ambiguity, the evidence outside the four corners clearly demonstrates that Plaintiff was responsible, that Plaintiff was the drafter of the agreement and that Defendant is a pro se litigant.
5. Counsel for Plaintiff misled the court by saying that no attorney would file a stipulation of dismissal before payment was received, when in fact, the evidence is clear in the exhibits presented by Defendant with the motion that that is exactly what counsel for Plaintiff was representing would happen. At the time of entering the Settlement Agreement, Defendant did not know the precise mechanics by which Plaintiff would bring the Litigation to an immediate, full and final end, but

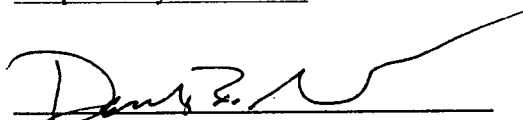
the mechanics did not matter to Defendant as long as the Litigation ended immediately. All the court has to do to test the veracity of this misleading statement by counsel for Plaintiff is to look at the exhibits presented with the motion.

6. Defendant testified that he was shocked or stunned to learn that the litigation was still pending when, in late January or early February 2017, he received a notice of a status conference in this litigation that was scheduled for March.
7. The preponderance of the evidence clearly proves that Plaintiff breached a material term of the Settlement Agreement, and that Plaintiff engaged in negligence, fraud, misrepresentation or other misconduct that should relieve Defendant from his obligations under the Settlement Agreement and Confession of Judgment.
8. The court improperly concluded that the Settlement Agreement and Confession of Judgment entered into by the parties was indeed a valid agreement, and that Defendant continues to be obligated by the terms of the Settlement Agreement, which Plaintiff breached. Even if the Settlement Agreement and Confession of Judgment were judged to be valid, Defendant should be granted relief from the judgment based upon the negligence, fraud, misrepresentation or other misconduct of Plaintiff in inducing Defendant into entering agreement under false or pretextual circumstances.
9. In Plaintiff's brief, which was submitted to the court and to Defendant the day before the hearing, Plaintiff misrepresents to the court that Defendant offered to settle the case for \$75,000, when in fact Defendant offered to make an immediate payment of \$75,000 and then pay an additional \$68,000 as he was able, so long as Plaintiff was willing to resume doing business with Defendant. This misrepresentation is even more egregious when consideration is given to the fact that Defendant, in the same email string, proceeded to make several improvements to the offer in order to try to come to terms with Plaintiff that would give Plaintiff what they were seeking and yet provide some measure of compensation to Defendant for the breach of the Settlement Agreement by Plaintiff. All of this evidence, presented in the exhibits to the motion, clearly

shows that Defendant was simply seeking to have some form of compensation for what Plaintiff took from Defendant when they breached the Settlement Agreement.

10. Defendant testified that if the court were to grant him relief from the Confession of Judgment and reinstate the Litigation to the trial roster, he was hopeful that Plaintiff would then be willing to come to agreeable terms to resolve the litigation without having to go to trial. The exhibits presented by Defendant clearly show that Plaintiff was unreasonable in addressing their breach of the Settlement Agreement despite the best efforts of Defendant.
11. Defendant testified at the hearing and asserted numerous times in the exhibits presented with the motion that it is his firm belief that Plaintiff would fail in their claims due to statute of limitation defenses. Defendant was seeking to restore a business relationship with Plaintiff, but believes that counsel for Plaintiff has made that difficult, which diminishes the motivation that Defendant had to enter into the Settlement Agreement.
12. If the court granted Defendant's motion, the result would be that the Litigation would proceed, and Plaintiff would then be able to prove its case upon the merits. Plaintiff would not lose a valid judgment that they earned by proving the merits of their case, they would simply lose a confession of judgment that was secured by counsel for Plaintiff through negligence, fraud and misrepresentation. Justice in this case requires that the court grant the motion of Defendant and allow the parties to prove their claims, defenses and counterclaims.

Respectfully submitted,



DANIEL B. ALBERT, pro se

DEFENDANT

2 Tennwood Dr

Greenville, SC 29609

Phone: 321-474-9189

July 20, 2017

October 18, 2017

The Honorable Paul Wickensimer
Clerk of Court for Greenville County
305 E. North St. #202
Greenville, South Carolina 29601

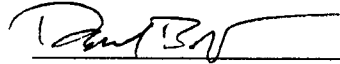
2017 OCT 18 AM 9:47
FILED-CLERK OF COURT
PAUL B. WICKENSIMER
COFFIN

RE: Oldcastle APG South, Inc., d/b/a Adams Products Company, and
Oldcastle APG Northeast, Inc., d/b/a Foster-Southeastern, Respondent v
Daniel B. Albert, Appellant, Case No. 2014-CP-23-05031

Dear Mr. Wickensimer:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,



Daniel B. Albert
2 Tennwood Dr
Greenville, South Carolina 29609
(321) 474-9189
Appellant, pro se

cc: Elizabeth McMillan
McAngus, Goudelock & Courie, LLC
Post Office Box 2980
Greenville, South Carolina 29602
Attorney for Respondent
(864) 239-4000

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

2017 OCT 18 AM 9:47

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

FILED-CLERK OF COURT
PAUL B. WICK
GREENVILLE

Robin B. Stilwell, Circuit Court Judge

Case No. 2014-CP-23-05031

Oldcastle APG South, Inc.,
d/b/a Adams Products
Company, and Oldcastle APG
Northeast, Inc., d/b/a Foster-
Southeastern, Respondent,

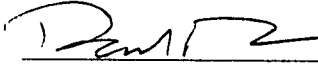
v.

Daniel B. Albert, Appellant.

NOTICE OF APPEAL

Daniel B. Albert appeals the orders of the Honorable Robin B. Stilwell dated July 10, 2017, and July 27, 2017. Appellant filed a Motion for Relief of Judgment and Reinstatement to Trial Roster, which Judge Stilwell denied on July 10, 2017. Appellant filed a Motion to Reconsider the July 10, 2017 order on July 20, 2017. Judge Stilwell entered an order denying said Motion to Reconsider on July 27, 2017. Appellant received written notice of entry of the July 27, 2017 order denying his Motion to Reconsider via email on September 18, 2017.

October 18, 2017


Daniel B. Albert
2 Tennwood Dr
Greenville, South Carolina 29609
(321) 474-9189
Appellant, pro se

Other Counsel of Record:
Elizabeth McMillan
McAngus, Goudelock & Courie, LLC
Post Office Box 2980
Greenville, South Carolina 29602
Attorney for Respondent
(864) 239-4000

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

2017 OCT 18 AM 9:47

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

FILED-CLERK OF COURT
PAUL B. VICKERS
GREENVILLE

Robin B. Stilwell, Circuit Court Judge

Case No. 2014-CP-23-05031

Oldcastle APG South, Inc.,
d/b/a Adams Products
Company, and Oldcastle APG
Northeast, Inc., d/b/a Foster-
Southeastern,

Respondent,

v.

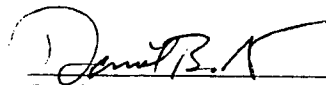
Daniel B. Albert,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Oldcastle APG South, Inc., d/b/a Adams Products Company, and Oldcastle APG Northeast, Inc., d/b/a Foster-Southeastern by depositing a copy of it in the United States Mail, postage prepaid, on October 18, 2017, addressed to their attorney of record, Elizabeth McMillan, McAngus, Goudelock & Courie, LLC, PO Box 2980, Greenville, South Carolina 29602.

October 18, 2017



Daniel B. Albert
2 Tennwood Dr
Greenville, South Carolina 29609
(321) 474-9189
Appellant, pro se

October 18, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

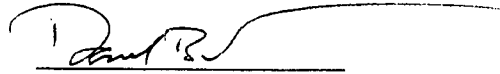
RE: Oldcastle APG South, Inc., d/b/a Adams Products Company, and
Oldcastle APG Northeast, Inc., d/b/a Foster-Southeastern, Respondent v
Daniel B. Albert, Appellant, Case No. 2014-CP-23-05031

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the orders which are to be challenged on appeal.
- (3) A filing fee of \$100.

Sincerely,



Daniel B. Albert
2 Tennwood Dr
Greenville, South Carolina 29609
(321) 474-9189
Appellant, pro se

cc: Elizabeth McMillan
McAngus, Goudelock & Courie, LLC
Post Office Box 2980
Greenville, South Carolina 29602
Attorney for Respondent
(864) 239-4000

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Oldcastle APG South, Inc., d/b/a Adams)
Products Company, and Oldcastle APG)
Northeast, Inc., d/b/a Foster-Southeastern,)
Plaintiffs,)
vs.)
Daniel B. Albert,)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER**

Case No.: 2014-CP-23-05031

This matter comes before the Court pursuant to the Defendant's July 20, 2017, Motion to Reconsider the Court's Ruling on Defendant's Motion for Relief of Judgment and for Reinstatement to Trial Roster. Having carefully considered the same, this Court respectfully denies the Motion.

AND IT IS SO ORDERED.

ROBIN B. STILWELL

July 26, 2017
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Oldcastle APG South Inc , plaintiff, et al vs. Daniel B Albert
Case Number: 2014CP2305031
Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2017-07-27 10:54:39 page 2 of 2

ELECTRONICALLY FILED - 2017 Jul 27 3:08 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2305031

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Plaintiff,

v.

DANIEL B. ALBERT,

Defendant.

Civil Action No. 2014-CP-23-05031

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF OF
JUDGMENT AND REINSTATEMENT
TO TRIAL ROSTER**

This matter comes before the Court pursuant to *pro se* Defendant's Motion for Relief of Judgment and Reinstatement to Trial Roster. The Court conducted a hearing on June 15, 2017, which was fully briefed by both parties before the hearing. Present at the hearing were Elizabeth M. McMillan, Esq., on behalf of Plaintiff, and Daniel B. Albert, *pro se*. Having fully considered the arguments by the parties in the briefs and at the hearing, the Court hereby **DENIES** Defendant's Motion for Relief of Judgment after reaching the following conclusions.

BACKGROUND FACTS

Plaintiff initiated this action by filing a Complaint on September 11, 2014, asserting claims for breach of contract, unjust enrichment, breach of guarantee, and quantum meruit against Defendant alleging that Defendant owed it \$127,212.13 for goods and services provided to Defendant and his companies for which he did not pay.

After discovery was conducted and numerous discussions were had regarding a settlement of this matter, Defendant agreed to enter into a confession of judgment for \$100,000 to end the litigation which he executed on May 16, 2016 ("Confession of Judgment"). The

Confession of Judgment states that Defendant obtained a judgment in a United States District Court case (the "Federal Case") in the amount of \$928,915.00 which judgment was on appeal. In the event Defendant received payment in the Federal Case, Defendant agreed to pay Plaintiff \$100,000. If within ten days after receiving payment in the Federal Case, Defendant failed to make a payment to Defendant, then Plaintiff would file the Confession of Judgment with the court. After executing the Confession of Judgment, Defendant requested a settlement agreement be signed by both parties. Plaintiff prepared a settlement agreement and release ("Settlement Agreement") to set forth the terms of the settlement and of the Confession of Judgment which was executed by all parties on May 23, 2016. Plaintiff then informed the court of the settlement and requested the case be removed from the trial roster. The case was removed from the immediate trial roster, but it remained an active case in the system and was subsequently scheduled for a status conference with the administrative judge for March 8, 2017.

On January 31, 2017, Defendant was awarded \$361,559.00 in the Federal Case. Defendant did not pay the \$100,000 settlement amount and the parties proceeded to the status conference on March 8. On March 9, 2017, Plaintiff made a formal demand for the \$100,000 agreed to in the Settlement Agreement and Confession of Judgment and informed Defendant that if payment was not received within ten days of the date of the letter, Plaintiff would file the Confession of Judgment with the Court. Defendant refused to pay the agreed upon settlement amount, and the Confession of Judgment was filed on May 5, 2017. Defendant argued to Plaintiff that because Plaintiff refused to file a stipulation of dismissal, Plaintiff had breached the Settlement Agreement and the Confession of Judgment was not valid. Defendant then proposed a new settlement agreement of \$75,000 and a declaration that the Confession of Judgment and Release were null and void. After Plaintiff declined to enter into a new settlement agreement,

Defendant filed a Motion for Relief of Judgment and For Reinstatement to Trial Roster on May 15, 2017.

In his motion, Defendant argued that the Confession of Judgment and Settlement Agreement were invalid because a stipulation of dismissal had not yet been filed. The Settlement Agreement contained paragraph 5 which states as follows: "Stipulation of Dismissal. The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaim in the Litigation." Defendant argued that because no stipulation of dismissal had been filed and through negligence, breach of contract, fraud, misrepresentation or other misconduct of Plaintiff, Defendant had been denied the benefit of his bargain. He asked this Court to rule that the Confession of Judgment was null and void, and without any continuing effect.

Plaintiff filed a Memorandum in Opposition to the Motion for Relief of Judgment denying and refuting Defendant's entitlement to relief from the Confession of Judgment, and both sides appeared at the hearing and presented arguments. Plaintiff argued that the Motion should be denied for the following reasons: (1) Defendant failed to honor the terms of the Settlement Agreement and pay the \$100,000 upon his receipt of that amount from the Federal Case, and, thus the Confession of Judgment was rightly entered; (2) Defendant could not establish the necessary grounds to repudiate the Settlement Agreement and the Confession of Judgment because he could not show that there was any evidence of fraud, mistake or misconduct by Plaintiff; (3) Defendant could not establish that the Settlement Agreement had been breached by Plaintiff because Plaintiff had no duty to file a stipulation of dismissal, especially since Defendant had refused to pay the \$100,000 once he received more than that amount from the Federal Case; and (4) Defendant could not establish the grounds for relief from

judgment pursuant to Rule 60, SCRCP, even if that Rule were applicable to the Confession of Judgment.

APPLICABLE STANDARD OF LAW

The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct.App. 2008). When a party asserts grounds for relief because of fraud, misrepresentation, or other misconduct of an adverse party under Rule 60(b)(3), SCRCP, the movant must prove his entitlement by clear and convincing evidence. Chewning v. Ford Motor Co., 354 S.C. 72, 578 S.E.2d 605 (2003). A party asserting the fraudulent nature of a statement must demonstrate: (1) a representation; (2) the falsity of the representation; (3) the materiality of the representation; (4) knowledge of its falsity, or reckless disregard for its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 451 S.E.2d 907 (Ct.App. 1994).

CONCLUSIONS OF FACT AND LAW

Based on the filings of both parties and the arguments presented at the hearing, I make the following findings:

1. The Settlement Agreement is not ambiguous.
2. Based on the unambiguous language of the Settlement Agreement, Plaintiff was under no duty to file a stipulation of dismissal.
3. Defendant has failed to present sufficient evidence to show that the Plaintiff breached any terms of the Settlement Agreement.
4. Defendant has failed to present sufficient evidence to show that Plaintiff engaged in

negligence, fraud, misrepresentation or other misconduct that would relieve Defendant from his obligations under the Settlement Agreement and Confession of Judgment.

5. Defendant entered into a valid Settlement Agreement and Confession of Judgment and was obligated by their terms and cannot renegotiate the terms of those agreements under a pretextual argument that because no stipulation of dismissal had been filed he is not obligated by the terms of those agreements.
6. Defendant has failed to present sufficient evidence to establish that he is entitled to any relief under Rule 60, SCRCP.
7. The Confession of Judgment was validly entered by Plaintiff.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Relief of Judgment and Reinstatement to the Trial Roster is hereby denied and this case is stricken from the trial docket.

AND IT IS SO ORDERED.

Robin B. Stilwell, Judge
Thirteenth Judicial Circuit



Greenville Common Pleas

Case Caption: Oldcastle APG South Inc , plaintiff, et al vs. Daniel B Albert
Case Number: 2014CP2305031
Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2017-07-10 10:21:23 page 6 of 6

s. Robin B. Stilwell 2158

ELECTRONICALLY FILED - 2017 Jul 10 10:49 AM - GREENVILLE - COMMON PLEAS - CASE#2014CP2305031

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
) COMMON PLEAS
 2 COUNTY OF GREENVILLE) OF THE SEVENTH
) JUDICIAL CIRCUIT
 3)
)
 4 OLDCASTLE APG SOUTH, INC.,)
 5 OLDCASTLE APG NORTHEAST,)
 INC.,)
 6)
)
 7 Plaintiffs,) TRANSCRIPT OF RECORD
) 2014-CP-23-05031
 8 vs.)
)
 9 DANIEL B. ALBERT,)
 Defendant.)
 10)
 11 -----

12 June 15, 2017
 13 Greenville, South Carolina

14
 15 B E F O R E:

16 HONORABLE ROBIN B. STILWELL, Judge.

17
 18 A P P E A R A N C E S:

19 ELIZABETH MCDANIEL MCMILLAN, ESQUIRE
 For Plaintiffs

20 DANIEL B. ALBERT,
 Prose Defendant

21
 22
 23
 24 Julie A. Ashbrook,
 Circuit Court Reporter
 25 Seventh Judicial Circuit

I N D E X

WITNESSPAGE

ANNOUNCEMENT OF CASE

By The Court

4

MOTION FOR RELIEF OF JUDGMENT

By Mr. Albert

4

REPLY TO MOTION FOR RELIEF
OF JUDGMENT

By Ms. MCMILLAN

24

FURTHER ARGUMENT

By Mr. ALBERT

30

ORDER OF THE COURT

39

CERTIFICATE OF REPORTER

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 OLDCASTLE APG SOUTH, INC. VS. DANIEL B. ALBERT

2 THE COURT: Okay. Next case up is Oldcastle APG
3 South, Inc. Versus Daniel B. Albert. And that is Case
4 Number 2014-CP-23-5031.

5 All right. It appears to be a motion for relief
6 of judgment. And is that -- Mr. Albert, that's your
7 motion, sir?

8 MR. ALBERT: Yes, sir.

9 THE COURT: Okay. I'd be happy to hear from you,
10 sir.

11 MR. ALBERT: All right. Appreciate your time,
12 Your Honor.

13 THE COURT: Yes, sir.

14 MR. ALBERT: At issue in this case is the
15 validity of a, of a Confession of Judgment that was
16 executed May 16th of 2016. A little background on the
17 case, Plaintiffs are divisions of a very large concrete
18 products company that I've done a lot of business with
19 over decades, and they're an important supplier to me.

20 THE COURT: Yes, sir.

21 MR. ALBERT: And although I went out of business,
22 I'd like to get back on my feet and get back in
23 business.

24 THE COURT: Uh-huh.

25 MR ALBERT: And it's important to try to maintain

1 favor with, with Oldcastle.

2 THE COURT: Yes, sir.

3 MR. ALBERT: And my company, Madawaska Hardscape
4 Products, went bankrupt. Actually, it filed bankruptcy
5 and came out of it. It was dismissed. But basically
6 it's basically insolvent. That company owes Plaintiffs
7 money that is outside of the statute of limitations.
8 And they're asserting a personal guarantee and sued me
9 personally because of that personal guarantee.

10 Last year about, I guess it was about March of
11 last year, a trial was scheduled and -- actually it was
12 May. And I had, I had sent a deficiency letter with
13 some discovery requests to Plaintiff's attorney, and
14 about four weeks later she responded call me to discuss
15 a potential settlement in the case.

16 And when I, when I received the draft 40(j)
17 Consent Order of Dismissal -- pardon me, I'm getting
18 kind of dry.

19 THE COURT: No, no. You're fine. You're fine.

20 MR. ALBERT: I'm kind of dry.

21 THE COURT: You're okay, take your time. I've
22 been rushing people and I'm not gonna rush you all.
23 I've got -- I don't have any additional hearings till
24 two, so --

25 MR. ALBERT: Okay.

1 THE COURT: -- just relax and take your time.

2 MR. ALBERT: Well I appreciate that, Your Honor.

3 THE COURT: I know Ms. McMillan makes us all
4 nervous.

5 MR. ALBERT: Yes, ma'am -- I mean yes, sir. See.
6 So when I saw the 40(j) stipulation of order of
7 dismissal, I noticed that it would not dismiss the case
8 immediately, completely, fully get rid of the case which
9 is what I wanted to do.

10 THE COURT: Right.

11 MR. ALBERT: Because if we're not going to go to
12 trial, I just want to have closure, you know?

13 THE COURT: Right.

14 MR. ALBERT: So I told Plaintiff that that was
15 not gonna work for me. And she had already sent me a
16 proposed Confession of Judgment, which I didn't like.
17 And so I suggested that they modify the Confession of
18 Judgment and that we would dispose of the case by
19 signing a Confession of Judgment for \$100,000, which we
20 did.

21 And then Exhibit 4 in my, in my motion is an
22 e-mail string that starts with my transmission of an
23 executed Confession of Judgment to Ms. McMillan. And
24 then it leads into a rather sharp disagreement over
25 whether it was actually an agreement. What we intended

1 was an agreement to settle the case. And then the
2 Confession of Judgment was can we document that we
3 executed at that time.

4 My point was that that document was invalid, it
5 wasn't a true agreement, that it didn't completely
6 reflect all of the terms of the agreement. And in that,
7 in that e-mail exchange, um, we've discussed -- there's
8 a, there's a lot of documentation of the intent of the
9 agreement. And the string itself gives great evidence
10 to, to show, to prove we had an agreement. And indeed,
11 the net result was that Ms. McMillan acquiesced.

12 And then through Exhibit 5 sent -- this all
13 happened over like a Friday, Saturday. We were
14 communicating on Saturday. And the evidence will show
15 that I was very willing to try to work something out.

16 I didn't want to -- I didn't want to go to trial
17 even though my, my firm belief is that their claim is
18 outside the statute of limitations on several, several
19 grounds and that plaintiff didn't do things that could
20 have mitigated the loss, and actually contributed to me
21 going out of business because they stopped selling to
22 me.

23 And then so I was motivated to try to avoid
24 Plaintiff any additional expense and aggravation. You
25 know, I owed the money, my company owed the money. It

1 was outside the statute of limitations. If I won a case
2 or I made them go to trial and won the case they'd be
3 ticked off, so I wanted to resolve the thing.

4 And she sent me an Exhibit 5: (Reading.)
5 Attached is a Settlement Agreement and Release that
6 incorporates the terms of our Settlement Agreement and
7 which addresses the points you raised in your e-mail to
8 me of yesterday. (Ends reading.) This is dated May
9 21st, 2016.

10 So May 20th, 2016, is the end of the e-mail
11 string on Exhibit 4. So, you know, we're talking about
12 terms of our Settlement Agreement. And here, here's a
13 new document that represents the terms of our agreement.
14 So identified is that draft agreement that shows the
15 terms of the, the agreement.

16 And then on Exhibit 5 I also say: (Reading.)
17 That we ought to acknowledge the Confession of Judgment
18 by having the parties sign off on the Confession of
19 Judgment.

20 And then I also said that: I assumed you will
21 collect the signatures and send executed copies to me,
22 and I will execute and send mine to you. And then that
23 way we can inform the court that the case has been
24 settled. (Ends reading.) So she sent the, the
25 Settlement Agreement.

1 And then Exhibit 7 is the string of -- the e-mail
2 string of all of the back and forth on the execution of
3 the agreement. Now this Settlement Agreement was
4 designed to make up for the deficiencies of the
5 Confession of Judgment. It was signed on May 16th,
6 2016.

7 At one point during that dispute she was saying
8 that I'll just go file it. I'm like go ahead. And it's
9 not valid. And we went back and forth, and then out
10 came the new Settlement Agreement.

11 And the, the string that executed the Settlement
12 Agreement starts with on Exhibit 7. Beth sends -- Ms.
13 McMillin sends me a signature page from one of the
14 parties of plaintiff. (Reading.) Expect to have a
15 signature on the Confession of Judgment until I bring
16 the signature on both documents shortly. I will forward
17 them to you once I receive them. (Ends reading.)

18 She sends me the, the executed -- and I think the
19 agreement says that it can be executed in parts. You
20 know, so she sends me the signature page from, from the
21 northern company up in Massachusetts that I was doing
22 business with, one of the plaintiffs.

23 And further, in Exhibit 7 she sends me two more
24 signature pages from the South Carolina, from, from
25 Adam's Products operating in North Carolina that I was

1 buying from. They actually have a plant in South
2 Carolina.

3 She said: (Reading.) Here are the signature
4 pages from Todd, Todd Ring. I should have the other
5 pages from Robert anytime now, which would be signing
6 off on the Confession of Judgment. (Ends reading.)

7 THE COURT: Uh-huh.

8 MR. ALBERT: There are two parts, the Settlement
9 Agreement and then the signing off on the Confession of
10 Judgment, which the Settlement Agreement actually says
11 that the Confession of Judgment is attached. So the
12 Confession of Judgment received its, its operation and
13 the validity from the Settlement Agreement.

14 THE COURT: Uh-uh.

15 MR. ALBERT: So she sent me two more please send
16 me your, your signed page. And then I get back to her
17 and say: (Reading.) Here's my piece. Based on your
18 representations that these signatures are from duly
19 authorized representatives of the Plaintiffs, that the
20 signature pages saying we consent will be forthcoming
21 from Robert, which she eventually said -- sent. And
22 that "We Consent" signatures which pertain to the
23 Confession of Judgment that you already have. I agree
24 that we have settled the matter and you may inform the
25 court. (Ends reading.)

1 So the court was informed. And then all of
2 these, Exhibit 7 is just all the pieces that, that are
3 part of that e-mail string.

4 And then the last, second to last page, she
5 finally sends me the: (Reading.) Here's the signature
6 page from Robert on the Confession of Judgment. I think
7 you should have everything, send the originals. (Ends
8 reading.)

9 And then I, I -- my last e-mail was: (Reading.)
10 Is there a stipulation of dismissal or some other
11 document that would be forthcoming? (Ends reading.)

12 So Exhibit 8 is the assembly of all of those
13 documents, the Settlement Agreement and the Confession
14 of Judgment. Those, those documents form, in my view,
15 because everything was signed in parts, Exhibit 8 is the
16 actual memorialization of the agreement. The agreement
17 involves the Settlement Agreement, which I have
18 initialed those pages. Paragraph two of the Settlement
19 Agreement refers to the Confession of Judgment. Then it
20 says: (Reading.) Albert has agreed to a Confession of
21 Judgment in the amount of \$100,000, which is attached
22 hereto. Will only be recorded.

23 And then it continues to say that if Albert, or
24 one of his companies, receives less than \$100,000 from
25 the Federal Court case and he remits payment to

1 Oldcastle of all of the funds he receives, Confession of
2 Judgment will not be recorded, he will have no
3 continuing effect. (Ends reading.)

4 The intent was this Confession of Judgment was
5 based on a Federal Court action that I had received a
6 judgment on and was at the Fourth Circuit on appeal, at
7 the Fourth Circuit Court of Appeals. And that judgment
8 was the only basis where this Confession of Judgment
9 would be operable was if there was funds received. The
10 intent was net of attorney fees.

11 And part of the -- if the, if the Confession of
12 Judgment were deemed to be valid, there's still the
13 issue of how much that should be because based on what
14 the agreement calls for is the difference in amount of
15 the judgment based on how much money I receive, which is
16 not truly reflected in the, in the four page -- four
17 corners of the actual Confession of Judgment portion of
18 the agreement, which is confusing.

19 So paragraph 5 is a key paragraph in the
20 Settlement Agreement. (Reading.) The parties agree to
21 enter into a stipulation of dismissal which will dismiss
22 all claims and counterclaims in the litigation. (Ends
23 reading.)

24 And, you know, the original 40(j) would have put
25 the case on hold for a year and I could have just agreed

1 to enter into that. And the case is, you know, we don't
2 go to trial next week. And that's what the original
3 proposal was by Plaintiff, but I wanted closure. I
4 wanted the case completely and finally over and done
5 with.

6 And that was the only reason why I rejected the
7 40(j) and suggested this other path, which is based on
8 an agreement that the first attempt was inadequate. And
9 in that communication I even suggested there was a
10 possibility I was concerned it to be even an intention
11 to be ambiguous in the document.

12 So we litigated that May 16th Confession of
13 Judgment last year. And Ms. McMillan, the plaintiff,
14 acquiesced and entered into what I was, what I was
15 pushing for was a valid agreement, you know,
16 memorializing the agreement and was executed by all
17 parties. The other Confession of Judgment mentioned the
18 parties, you know, Plaintiff agrees but there was no
19 signature of anyone from the plaintiff.

20 And so a key issue in this case is they did not
21 issue that Stipulation of Dismissal as agreed, and had
22 they done that we would not be here today. When I
23 received the notification back in maybe January, around
24 January 18th this year, of the status conference
25 scheduled for March 9th, I believe, I was shocked. I

1 was, I couldn't believe that the case was even alive and
2 kicking.

3 In communication with Lyndall Coker in Exhibit 9
4 there's, there's communication about, about the trial
5 roster. In the last page of that communication, after
6 we'd come to terms on the Settlement Agreement, which
7 validated the Confession of Judgment.

8 (Reading.) This e-mail is to advise you that we
9 have settled this case and have executed a Settlement
10 Agreement. I will be submitting the Stipulation of
11 Dismissal shortly. Please remove the case from the
12 trial roster. (Ends reading.)

13 Even though we hadn't received that final sign
14 off on the Confession of Judgment for the promise it had
15 in that comment too was there. And they said based on
16 that we'll say that the case is settled and they
17 shouldn't come. And but yet the, you know, time and
18 again the issue is that the dismissal never happened.
19 It took it -- they made it completely go away. And
20 that's the only reason why I entered into an agreement
21 and a Confession of Judgment was to satisfy their
22 concern about not going to trial next week.

23 THE COURT: Yeah.

24 MR. ALBERT: I didn't -- you know, all their,
25 their witnesses would have had to come. They would have

1 had to prove their case, survive the statute of
2 limitations challenges. And, and then, you know, I --
3 there would have been aggravation and I, and I have
4 tried through a series of e-mails, after this issue
5 started to ---

6 THE COURT: I'm going stop you for two seconds.

7 MR. ALBERT: Okay.

8 THE COURT: I'm gonna ask you some very surgical
9 questions, okay?

10 MR. ALBERT: Yes, sir.

11 THE COURT: What you want today is for the case
12 to be reinstated and for me to vacate the judgment?

13 MR. ALBERT: Yes, sir.

14 THE COURT: So you want to litigate the
15 underlying matters?

16 MR. ALBERT: Well actually, Your Honor, my hope
17 is that if we level the playing field and take the
18 invalid Confession of Judgment out of their hands as a
19 weapon, I believe, Your Honor, that we could settle this
20 case without having to have it come to fruition.

21 THE COURT: Did -- you received the proceeds from
22 the federal lawsuit or not?

23 MR. ALBERT: I received, I received some
24 proceeds, yes.

25 THE COURT: Okay. Did you pay those over?

1 MR. ALBERT: No, sir. What, what I got was ---

2 THE COURT: What were the proceeds?

3 MR. ALBERT: The proceeds were 360 -- 2,000,
4 roughly. And half went to the attorneys that were at
5 that point handling the case. The contractor had it
6 almost to take ---

7 THE COURT: Well, you don't have to tell me all
8 that.

9 MR. ALBERT: Okay.

10 THE COURT: I mean, there's too much detail.

11 MR. ALBERT: So none of, none of the attorney
12 fees -- I mean, attorney fees, you know, I got about 180
13 and there were attorney fees of 127. 180, 180, 127.

14 THE COURT: Okay.

15 MR. ALBERT: So if you follow the rationale of
16 having this be net of attorney fees, the judgment ought
17 to be about 54,000.

18 THE COURT: That's all you put in your pocket?

19 MR. ALBERT: I didn't put that in my pocket.
20 Right now I've got maybe 10,000 left from that
21 settlement.

22 THE COURT: So what was the total sum of the
23 settlement?

24 MR. ALBERT: The total sum was 361,900 or
25 something like that. 362.

1 THE COURT: Okay. And there were liens against
2 that other than attorneys' fees?

3 MR. ALBERT: Right. The attorneys took half of
4 that. Then I had them send money to -- I borrowed money
5 to pursue a case. And then I ---

6 THE COURT: I got ya. And then but you had a
7 net. And didn't the agreement say you were gonna pay
8 that --

9 MR. ALBERT: Well ---

10 THE COURT: -- pursuant to -- whether you're
11 looking at the confession and the Settlement Agreement,
12 didn't it say you were gonna pay that?

13 MR. ALBERT: Well, the -- I'm, I'm seeking to try
14 to pay them a reasonable amount of money that exceeds
15 what I actually got. I mean, I'm not trying to squeeze
16 them down. I'd like to have these -- these people run a
17 20 billion dollar company in the U.S. and I -- they keep
18 gobbling up all the companies I've done business with
19 over the years. And, you know, they're almost like the
20 only show in town.

21 THE COURT: Okay.

22 MR. ALBERT: They're a national company and --

23 THE COURT: Okay.

24 MR. ALBERT: -- so I ---

25 THE COURT: Ms. McMillan, if he had paid the net

1 \$54,000 would you have satisfied the judgment? If he
2 could have demonstrated that it was the amount, that it
3 was the net amount?

4 MS. MCMILLAN: Possibly we can say that, Your
5 Honor, but when he's finished there's a whole lot of
6 background here that's very relevant --

7 THE COURT: Okay.

8 MS. MCMILLAN: -- to what he's trying to do.

9 THE COURT: Okay. Okay, good enough. I'm just,
10 I'm trying to make sure in my mind that --

11 MS. MCMILLAN: I don't have any ---

12 THE COURT: -- that I'm logically flowing from
13 point A to point B.

14 MS. MCMILLAN: Right. And then there's a whole
15 chronology that needs to be mapped out.

16 THE COURT: All right. All right. Okay. Mr.
17 Albert, I'm gonna give you five more minutes to sum, sum
18 up.

19 MR. ALBERT: Okay.

20 THE COURT: Then I'll let you respond to Ms.
21 McMillan, okay?

22 MR. ALBERT: Okay. Exhibit 12 is a chain of
23 e-mails that started on March 13th of this year and
24 ended May 5th when they filed the, the Confession of
25 Judgment.

1 THE COURT: Uh-huh.

2 MR. ALBERT: And I basically brought out that
3 like there was a refusal to accept responsibility for
4 not delivering on what was negotiated. And my position
5 was that our agreement, they reached an agreement and
6 it's invalid.

7 THE COURT: Uh-huh.

8 MR. ALBERT: And I made a proposal of making a
9 payment of 75,000 to them, and then pay the rest of what
10 I showed on my company's books I owed them over time
11 that I did business with them. So they had the prospect
12 of getting another 68,000 on top of the 75.

13 And then option two, I said, look I'll pay you a
14 hundred grand, but you've got to sell the residual to a
15 friendly entity that will help me tax wise, because I
16 didn't even know what the tax consequences will be for
17 me on all these comings and goings and what have you. I
18 don't know if I might wind up at the end of the day
19 owing the IRS some money and having an IRS lien.

20 And so what I was looking for at that time I --
21 well, this entire e-mail string shows me, I mean, I was
22 trying over and over to come to an accommodation that
23 would satisfy them and satisfy me. And their response
24 is no, we will not sign a revised Settlement Agreement.
25 We'll proceed with, you know, your Confession of

1 Judgment. You know, and I was proposing that even
2 though they breached the agreement, I proposed that they
3 should give me what they were asking for.

4 And so on the last pages of this e-mail string I
5 laid out the case. My position was that the original
6 Confession of Judgment was invalid. But they conceded
7 that point, negotiated the Settlement Agreement. We
8 executed it. The admitted execution of the stipulation
9 was for the most part important part of the Settlement
10 Agreement. And my position was that they breached the
11 Settlement Agreement by not filing it and that I didn't
12 get what I bargained for.

13 And I also, you know, I was, I was trying to get
14 the litigation completely over. And then I, by
15 breaching the Settlement Agreement that made the
16 Confession of Judgment null and void, in the e-mail
17 string it didn't recognize that the Settlement Agreement
18 even existed. And even now they're trying to rely on a
19 stand alone Confession of Judgment.

20 The Confession of Judgment was part and parcel to
21 an agreement, which they've breached. And, um -- and
22 the posturing and this e-mail string, Exhibit 12 is, is
23 just full of my effort to -- basically, Your Honor, they
24 breached the agreement, they took something from me.

25 THE COURT: They breached it by not filing the

1 Stipulation of Dismissal --

2 MR. ALBERT: Right.

3 THE COURT: -- that's contemplated in the
4 Settlement Agreement?

5 MR. ALBERT: And they dismissed that as being ---

6 THE COURT: And ultimately that's the basis for
7 overturn -- vacating the judgment and placing it back on
8 the trial roster?

9 MR. ALBERT: Basically.

10 THE COURT: Okay.

11 MR. ALBERT: And uh ---

12 THE COURT: And I understand the additional
13 complaints, which is you allege that they're being
14 obtuse and unreasonable in coming to an accommodation in
15 this case.

16 MR. ALBERT: Right. I have a few exhibits just
17 to give you for additional enlightenment on -- based on
18 what she, you know, they gave me a 70-page document at
19 1:30 yesterday. And I had to reconcile what they were
20 publishing, what I was publishing.

21 I, I have the, Exhibit 14 is the consent order
22 dismissal that in her, in her motion -- opposition to
23 motion yesterday she puts the wrong 40(j) in, in the
24 first whatever it is. So I've got the, the actual one
25 they sent to me that I rejected.

1 And then there's the communication early this
2 year where I found out that I was still on the roster
3 and I'm asking questions about that. And they're
4 sending two other stipulations of dismissal. And then
5 there's the stipulation of dismissal with prejudice that
6 I wound up signing. And then there's also a Settlement
7 Agreement that I put forth to them as a resolution to
8 this thing that could have avoided today.

9 I mean, they really have been -- in this, in this
10 Exhibit 12 I, at the end, I actually say that it looks
11 like they're doing it out of spite. So 14 I gave -- do
12 you object?

13 MS. MCMILLAN: No, sir.

14 THE COURT: Yeah, if you just come around here
15 and hand it to me I'll be happy to take a look at it.

16 MR. ALBERT: (Handing.) It just supplements
17 what's already there. They're fairly, fairly minor.

18 THE COURT: All right, thank you. And I've got
19 what you got filed up on my computer right now. I've
20 been looking at it as, as you presented your argument.

21 MR. ALBERT: Let's see if there's anything else.
22 I just want to point out that the, the reliance, they're
23 trying to rely on this Confession of Judgment..

24 THE COURT: Uh-huh.

25 MR. ALBERT: When they sent the demand letter it

1 was on the back. They didn't put the Settlement
2 Agreement in there and they were trying to ignore all
3 the, the rich history here that shows the agreement is
4 not -- the agreement is not represented by the
5 Confession of Judgment. It's not a stand alone, the
6 agreement is valid.

7 THE COURT: Okay.

8 MR. ALBERT: And, and ignoring the -- well, one
9 other thing is on Exhibit 2 at the bottom, the first
10 page of Exhibit 2.

11 THE COURT: Yes, sir.

12 MR. ALBERT: I sent Ms. McMillan e-mail which she
13 admitted and what she produced. (Reading.) It may be
14 obvious, but please confirm that my assumption is
15 accurate, that in the event that the funds that I or
16 Keystone Northeast receives from the federal lawsuit net
17 of attorney fees and costs is less than 100,000. That I
18 would disperse all of those proceeds to Oldcastle, and
19 that Oldcastle would not be recording the judgment or
20 seeking a residual balance. (Ends reading.)

21 So the original intent was net of attorney fees.
22 And I had one set of attorneys that I fired. And then I
23 had another set of attorneys that took it to the point
24 of appeal. And they didn't want to represent me on
25 appeal or I didn't want to increase the fee.

1 THE COURT: I understand.

2 MR. ALBERT: And they declined to represent me on
3 my appeal. So there are two sets of attorneys. And
4 then actually other, other fees from other attorneys.
5 But we never did -- it never became germane to calculate
6 the net attorneys fees number because I'm really -- I've
7 been trying. You can see the evidence in Exhibit 12
8 that I've tried and tried and tried to, to bend over
9 backwards. Actually to show a lot of forbearance in
10 what I think has been some, some, what amounts to,
11 misrepresentation and fraud and, and misconduct and not
12 responding, all those...

13 And the judgment, ultimately I think the judgment
14 is void because the agreement that, that created the
15 judgment was breached.

16 THE COURT: All right. Okay. That's good
17 enough. Thank you Mr. Albert.

18 Ms. McMillan?

19 MS. MCMILLAN: I'll be as brief and concise as I
20 can, Your Honor.

21 THE COURT: Yes, ma'am.

22 MS. MCMILLAN: We've got a long history between
23 Mr. Albert and Oldcastle entities and they have
24 repeatedly borne all the -- given him chances and given
25 him chances to pay his debts. And then finally said no,

1 let's sue. That's why we sued because they had
2 repeatedly tried to give him credit and lend him money
3 that didn't get paid. So we file a lawsuit.

4 While that lawsuit is pending, he had gotten
5 Betty Ashmore and Wally Fayssoux represented Mr. Albert
6 in a Federal Court case. And they got him summary
7 judgment for \$987,000, approximately. I don't know the
8 exact number. Then the other side appealed that to the
9 Fourth Circuit. Mr. Albert refused to retain counsel to
10 represent him in the Fourth Circuit. The Fourth Circuit
11 repeatedly asked him -- this is all in the pacer. You
12 can pull it up. I mean, the Fourth Circuit will provide
13 that to you.

14 THE COURT: Yeah.

15 MS. MCMILLAN: Please respond to the briefs.
16 Please respond. He never responded to the briefs.

17 Well, what about our case? We were up for trial
18 last May. We were trying to negotiate a settlement
19 while the other case is pending in the Fourth Circuit.
20 So I propose let's file 40(j) and then you and I can
21 continue to discuss settlement, and if we can't settle
22 it then I'll reinstate it. That was the original 40(j).
23 That was the sole intent of that.

24 And then you've got this correspondence where he
25 admits he agreed. It's repeated in there, I agree,

1 let's settle it. I'll enter a Confession of Judgment
2 for \$100,000. I think you've got a statute of
3 limitations problem. We'll do that. Signed a
4 Confession of Judgment. Then he started just -- you
5 just have to understand there's a long history of Mr.
6 Albert and lawyers --

7 MR. ALBERT: Object, Your Honor.

8 MS. MCMILLAN: -- with the -- anyway, I said,
9 okay, we'll do a Settlement Agreement too, but the
10 Settlement Agreement incorporates the Confession of
11 Judgment, Your Honor. And it all says he will pay us
12 \$100,000 if he recovers the funds from the federal
13 lawsuit. Hadn't been decided yet. Still on appeal in
14 the Fourth Circuit.

15 And we said, okay, we will -- you will do that.
16 We won't enter the Confession of Judgment if you pay us
17 the proceeds from Federal Court. Yes, there's a
18 stipulation to provide to file a stipulation of
19 dismissal in the Settlement Agreement, but no lawyer is
20 gonna file a stipulation of dismissal, Your Honor, until
21 we know that he's gonna satisfy the judgment that are
22 the agreement.

23 And he has sat here and told you repeatedly today
24 that this is the agreement he reached. And he did and
25 the correspondence shows that. So the federal Fourth

1 Circuit did not issue its order until January of 2017.
2 I think it was January 31st where they upheld portions
3 and then reduced the verdict to \$362,000.

4 By this time we had gotten a notice too. I
5 wasn't fully aware right away when that came about. I
6 didn't know that day that it was issued. But we were on
7 the status conference roster. So I notified Mr. Albert
8 about the status conference roster. I said, well, we
9 can file a stipulation of dismissal. We sent him one.

10 I said, well, we need to do a 40(j) until we find
11 out what's gonna happen with it. I didn't know how much
12 attorneys' fees had to be paid out of the Federal Court
13 case. And he refused to do that. And I said, okay,
14 well let's just go to the status conference and we'll
15 tell the judge this is where we are.

16 And it was Judge Gravely. And we explained all
17 this to him. And I explained to Judge Gravely, look,
18 now we've got a way to end this thing. He's gotten the
19 proceeds. I haven't filed a stipulation of dismissal
20 because I've been waiting to see what's gonna happen
21 with payment. And Judge Gravely said, well, I think
22 this isn't an issue for a status conference. If there's
23 gonna be an issue, then a motion's got to be filed by
24 somebody if they contest something.

25 So we made our demand on March 9th for the

1 payment of \$100,000. He refused to pay it. And he
2 refused to pay it. And he said, oh, you didn't file a
3 stipulation of dismissal so you don't have a valid
4 Settlement Agreement. And then he's consistently tried,
5 he's never raised the issue to us that he has net
6 proceeds now of \$54,000.

7 He's gone back and tried to renegotiate with us
8 the Settlement Agreement to try to get leverage to start
9 doing business Oldcastle again. That's what he's doing.
10 The, the Settlement Agreement is valid. And I also put
11 on the record and in any brief, the standard here is to
12 undo a Settlement Agreement.

13 It's really not a rule 60(b) motion. And I don't
14 think he can meet the standard for undoing a Settlement
15 Agreement, as set forth in our brief, or meet the
16 requirements for Rule 60(b). There's been absolutely no
17 fraud. It all hinged on this Federal Court case and
18 when the proceeds were received. And that's what we
19 did.

20 And I want to be clear cut with Mr. Albert, so I,
21 I'm not gonna agree to anything until I know the court's
22 approval on it because its just, it keeps going back and
23 forth and back and forth with him. So that's why I'm --
24 we haven't been obtuse or trying to be mean to him, it's
25 just that he's got the money, he needs to pay it or the

1 Confession of Judgment needs to stand.

2 That's the basis of why we didn't file the
3 stipulation of dismissal, Your Honor. Just waiting on
4 the Federal Court proceeds. We made our demand and he
5 refused to pay it, so I entered the Confession of
6 Judgment. And quite honestly, I don't know whether if I
7 had a Confession of Judgment that the stipulation of
8 dismissal would be filed on that.

9 THE COURT: It seems to me that once the
10 Confession of Judgment was issued --

11 MS. MCMILLAN: That did ---

12 THE COURT: -- it settled all the outstanding
13 issues. There should have been a Form 4 issued which
14 ended the case with prejudice.

15 MS. MCMILLAN: Right. And -- well, anyway. I
16 don't know why it was still on the trial -- it's on the
17 trial roster for next week even though the Confession of
18 Judgment was entered on May 8th. But in summary, I
19 don't think he can meet the standards under what it
20 takes to undo a Settlement Agreement which was reached.
21 He had no showing of fraud or mistake by the parties.
22 And he's clearly repeatedly admitted that we had a
23 Settlement Agreement.

24 It all hinged on when the Fourth Circuit made its
25 ruling and when he got the proceeds from that judgment.

1 And we have fallen through with that ruling. We believe
2 the Confession of Judgment is the proper document to end
3 the case.

4 THE COURT: Okay.

5 All right. Mr. Albert I'm gonna give you five
6 minutes to respond, sir.

7 MR. ALBERT: Thank you, Your Honor. You know,
8 Rule 60 describes misrepresentation or other misconduct
9 from an adverse party. I'm not an attorney and it's,
10 it's up -- I'm throwing this out at the mercy of the
11 Court to decide this case, obviously, about what's right
12 and what's wrong.

13 THE COURT: Uh-huh.

14 MR. ALBERT: I, I heard Ms. McMillan state a
15 moment ago that no lawyer would file a stipulation of
16 dismissal if there's a confession of judgment or
17 something. And did they not agree to file it? And the,
18 the whole, the whole case hinges on, my understanding,
19 my contention is, there was an absolute agreement to
20 file something that completely and actually and finally
21 terminated this case.

22 And I'm not an attorney and I just learned the
23 distinction between a dismissal with prejudice, without
24 prejudice, a 40(j) and a 41(a) and all those things.
25 But I was bargaining in for an absolute end to this

1 thing. Otherwise I would have taken her original 40(j).
2 If you look at the one I gave you was the accurate one,
3 But where it's put it in limbo and we wound up being in
4 limbo.

5 So I'm not saying it was intentional, but the
6 result is that I was denied from them my bargain. And
7 there are all kinds of ways, if you think about it,
8 where this thing could have gone sideways contrary to
9 the agreement if certain things could have occurred.
10 You know, you can speculate about what if I had gotten a
11 million dollar judgment that had originally been
12 ordered.

13 And, furthermore, you know, she made prejudicial
14 comments to Judge Gravely that -- and misrepresentations
15 that are inaccurate, making a point I fired them. She
16 said I fired them. I never fired them.

17 And as far as the representation of the Fourth
18 Circuit, the Fourth Circuit wouldn't let me go as a
19 prose litigant representing a corporation. I wish it
20 had been -- I wish I could have. And, and so they don't
21 recognize me.

22 And I didn't -- and I'd already decided with
23 Betty and Wally, in my opinion, they sold me down the
24 river and there are some things that I could say that
25 relate to that that are immaterial here, but they -- I

1 was not happy with what was going on. And I was in the
2 court and jury's in the other room and Betty tells me
3 there's nothing to -- they're not ---

4 THE COURT: I'm gonna stop you here.

5 MR. ALBERT: Okay.

6 THE COURT: You are going beyond the scope of
7 this agreement.

8 MR. ALBERT: Okay. Pardon me.

9 THE COURT: Let me ask you this, I'm looking at
10 the -- I'm looking at the Settlement Agreement.
11 Paragraph 5, Stipulation of Dismissal. And I think what
12 it says is: (Reading.) The parties agree to enter into
13 a stipulation of dismissal which will dismiss all claims
14 and counterclaims in the litigation. (Ends reading.)

15 Is that the -- is that the language in the
16 Settlement Agreement to which you, you refer? I'm
17 looking at one that's unsigned, so I don't know if this
18 is the one or ---

19 MR. ALBERT: Exhibit 8 is signed and executed.
20 The compilation of all of the various pieces which
21 includes the attached Confession of Judgment.

22 THE COURT: Okay. Read -- you read to me into
23 the record the portion of the Settlement Agreement that
24 refers to a stipulation of dismissal.

25 MR. ALBERT: (Reading.) Paragraph 5, Stipulation

1 of Dismissal. The parties agree to enter into a
2 stipulation of dismissal which will dismiss all claims
3 and counterclaims in litigation. (Ends reading.)

4 THE COURT: Did you present to the Plaintiff a
5 proposed stipulation of dismissal for filing?

6 MR. ALBERT: They propo -- they gave me several
7 proposed stipulations of dismissal.

8 THE COURT: Let me ask you this.

9 MR. ALBERT: No.

10 THE COURT: In the timeframe in which you thought
11 that it was appropriate to file the stipulation of
12 dismissal, did you submit to the Plaintiff a proposed
13 stipulation of dismissal for execution of filing?

14 MR. ALBERT: No, sir.

15 THE COURT: In the, in the agreement when it says
16 the parties have agreed, does it provide in any place in
17 that agreement an affirmative duty for the plaintiff to
18 provide that stipulation of dismissal or is it a mutual
19 obligation that either had the opportunity to provide
20 and file?

21 MR. ALBERT: Your Honor, my, my understanding and
22 the record shows, all of the evidence I've given you
23 shows, that Ms. McMillan took responsibility for filing
24 the stipulation of dismissal, that she would file it.
25 Told me that ---

1 THE COURT: She has an agreement that says that
2 or does the Confession of Judgment say that?

3 MR. ALBERT: Well, Your Honor ---

4 THE COURT: Because I'm looking at, I'm looking
5 at contracts. All of the stuff that you've given me is
6 interesting and it gives me a lot of background into the
7 back and forth between the parties, but ultimately what
8 you're asking me to do is to overturn a stipulation
9 agreement and vacate a Confession of Judgment. So
10 you're gonna have to tell me exactly where they failed
11 to meet an obligation under a unilateral obligation
12 under the terms of the agreement.

13 MR. ALBERT: Your Honor, I can only point to
14 outside the four corners where the evidence shows
15 clearly that she was taking that responsibility. She
16 told Lyndall Coker she would do it. Lyndall Coker said
17 I'm looking for it. She told me she would do it. I
18 asked her are you gonna do this. I even signed one and
19 sent one to her.

20 So I believe, Your Honor, that, that the
21 agreement, it's pretty clear that the -- it was an
22 immediate -- that upon executing the Settlement
23 Agreement, the case is over. Memorializing it takes the
24 Stipulation of Dismissal. She took that responsibility.
25 She didn't do it.

1 THE COURT: I don't see where it says that it was
2 her responsibility. I'm just looking for the ---

3 MR. ALBERT: It's there.

4 THE COURT: I'm looking for the verbiage in
5 either the Confession of Judgment or the Settlement
6 Agreement that says that it was Ms. McMillan's
7 responsibility to do it.

8 MR. ALBERT: Your Honor, any ambiguity in the
9 four corners of the agreement is the responsibility of
10 the drafter. Ms. McMillan drafted it.

11 THE COURT: You've got to demonstrate that
12 there's an ambiguity. There's no ambiguity there.

13 MR. ALBERT: Well, Your Honor, the fact that it
14 does not state exactly when it's supposed to happen is
15 an ambiguity. Until you bring it up today, I didn't
16 think there ever was an ambiguity on that timing of that
17 issue.

18 THE COURT: You didn't think ---

19 MR. ALBERT: They never brought that up.

20 THE COURT: You didn't think there was an
21 ambiguity because there is no ambiguity.

22 MR. ALBERT: Pardon me?

23 THE COURT: You didn't think there was an
24 ambiguity until today because there is no ambiguity.

25 MR. ALBERT: Well, there is now because she

1 clearly communicated, of course outside the four
2 corners, and there's a lot of stuff that happened
3 outside the four corners here where in the first
4 Confession of Judgment we had a sharp disagreement on
5 the e-mail strings. There's a lot of information there
6 outside the four corners that shows some of the nature
7 of the terms of the agreement that weren't represented
8 in the four corners that you can look at and see where
9 there's ambiguity in the four corners.

10 And then in the Settlement Agreement in the
11 entire -- this entire case, Your Honor, rests on the,
12 the benefit of my bargain to get an immediate and
13 complete absolute end to the case. That was what was
14 agreed to.

15 Do you dispute that, that that was agreed to?

16 MS. MCMILLAN: Paragraph 1 of the agreement, Your
17 Honor, is very relevant on what it says. It says:
18 (Reading.) Albert agrees to pay the sum of \$100,000 to
19 Oldcastle when and only if he or one of his companies
20 receives money from the Federal Court case. (Ends
21 reading.)

22 So his obligation under this Settlement Agreement
23 was to pay that money when and only if he got the Fourth
24 Circuit settlement. So that right there says that
25 that's what's gonna happen.

1 MR. ALBERT: No, sir. The, the ---

2 MS. MCMILLAN: Paragraph 1 is right there.

3 MR. ALBERT: But, but that was a future event,
4 that the agreement was to bring an immediate end to the
5 case. That was a here and now event. And what I
6 expected I was getting from what I was bargaining for
7 was that this case would be over.

8 Not only is it over, it comes out of the
9 litigation department of Oldcastle, a 20 billion dollar
10 business that I'm -- they don't even want to talk to me
11 because there's a litigation. So I did not get the
12 benefit of being able to have at least an opportunity to
13 approach the hundreds of companies that, that are under
14 the umbrella of Oldcastle to possibly do business
15 because I'm stuck in their litigation department.

16 MS. MCMILLAN: Your Honor, the Stipulation of
17 Dismissal only became an issue after he received money
18 from the Federal Court case. That's when it first
19 became an issue when he got money.

20 MR. ALBERT: Your Honor, it became an issue when
21 I got the notice from the court there was a status
22 conference and I brought that issue up to them. And I
23 can tell you in Exhibit 15. Exhibit 15 I get a -- I had
24 actually, I think, called an e-mail about what's this
25 with the status conference.

1 And then I get an e-mail from Ms. McMillan's
2 assistant of actually a 41(a), Stipulation of Dismissal,
3 which I signed. They sent that to me, I signed it. I
4 thought -- and then I respond to that e-mail.

5 I say: (Reading.) I thought the Confession of
6 Judgment and the consent order of dismissal that I
7 signed and sent to you last year took care of
8 everything. How does a Stipulation of Dismissal, which
9 involves a dismissal with prejudice, differ from what we
10 already did? (Ends reading.)

11 So that's the start of the -- that's when I first
12 objected. I didn't even know the case wasn't over until
13 January of this year. January 10th, I think I got the
14 notice.

15 THE COURT: Okay.

16 MR. ALBERT: And then there's the Exhibit,
17 Exhibit 17. There's a Stipulation of Dismissal that I
18 signed.

19 THE COURT: Okay. I think you gave me a copy of
20 that already, didn't you?

21 MR. ALBERT: Yes, sir. Yes, sir, it's the 41(a).

22 THE COURT: Okay.

23 MR. ALBERT: So they sent that to me, and then I
24 sent that back to them signed.

25 THE COURT: Okay.

1 MR. ALBERT: So I, as far as I knew, they'd taken
2 care of it. The case was -- I was not hearing anything.
3 There's no reason why I should have been concerned. I
4 thought the deal was done. And low and behold when it
5 comes up, what could have happened is I'm sorry let's
6 get this thing done. And then if they -- then if they
7 had just -- and I offered in the e-mail screen on
8 Exhibit 12 all kinds of ways to, you know, to bridge the
9 gap they created by breaching the agreement. I did all
10 I could.

11 THE COURT: Okay. All right. I have had the
12 opportunity to hear your arguments and to look at all of
13 the documents. Again, the documents that are salient to
14 the decision before the Court today, the Confession
15 Agreement and the Settlement Agreement, I've read each
16 of them. And, Mr. Albert, you made excellent arguments
17 and you articulated very well and, and thank you for
18 that. And, but I'm gonna rule against you with no
19 disrespect to you, but it strikes me that the arguments
20 regarding the filing of a Stipulation of Dismissal are
21 entirely pretextual and are calculated to effect an end
22 different than the Settlement Agreement that was entered
23 into between the parties.

24 This Confession of Judgment was clearly agreed to
25 and signed and entered into the public record. I'm not

1 gonna vacate the -- excuse me, not the Settlement
2 Agreement, but the Confession of Judgment. I'm not
3 gonna vacate the Confession of Judgment. There is not
4 evidence in the record that would suggest that, that it
5 should be vacated under any rule of law or any statutory
6 case, statutory law or any case law or any rule of the
7 civil procedure. It simply hasn't been presented to
8 this Court, which would warrant overturning the
9 judgment.

10 With regard -- Mr. Albert, sit down.

11 MR. ALBERT: I have health issues, Your Honor.

12 THE COURT: Mr. Albert, sit down, please. I've
13 been here listening to you for an hour and I've given
14 you, I've given you consideration and respect. I didn't
15 stand up and stop you. I had some salient questions for
16 you. Okay?

17 MR. ALBERT: Your Honor, if I could just explain.

18 THE COURT: I don't, I don't expect you --

19 MR. ALBERT: I can't sit --

20 THE COURT: -- to interrupt me..

21 MR. ALBERT: -- very long and I can't stand very,
22 so it's a health issue. I'm not standing to say
23 anything, I just -- if you could bear with me, I -- ask
24 anybody that's given me a deposition, I've stood, I
25 mean...

1 THE COURT: I had the distinct impression that
2 you were ready to address the Court and begin additional
3 arguments while I was ruling.

4 MR. ALBERT: No, sir. I just -- when you are
5 finished I have a question, but that's it. I mean...

6 THE COURT: Okay. You may stand up if you want
7 to. You will on that. I'm sorry if I misinterpreted
8 that.

9 MR. ALBERT: No problem. I understand the ---

10 THE COURT: Okay.

11 MR. ALBERT: You know, I understand.

12 THE COURT: I have to look at the four corners of
13 the agreement. The four corners of the agreement, it
14 seems to me, are clear and unambiguous. And I will not
15 overturn a Settlement Agreement. I think in keeping
16 with, again, the statutory law, the common law in the
17 state of South Carolina and the case law in the state of
18 South Carolina, there are not sufficient grounds to
19 overturn the same.

20 I will not reinstate the case to the active
21 docket and I'll enter an order that the case is resolved
22 with finale. It is clear to me that a settlement was
23 arrived at in this matter. It is the terms and
24 conditions of that settlement are absolutely clear and
25 unambiguous.

1 I'm not sure exactly why we are here unless it is
2 just for an opportunity to renegotiate the terms of the
3 settlement, which have been previously arrived at. I've
4 heard a lot today that doesn't necessarily bear upon the
5 issue to be decided by the Court. And I'll not let
6 those additional issues, however interesting they may
7 be, confuse the calculation of the Court. It's a matter
8 of was the Confession of Judgment inappropriately
9 entered and was the settlement, should the Settlement
10 Agreement be overturned, and I don't see any evidence in
11 the record which would indicate that. Therefore, I will
12 respectfully deny the motion.

13 MR. ALBERT: Okay.

14 THE COURT: Now, Mr. Albert, I know you had a
15 question. I'll be happy to answer a question that you
16 may have.

17 MR. ALBERT: Just one question. If the, if the
18 Settlement Agreement had said immediately dismissed, if
19 the word "immediate" was in there, if it had said that,
20 would you rule differently?

21 THE COURT: Well, let me tell you first and
22 foremost, I am proscribed, proscribed as a matter of law
23 from offering advisory opinions. And that's an advisory
24 opinion to you bearing upon a hypothetical set of
25 circumstances that aren't before the Court. However, I

1 would tell you, again, the question in that Settlement
2 Agreement is to whom or who had the affirmative duty to
3 do it, and it doesn't precisely say who had the
4 affirmative duty to do it.

5 And I will tell you as well, you haven't
6 convinced me that that was a material term of the
7 Settlement Agreement. In my looking at it, I've already
8 told you it seems to me that that's entirely pretextual
9 as a calculation of renegotiating the terms of the
10 Settlement Agreement and I do not see that it is a
11 material term of the contract. Okay? All right.

12 Ms. McMillan, you draft me an order, please. I'd
13 appreciate it.

14 MS. MCMILLAN: Yes, sir, Your Honor.

15 THE COURT: Thank you very much.

16 MR. ALBERT: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 (Whereupon, hearing concluded at 12:49 p.m.)

19

20 --- THIS ENDS REQUESTED TRANSCRIPT ---

21

22

23

24

25

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record to the best of my ability of all the
8 proceedings and evidence introduced in the hearing
9 and/or trial of the captioned case, relative to appeal,
10 in the Court of Common Pleas for Greenville County,
11 South Carolina, on the 15th day of June, 2017.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17
18

19 _____
20 Julie A. Ashbrook
21 Circuit Court Reporter
22 Seventh Judicial Circuit
23
24
25

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
OLDCASTLE APG SOUTH, INC. D/B/A	)	Civil Action No. 2014-CP-23-05031
ADAMS PRODUCTS COMPANY AND	)	
OLDCASTLE APG NORTHEAST, INC.	)	
D/B/A FOSTER-SOUTHEASTERN,	)	
Plaintiff,	)	CONSENT ORDER OF DISMISSAL
	)	PURSUANT TO RULE 40(j), SCRPC
vs.	)	
	)	
DANIEL B. ALBERT,	)	
Defendant.	)	

This matter is before this Court upon joint motion and consent of all parties.

The parties agreed to the following, which is hereby Ordered:

1. That this matter will be placed on the inactive docket pursuant to Rule 40(j) of the *South Carolina Rules of Civil Procedure*.
2. That during the period this case is on the inactive docket, the parties will continue, in good faith, to engage in settlement discussions and the statute of limitations will be tolled as of the date of the original filing of this action as to all claims.
3. That at any time within one (1) year from the entry of this Order, any party may restore this case to the active docket, in its original form, with a new case number being assigned. Each party expressly agrees to consent to restoring this matter within one (1) year at the written request of any other party.
4. That no party waives or forfeits any claims or defenses it may have due to the actions or inactions of the parties prior to the entering of this Order, including but not limited to all procedural actions or inactions of the other party.

AND IT IS SO ORDERED.

The Honorable Robin Stilwell
Chief Administrative Judge,
Thirteenth Judicial Circuit

Greenville, South Carolina

May _____, 2016

CONSENT ORDER FOR DISMISSAL PURSUANT TO RULE 40(j), SCRCF
Civil Action No. 2014-CP-23-05031

WE SO MOVE:

Plaintiff Counsel Company

Plaintiff Counsel Full Name

Plaintiff Counsel Address

***Plaintiff Counsel Phone Number Type
Main***

ATTORNEY FOR OLDCASTLE APG
SOUTH, INC. D/B/A ADAMS PRODUCTS
COMPANY

May _____, 2016

CONSENT ORDER FOR DISMISSAL PURSUANT TO RULE 40(j), SCRCF
Civil Action No. 2014-CP-23-05031

WE SO MOVE:

Defendant Counsel Company

Defendant Counsel Full Name

Defendant Counsel Address

***Defendant Counsel Phone Number Type
Main***

ATTORNEY FOR DANIEL B. ALBERT

May _____, 2016

CONSENT ORDER FOR DISMISSAL PURSUANT TO RULE 40(j), SCRCF
Civil Action No. 2014-CP-23-05031

WE CONSENT:

MCANGUS GOUDELOCK & COURIE, L.L.C

Elizabeth M. McMillan
Bar No: 15049

Post Office Box 2980

55 East Camperdown Way, Suite 300

Greenville, South Carolina 29602

(864) 239-4000

ATTORNEYS FOR PLAINTIFFS, OLDCASTLE APG SOUTH, INC. D/B/A ADAMS
PRODUCTS COMPANY

May _____, 2016



Dan Albert <dan.albert7@gmail.com>

Oldcastle APG South, Inc. d/b/a Adams Products Company and Oldcastle (C.A. No. 2014-CP-23-05031)

3 messages

Melinda Owens <melinda.owens@mgclaw.com>
 To: "dan.albert7@gmail.com" <dan.albert7@gmail.com>
 Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Wed, Jan 25, 2017 at 2:36 PM

Mr. Albert,

Please see the attached Stipulation of Dismissal which needs to be filed with the court in order to formally dismiss the above action. If you will reply to this email that we have your permission to add your s/signature and electronically file the Stipulation of Dismissal with the court, it would be much appreciated. If you have any questions, please don't hesitate to call me or Beth McMillan.

Thank you,



Melinda Owens, Legal Assistant
 melinda.owens@mgclaw.com
 55 E. Camperdown Way Suite 300
 Greenville, SC 29601
 Main: 864-239-4000 | Direct: 864-239-4005 | Fax: 864-242-3199
 VCARD

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Please consider the environment before printing this email.

Stipulation of Dismissal.pdf
 19K

Dan Albert <dan.albert7@gmail.com>
 To: Melinda Owens <melinda.owens@mgclaw.com>
 Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, Jan 27, 2017 at 3:50 PM

Beth,

I thought that the confession of judgment and the consent order of dismissal that I signed and sent you last year took care of everything. How does this stipulation of dismissal, which involves a dismissal with prejudice, differ from what we already did?

Dan
 [Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>
 To: Dan Albert <dan.albert7@gmail.com>, Melinda Owens <melinda.owens@mgclaw.com>

Tue, Jan 31, 2017 at 10:00 AM

Dan,

DEF 0072

I sent you the wrong Stipulation of Dismissal. It should be a dismissal pursuant to Rule 40(j) without prejudice. The case will be removed from the trial docket and we will reinstate only if the Confession of Judgement has to be entered. If the Confession of Judgment does not have to be entered, then the case will not be restored and it is over. We have a period of one year to restore the case. If we do not refile it within one year, then the case is barred. I will send you the corrected Stipulation of Dismissal.

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com]

Sent: Friday, January 27, 2017 3:50 PM

To: Melinda Owens

Cc: Beth McMillan

Subject: Re: Oldcastle APG South, Inc. d/b/a Adams Products Company and Oldcastle (C.A. No. 2014-CP-23-05031)

[Quoted text hidden]



Beth McMillan, Attorney

beth.mcmillan@mgclaw.com

55 E. Camperdown Way Suite 300

Greenville, SC 29601

Main:864-239-4000 | Direct:864-239-4037 | Fax:864-242-3199

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DEF 0073

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Plaintiff,

vs.

DANIEL B. ALBERT,

Defendant.

Civil Action No. 2014-CP-23-05031

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

Pursuant to Rule 41(a) of the *South Carolina Rules of Civil Procedure*, Plaintiffs in the above-captioned case, by and through the undersigned counsel, hereby dismiss this case with prejudice. *Pro se* Defendant consents to this dismissal with prejudice. The parties agree to bear their own respective costs.

WE SO STIPULATE:

I CONSENT:

MCANGUS GOUDELOCK & COURIE, LLC

Elizabeth M. McMillan, S.C. Bar No. 15049
Jeanmarie Tankersley, SC Bar No. 101068
Post Office Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000

ATTORNEYS FOR PLAINTIFFS

Date: _____

Daniel B. Albert
2 Tennwood Drive
Greenville, SC 29609
(321) 474-9189
Email: dan.albert7@gmail.com

PRO SE DEFENDANT

Date: _____

DEF 0074



Dan Albert <dan.albert7@gmail.com>

Oldcastle APG South, Inc. d/b/a Adams Products Company and Oldcastle (Claim No.: n/a)

7 messages

Melinda Owens <melinda.owens@mgclaw.com>
To: "dan.albert7@gmail.com" <dan.albert7@gmail.com>
Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, Feb 3, 2017 at 11:55 AM

Mr. Albert,

Attached please find a Consent Order striking this case pursuant to Rule 40(j). Per your emails with Beth, the case will be removed from the trial docket and we will reinstate only if the Confession of Judgment has to be entered. If the Confession of Judgment does not have to be entered, then the case will not be restored and it is over. We have a period of one year to restore the case. If we do not refile it within one year, then the case is barred. Please sign your name on the line indicated and return the form to us via email and via U.S. Mail at your earliest convenience. If you have any questions, please don't hesitate to contact us.

Thank you,



Melinda Owens, Legal Assistant
melinda.owens@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4005 | Fax: 864-242-3199
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Consent Order Striking Case re Rule 40J.pdf.pdf
18K

Dan Albert <dan.albert7@gmail.com>
To: Melinda Owens <melinda.owens@mgclaw.com>
Cc: Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, Feb 3, 2017 at 4:04 PM

Beth,

Here is the 41(a) Stipulation of Dismissal, which under the circumstances, is the correct one to bring closure to this action. The 40(j) Stipulation of Dismissal that we contemplated in May of last year is not something that I will agree to now, since so much time has passed. If Oldcastle is willing to have you execute the attached 41(a) Stipulation of Dismissal on their behalf, please do not delay in executing it and getting it over to the court. If need be, we can go before the judge on March 9th to sort things out.

Dan

[Quoted text hidden]

OC v DBA Stipulation of Dismissal 2.4.17.pdf
19K

Beth McMillan <beth.mcmillan@mgclaw.com>
To: Dan Albert <dan.albert7@gmail.com>, Melinda Owens <melinda.owens@mgclaw.com>

Tue, Feb 7, 2017 at 5:52 PM

DEF 0075

Dan,

I am content to bring this matter before the court at the status conference.

I also would like to be kept updated as to when you receive payment from the award in federal court.

Beth

From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Friday, February 03, 2017 4:04 PM
To: Melinda Owens
Cc: Beth McMillan
Subject: Re: Oldcastle APG South, Inc. d/b/a Adams Products Company and Oldcastle (Claim No.: n/a)

[Quoted text hidden]



Beth McMillan, Attorney
beth.mcmillan@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-4037 | Fax: 864-242-3199
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Please consider the environment before printing this email.

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>

Fri, Feb 24, 2017 at 1:24 PM

Would you like to agree on a term for trial instead of showing up at the status conference on the 9th?

[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>
To: Dan Albert <dan.albert7@gmail.com>

Thu, Mar 2, 2017 at 10:47 AM

No. There is no trial to go forward in this case. You are to pay Oldcastle \$100,000 from the proceeds from the federal court case, and if you do not, we will file the Confession of Judgment.

From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Friday, February 24, 2017 1:24 PM
To: Beth McMillan
Subject: RE: Oldcastle APG South, Inc. d/b/a Adams Products Company and Oldcastle (Claim No.: n/a)

[Quoted text hidden]

[Quoted text hidden]

Dan Albert <dan.albert7@gmail.com>
To: Beth McMillan <beth.mcmillan@mgclaw.com>

Thu, Mar 2, 2017 at 10:55 AM

DEF 0076

The record clearly shows that we were not in agreement. I expect to go forward with trial.
[Quoted text hidden]

Beth McMillan <beth.mcmillan@mgclaw.com>
To: Dan Albert <dan.albert7@gmail.com>

Thu, Mar 2, 2017 at 10:56 AM

That is certainly not the case. You agreed to the Confession of Judgment which I am going to file.

From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Thursday, March 02, 2017 10:55 AM

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

DEF 0077

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Plaintiff,

vs.

DANIEL B. ALBERT,

Defendant.

Civil Action No. 2014-CP-23-05031

**CONSENT ORDER STRIKING CASE
FROM DOCKET PER RULE 40(J)**

Upon consent of all parties, by and through the undersigned, and pursuant to the provisions of Rule 40(j) of the South Carolina Rules of Civil Procedure, the above-referenced action is hereby stricken from the docket. The parties further agree that this matter may be restored to the active trial docket upon Motion made within one year of the date stricken.

IT IS SO ORDERED.

Presiding Judge
Thirteenth Judicial Circuit

Date: _____

WE SO MOVE:

I CONSENT:

Elizabeth M McMillan, Esquire
McAngus Goudelock & Courie, LLC
55 E. Camperdown Way, Suite 300 (29601)
Post Office Box 2980
Greenville, SC 29602
(864) 239-4000

Daniel B. Albert
2 Tennwood Drive
Greenville, SC 29609
(321) 474-9189

PRO SE DEFENDANT

ATTORNEYS FOR PLAINTIFF

DEF 0078

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

OLDCASTLE APG SOUTH, INC. D/B/A
ADAMS PRODUCTS COMPANY AND
OLDCASTLE APG NORTHEAST, INC.
D/B/A FOSTER-SOUTHEASTERN,

Plaintiff,

vs.

DANIEL B. ALBERT,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-23-05031

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

Pursuant to Rule 41(a) of the *South Carolina Rules of Civil Procedure*, Plaintiffs in the above-captioned case, by and through the undersigned counsel, hereby dismiss this case with prejudice. *Pro se* Defendant consents to this dismissal with prejudice. The parties agree to bear their own respective costs.

WE SO STIPULATE:

MCANGUS GOUDELOCK & COURIE, LLC

Elizabeth M. McMillan, S.C. Bar No. 15049
Jeanmarie Tankersley, SC Bar No. 101068
Post Office Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000

ATTORNEYS FOR PLAINTIFFS

Date: _____

I CONSENT:



Daniel B. Albert
2 Tennwood Drive
Greenville, SC 29609
(321) 474-9189
Email: dan.albert7@gmail.com

PRO SE DEFENDANT

Date: 2.4.17

DEF 0079

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A
 ADAMS PRODUCTS COMPANY AND
 OLDCASTLE APG NORTHEAST, INC.
 D/B/A FOSTER-SOUTHEASTERN,

Civil Action No. 2014-CP-23-05031

Plaintiff,

**STIPULATION OF DISMISSAL
 WITH PREJUDICE**

vs.

DANIEL B. ALBERT,

Defendant.

Pursuant to Rule 41(a) of the *South Carolina Rules of Civil Procedure*, Plaintiffs in the above-captioned case, by and through the undersigned counsel, hereby dismiss this case with prejudice. *Pro se* Defendant consents to this dismissal with prejudice. The parties agree to bear their own respective costs.

WE SO STIPULATE:

I CONSENT:

MCANGUS GOUDELOCK & COURIE, LLC

Elizabeth M. McMillan, S.C. Bar No. 15049
 Jeanmarie Tankersley, SC Bar No. 101068
 Post Office Box 2980
 55 East Camperdown Way, Suite 300 (29601)
 Greenville, South Carolina 29602
 (864) 239-4000

ATTORNEYS FOR PLAINTIFFS

Date: _____



Daniel B. Albert
 2 Tennwood Drive
 Greenville, SC 29609
 (321) 474-9189
 Email: dan.albert7@gmail.com

PRO SE DEFENDANT

Date: 2.4.17



Greenville County 13th Judicial Circuit Public Index



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Oldcastle APG South Inc , plaintiff, et al vs. Daniel B Albert

Case Number:	2014CP2305031	Court Agency:	Greenville County Common Pleas	Filed Date:	09/11/2014
Case Type:	Common Pleas	Case Sub Type:	Breach of Cont 140	File Type:	Jury
Status:	Appeal	Assigned Judge:			
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:	2014CP2305031	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Oldcastle APG South Inc	Notice/Appeal	Filing		10/18/2017-09:54		
Albert, Daniel B	11/20/2017_JT_Roster/Notice of Case Roster Publication Sent	Action		10/03/2017-11:03		
Tankersley, Jeanmarie	11/20/2017_JT_Roster/Notice of Case Roster Publication Sent	Action		10/03/2017-11:03		
McMillan, Elizabeth McDaniel	11/20/2017_JT_Roster/Notice of Case Roster Publication Sent	Action		10/03/2017-11:03		
Albert, Daniel B	Order/Order Denying Defendant's Motion to Reconsider	Order		07/27/2017-15:08		
Albert, Daniel B	Certificate Of Service	Filing		07/20/2017-16:38		
Albert, Daniel B	Motion/Motion To Reconsider	Motion		07/20/2017-16:30		
Oldcastle APG South Inc	Order/Other-Motion for Relief Denied	Order		07/10/2017-10:49		
Oldcastle APG South Inc	Form 4 Notice of Order	Filing		07/10/2017-10:04		
Oldcastle APG South Inc	Order/Order Cover Sheet \$25.00	Filing		06/29/2017-15:26		
Oldcastle APG South Inc	Service/Certificate Of Service	Filing		06/14/2017-13:16		
Oldcastle APG South Inc	Memo/Memo In Opposition	Filing		06/14/2017-13:16		

Tankersley, Jeanmarie	6/19/2017_JT_Roster/Notice of Case Roster Publication Sent	Action	06/13/2017-08:59		
Albert, Daniel B	6/19/2017_JT_Roster/Notice of Case Roster Publication Sent	Action	06/13/2017-08:59		
McMillan, Elizabeth McDaniel	6/19/2017_JT_Roster/Notice of Case Roster Publication Sent	Action	06/13/2017-08:59		
McMillan, Elizabeth McDaniel	6/12/2017_MOTION_Roster/Notice of Motions Roster Publication	Action	05/15/2017-16:14		
Tankersley, Jeanmarie	6/12/2017_MOTION_Roster/Notice of Motions Roster Publication	Action	05/15/2017-16:14		
Albert, Daniel B	6/12/2017_MOTION_Roster/Notice of Motions Roster Publication	Action	05/15/2017-16:14		
Albert, Daniel B	Def/Daniel B Albert Motion/Relief Judgment&Reinstate Trial	Motion	05/15/2017-15:34	06/15/2017-15:34	
Albert, Daniel B	Judgment/Confession	Judgment	05/08/2017-11:06		
Oldcastle APG Northeast Inc	Judgment/Confession	Judgment	05/08/2017-11:06		
Albert, Daniel B	Judgment/Confession	Judgment	05/08/2017-11:06		
Oldcastle APG Northeast Inc	Judgment/Confession	Judgment	05/08/2017-11:06		
Oldcastle APG South Inc	Judgment/Confession	Judgment	05/08/2017-11:05		
Albert, Daniel B	Judgment/Confession	Judgment	05/08/2017-11:05		
Oldcastle APG South Inc	Confession of Judgment	Filing	05/05/2017-16:49		
Tankersley, Jeanmarie	3/9/2017_JT_Roster/Notice of Case Roster Publication Sent	Action	03/01/2017-08:52		
Albert, Daniel B	3/9/2017_JT_Roster/Notice of Case Roster Publication Sent	Action	03/01/2017-08:52		
McMillan, Elizabeth McDaniel	3/9/2017_JT_Roster/Notice of Case Roster Publication Sent	Action	03/01/2017-08:52		
McMillan, Elizabeth McDaniel	March 9, 2017 Status Conf. Roster 9:00 am. Courtroom 8	Action	01/18/2017-09:40		
Tankersley, Jeanmarie	March 9, 2017 Status Conf. Roster 9:00 am. Courtroom 8	Action	01/18/2017-09:40		
Albert, Daniel B	March 9, 2017 Status Conf. Roster 9:00 am. Courtroom 8	Action	01/18/2017-09:40		
Tankersley, Jeanmarie	5/23/2016_JT_Roster/Notice of Case Roster Publication Sent	Action	05/09/2016-11:18		
McMillan, Elizabeth McDaniel	5/23/2016_JT_Roster/Notice of Case Roster Publication Sent	Action	05/09/2016-11:18		
Albert, Daniel B	5/23/2016_JT_Roster/Notice of Case Roster Publication Sent	Action	05/09/2016-11:18		
Albert, Daniel B	Roster/Notice of Case Roster Publication Sent	Action	09/14/2015-11:56		
McMillan, Elizabeth McDaniel	Roster/Notice of Case Roster Publication Sent	Action	09/14/2015-11:56		
Tankersley, Jeanmarie	Roster/Notice of Case Roster Publication Sent	Action	09/14/2015-11:56		

Oldcastle APG South Inc	ADR/Notice of ADR	Action	07/15/2015- 10:55		
McMillan, Elizabeth McDaniel	Roster/Notice of Case Roster Publication Sent	Action	07/07/2015- 12:33		
Albert, Daniel B.	Roster/Notice of Case Roster Publication Sent	Action	07/07/2015- 12:33		
Tankersley, Jeanmarie	Roster/Notice of Case Roster Publication Sent	Action	07/07/2015- 12:33		
Oldcastle APG South Inc	Archived Document	Filing	04/16/2015- 00:00		
Oldcastle APG South Inc	ADR/Alternative Dispute Resolution (Workflow)	Action	04/09/2015- 16:07	07/15/2015- 16:07	
Oldcastle APG South Inc	Reply to Defendants Counterclaim & Service	Filing	01/30/2015- 11:22		
Albert, Daniel B	Answer/Answer & Counterclaim And Service	Filing	12/29/2014- 15:56		
Oldcastle APG South Inc	Service/Affidavit Of Service on Daniel B Albert	Filing	10/03/2014- 10:14		
Oldcastle APG South Inc	Verification/Verified	Filing	09/15/2014- 10:53		
Adams Products Company	Verification/Verified	Filing	09/15/2014- 10:53		
Oldcastle APG Northeast Inc	Verification/Verified	Filing	09/15/2014- 10:53		
Foster Southeastern	Verification/Verified	Filing	09/15/2014- 10:53		
Oldcastle APG South Inc	Summons & Complaint	Filing	09/11/2014- 16:04		

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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 31, 2018



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