

OCT 23 2017

NORTH CAROLINA
WAKE COUNTY

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C.S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CVS 6736

NORTH CAROLINA LANDSCAPE)
CONTRACTORS' LICENSING BOARD,)
Plaintiff,)

v.)

TOTAL PROFESSIONAL CARE)
LANDSCAPING, INC. and)
JAMES W. BARNES, IV,)
Defendants.)

CONSENT JUDGMENT

The undersigned Superior Court Judge, having reviewed the signatures of the parties to this document, makes the following findings of fact, conclusions of law, and orders accordingly:

FINDINGS OF FACT

1. Plaintiff, the North Carolina Landscape Contractors' Licensing Board (hereinafter "Plaintiff" and "Board"), is an agency of the State of North Carolina created under the authority Chapter 89D of the General Statutes of North Carolina.
2. Upon information and belief, Defendant Total Professional Care Landscaping, Inc. ("TPCL") is:
 - a. A corporation organized under North Carolina law. James W. Barnes, IV is the Registered Agent and President; and
 - b. Not presently and was not previously licensed, as required by N.C. Gen. Stat. §89D-12, by Plaintiff Board.
3. Upon information and belief, Defendant James W. Barnes, IV ("Barnes") is:

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- a. A citizen and resident of North Carolina, who has his principal place of business at 742 E. Sandpiper Court, Corolla County North Carolina 27927; and
 - b. Not presently and was not previously licensed as a Landscape Contractor, as defined by N.C. Gen. Stat. §89D-12, by Plaintiff Board.
4. Plaintiff is charged with the regulation of landscape contractors in North Carolina and is authorized to bring this action under N.C. Gen. Stat. § 89D-24(a), which provides:

If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

5. N.C. Gen. Stat. § 89D-11 defines "Landscape Contractor" as "Any person who, for compensation or other consideration, does any of the following:
- a. Engages in the business requiring the art, experience, ability, knowledge, science, and skill to prepare contracts and bid for the performance of landscape services, including installing, planting, repairing, and managing gardens, lawns, shrubs, vines, trees, or other decorative vegetation, including the finish grading and preparation of plots and areas of land for decorative utilitarian treatment and arrangement.
 - b. Practices the act of horticulture consultation or planting design for employment purposes.
 - c. Constructs, installs, or maintains landscape drainage systems and cisterns; provided the landscaping contractor makes no connection to pipes, fixtures, apparatus, or appurtenances installed upon the premises, or in a building, to supply water thereto or convey sewage or other waste therefrom as defined in G.S. 87-21.
 - d. Designs, installs, or maintains low-voltage landscape lighting systems, provided (i) the work does not exceed the scope of the exception set forth in G.S. 87-43.1(7) and (ii) the low-voltage lighting systems do not exceed 50

volts and constitute a Class II or Class III cord and plug connected power system.

- e. Engages in the construction of garden pools, retaining walls, walks, patios, or other decorative landscape features.”
6. N.C. Gen. Stat. §89D-11(2) defines landscape construction or contracting as “The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.”
7. N.C. Gen. Stat. §89D-12(a) provides:

“Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation “landscape contractor,” or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscape contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be performed under an individual who is readily available to exercise supervision over the landscape construction and contracting work and who is licensed by the Board under this Chapter.”
8. N.C. Gen. Stat. §89D-13(5) states that the provisions of chapter 89D shall not apply to “[a]ny landscaping work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than thirty thousand dollars (\$30,000). . . .”
9. Upon information and belief, on or about December 7, 2016, Defendants engaged in the practice of landscape construction or contracting in North Carolina in violation of N.C. Gen. Stat. §§ 89D-12(a) and (c). Specifically, on or about December 7, 2016, Defendant TPCL entered into a multi-year contract with Buck Island Association, Inc. (“Buck Island”) to provide landscaping services to the Buck Island Subdivision in Corolla, North Carolina. The contract amount to be paid annually by Buck Island to Defendant TPCL was \$91, 008.00 in year one,

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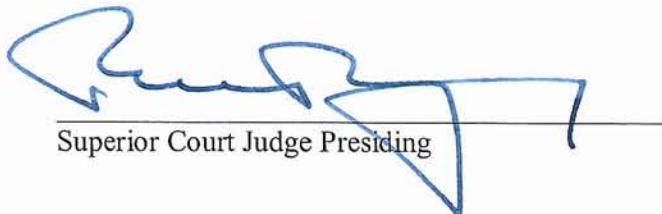
\$96,000.00 in year two and \$101,004.00 in year three. The contract was signed by Defendant Barnes.

10. Defendants TPCL and Barnes entered into a contract for landscaping services in excess of \$30,000.00 during a consecutive 12-month period while neither held a license issued by the Board and/or without qualifying for any of the exemptions as provided by N.C. Gen. Stat. §89D-13.
11. The Board is entitled to have the court restrain and permanently enjoin Defendants from any further conduct in violation of the law.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
AS FOLLOWS:**

1. That Defendants be permanently enjoined from the practice of landscape construction or contracting in North Carolina until such time as they are properly licensed by the Board.
2. That cost of this action, including Plaintiff's reasonable costs associated with the investigation and prosecution of Defendants' violation, be taxed against Defendants in the amount of \$730.00
3. That Plaintiff have and recover such other and further relief against Defendants as the Court may deem proper and just.

This the 4th day of October 2017.



Superior Court Judge Presiding

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I CONSENT:

Consent to entry of the foregoing is hereby acknowledged.

James W Barnes, IV
JAMES W. BARNES, IV
TOTAL PROFESSIONAL CARE
LANDSCAPING, INC.

COUNTY OF Currituck

I certify that James W. Barnes appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document:

Sworn to and subscribed before me;

This the 15 day of September 2017.

Ross E Doebler
Notary Public
ROSS E. DOEBLER
Typed or Printed Notary Name

My Commission Expires: 1-31-21



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WE CONSENT:

Consent to entry of the foregoing is hereby acknowledged.

This the 18 day of SEPTEMBER 2017.

NORTH CAROLINA LANDSCAPE
CONTRACTORS' LICENSING BOARD

By: Cornelia I. Hoyes
Cornelia I. Hoyes, Chairman

STATE OF NORTH CAROLINA

COUNTY OF North Carolina

I certify that Cornelia I. Hoyes personally appeared before me this day, acknowledging to me that she voluntarily signed the foregoing document:

Sworn to and subscribed before me:

This the 18th day of September 2017.

Suzanne M Hull
Notary Public

Suzanne M Hull
Typed or Printed Notary Name

My Commission Expires: 8/30/21



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BROOKS PIERCE

By:

David Smyth

David Smyth
Attorney for Total Professional Care
Landscaping, Inc. and James W. Barnes, IV

STATE OF NORTH CAROLINA

COUNTY OF Johnston

I certify that David Smyth appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

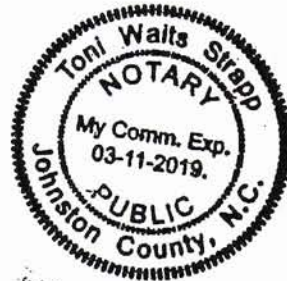
Sworn to and subscribed before me;

This the 18th day of September 2017.

Toni Waits Strapp
Notary Public


Toni Waits Strapp
Typed or Printed Notary Name

My Commission Expires: 3-11-2019



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NICHOLS, CHOI & LEE, PLLC


By: 
Anna Baird Choi
Attorneys for NCLCLB
4700 Homewood Court, Suite 320
Raleigh, NC 27609

COUNTY OF Wake

I certify that Anna Baird Choi personally appeared before me this day, acknowledging to me that she voluntarily signed the foregoing document:

Sworn to and subscribed before me;

This the 28th day of September 2017.


Notary Public
DENA Jordan Brown
Typed or Printed Notary Name

My Commission Expires: 6/15/2021

