

NORTH CAROLINA
CUMBERLAND COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 6381

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

v.)

JOE RUSSELL SMITH,)
MAHALEY LOUISE SMITH, and)
SMITH'S LAWN & TREE COMPANY, LLC,)
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 Joe Russell Smith ("J. Smith") is:
 - a. A citizen and resident of Cumberland County, North Carolina, residing at 3517 Madison Avenue, Fayetteville, North Carolina 28304;
 - b. Not presently and was not previously licensed as a Landscape Contractor, as defined by N.C. Gen. Stat. § 89D-12, by Plaintiff Board; and
 - c. A Member of Defendant Smith's Lawn & Tree Company, LLC.
3. Upon information and belief, Defendant Mahaley Louise Smith ("M. Smith") is:
 - a. A citizen and resident of Cumberland County, North Carolina, residing at 3517 Madison Avenue, Fayetteville, North Carolina 28304;

- b. Not presently and was not previously licensed as a Landscape Contractor, as defined by N.C. Gen. Stat. § 89D-12, by Plaintiff Board; and
 - c. A Manager/Member of Defendant Smith's Lawn & Tree Company, LLC.
4. Upon information and belief, Defendant Smith's Lawn & Tree Company, LLC ("SLTC") is:
 - a. A limited liability company organized and existing under the laws of the State of North Carolina, with its principal office located at 3517 Madison Avenue, Fayetteville, Cumberland County, North Carolina; and
 - b. Not presently licensed and was not previously licensed as a Landscape Contractor, as defined by N.C. Gen. Stat. § 89D-12, by Plaintiff Board.
5. 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.
6. 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.”
7. 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.”
8. N.C. Gen. Stat. § 89D-12(a) provides:
 - (a) “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.”
9. On or about June 8, 2019, Plaintiff Board received a complaint alleging that Defendants were advertising and offering to perform landscape contracting without a license.
10. On or about January 17, 2019, Emmitt W. Robinson contracted with Defendants for removal and disposal of six pine trees from his property located at 6476 Pericat Drive, Fayetteville, NC 28306. The contract price was \$1,200.00.

11. The website of Defendant SLTC lists a variety of landscape construction and contracting services and gives a license number that is not assigned to any of the Defendants.
12. Further, Defendant J. Smith advertised himself and Defendant SLTC as a "NC Licensed Landscaping Contractor" on his business cards.
13. The license number listed on the website was, in fact, a municipal business license issued by the City of Fayetteville. That number has now been removed from Defendants' website. Further, Defendants are no longer using business cards or other forms of advertisement that violate N.C. Gen. Stat. § 89D-12(a).
14. The Board is entitled to have the court restrain and permanently enjoin Defendants from any further conduct in violation of the law.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter to this action.
2. This Court has examined the signatures of the parties, and the parties are bound by all of the stipulations contained herein.
3. Plaintiff Board has standing under N.C. Gen. Stat. § 89D-24(1) to seek this injunctive relief.
4. This Order is enforceable by the contempt powers of this Court, including the imposition of fines and/or imprisonment in the event of contempt of this Order.

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

1. That Defendant Joe Russell Smith be permanently enjoined from the practice of advertising landscape construction or contracting in North Carolina, until such time as he is properly licensed by the Board.

2. That Defendant Mahaley Louise Smith be permanently enjoined from the practice of advertising landscape construction or contracting in North Carolina, until such time as she is licensed by the Board.
3. That Defendant Smith's Lawn and Tree Company, LLC be permanently enjoined from the practice of advertising landscape construction or contracting in North Carolina, until such time as it provides services "under an individual who is readily available to exercise supervision over the landscape construction and contracting work and who is licensed by the Board."
4. That the 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 \$300.00. Defendants shall remit payment to the Board within thirty (30) days after service of the fully-executed Order.

This the _____ day of _____, 20__.

Superior Court Judge Presiding

CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

Joe Russell Smith
JOE RUSSELL SMITH

STATE OF NORTH CAROLNA

COUNTY OF Cumberland

I certify that JOE RUSSELL SMITH appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document:

Sworn to and subscribed before me this the 15th day of January 2020

Doris R. Nauta
Notary Public
DORIS R. Nauta
Typed or Printed Notary Name

My Commission Expires: July 22, 2024



CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

Mahaley Louise Smith
MAHALEY LOUISE SMITH

STATE OF NORTH CAROLNA

COUNTY OF Cumberland

I certify that MAHALEY LOUISE SMITH appeared before me this day, acknowledging to me that She voluntarily signed the foregoing document:

Sworn to and subscribed before me this the 15th day of January 2020

Doris R. Nauta
Notary Public

DORIS R. Nauta
Typed or Printed Notary Name

My Commission Expires: July 22, 2024



CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

SMITH'S LAWN & TREE COMPANY, LLC.

By *Joe Russell Smith*
Joe Russell Smith
Print Name
Owner
Print Title

STATE OF NORTH CAROLNA
COUNTY OF Cumberland

I certify that Joe Russell Smith appeared before me this day, acknowledging to me that he/she is the Owner of Smith's Lawn & Tree Company, LLC and as such is authorized to sign and has voluntarily signed the foregoing document:

Sworn to and subscribed before me this the 15th day of January 2020

Doris R. Nauta
Notary Public
Doris R. Nauta
Typed or Printed Notary Name

My Commission Expires: July 22, 2024



WE CONSENT:

Consent to entry of the foregoing is hereby acknowledged.

This the 11 day of February 2020

NORTH CAROLINA LANDSCAPE
CONTRACTORS' LICENSING BOARD

By: 
Chris Mitchell, Chairman

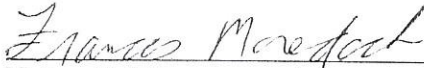
STATE OF NORTH CAROLINA

COUNTY OF Wake

FRANCES MOREDOCK
NOTARY PUBLIC
Wake County
North Carolina
My Commission Expires June 24, 2021

I certify that Chris Mitchell personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document:

Sworn to and subscribed before me this the 11th day of February 2020



Notary Public

Frances Moredock

Typed or Printed Notary Name

My Commission Expires: June 24, 2021

NICHOLS, CHOI & LEE, PLLC

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