

FILED

STATE OF NORTH CAROLINA
LINCOLN COUNTY 2020 MAR 25 P 3:08

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19-CVS-1576

LINCOLN CO., C.S.C.
NORTH CAROLINA LANDSCAPE)
CONTRACTORS' LICENSING BOARD,)
Plaintiff,)

v.)

APRIL J. SCOTT and)
LAKE NORMAN CUSTOM STONE, 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 Board"), is an agency of the State of North Carolina created under the authority of Chapter 89D of the General Statutes of North Carolina.
2. Defendant April J. Scott is:
 - a. A citizen and resident of Lincoln County, North Carolina, with a residence address of 7567 Deer Track Drive, Denver, NC 28037-8937;
 - b. Not presently and was not previously licensed by Plaintiff Board as a Landscape Contractor, as defined by N.C. Gen. Stat. § 89D-11; and
 - c. The registered agent and organizer/member of Defendant Lake Norman Custom Stone, LLC.
3. Defendant Lake Norman Custom Stone, LLC ("Defendant Custom Stone") is:

- a. A limited liability company organized and existing under the laws of the State of North Carolina, with its principal office located at 7567 Deer Track Drive, Denver, NC 28037-8937, Lincoln County, North Carolina; and
 - b. Not presently and was not previously licensed by Plaintiff Board as a Landscape Contractor, as defined by N.C. Gen. Stat. § 89D-11; and
4. Plaintiff Board 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(3) 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. Defendant Custom Stone engaged in the unlicensed practice of landscape construction or contracting in North Carolina in violation of N.C. Gen. Stat. § 89D-12(a), specifically:

a. On or about December 2, 2018, Defendant Custom Stone submitted an estimate to Donald and JoAnn Gracey (“Homeowners”) for landscape work at their property

located at 4822 Looking Glass Trail, Denver, Lincoln County, North Carolina. The estimate for services was \$44,740.00.

- b. On or about January 10, 2019, Donald Gracey accepted the above-referenced estimate with a revised total of \$37,093.00.
- c. On or about January 16, 2019, the Homeowners paid Defendant Custom Stone \$40,000.00 as a “first installment” on the above-referenced project.
- d. On or about February 27, 2019, Defendant Custom Stone submitted a revised estimate to the Homeowners. The revised estimate was \$46,890.00. On the same date, Defendant Custom Stone invoiced the Homeowners for \$40,230.00.

- 10. The Board is entitled to have the court restrain and permanently enjoin Defendants from any further conduct in violation of the law.
- 11. The parties agree and stipulate to the above Findings of Fact and agree to be bound by the terms of this Consent Judgment.

CONCLUSIONS OF LAW

- 1. This Court has jurisdiction over the parties and subject matter to this action. Venue is proper.
- 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 is charged with regulating the practice of landscape construction and contracting and, therefore, has standing under N.C. Gen. Stat. § 89D-24(1) to seek this injunctive relief.

4. The conduct of Defendants, as set forth in the Findings of Fact above, violates N.C. Gen. Stat. § 89D-12(a) and constitutes the unlicensed practice of landscape construction and contracting.
5. 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:**

- I. That Defendant April J. Scott be permanently enjoined from the practice of landscape construction or contracting in North Carolina, until such time as she, if ever, is properly licensed by Plaintiff Board.
- II. That Defendant Lake Normal Custom Stone, LLC be permanently enjoined from the practice of landscape construction or contracting in North Carolina, until such time, if ever, as it is properly licensed by the Board.
- III. That the costs of this action, including Plaintiff Board's reasonable costs associated with the investigation and prosecution of Defendants' violation, be taxed against Defendants in the amount of \$1,250.00. Defendants shall remit payment to Plaintiff Board within thirty (30) days after service of the fully-executed Judgment.
- IV. That Defendants shall comply with all provisions set forth in N.C. Gen. Stat. §§ 89D-12 and 13.

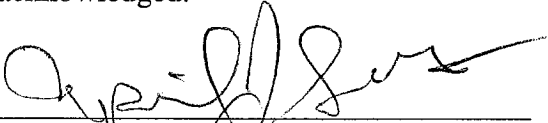
This the 24 day of March, 2020.



Superior Court Judge Presiding

CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.



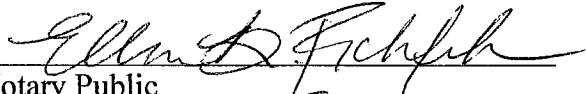
APRIL J. SCOTT

STATE OF NORTH CAROLINA

COUNTY OF Lincoln

I certify that APRIL J. SCOTT appeared before me this day, acknowledging to me that she voluntarily signed the foregoing document:

Sworn to and subscribed before me this the 20th day of February 2020.

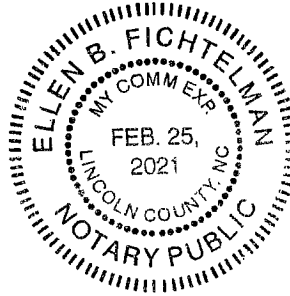


Notary Public

Ellen B. Fichtelman

Typed or Printed Notary Name

My Commission Expires: 2/25/2021



CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

LAKE NORMAN CUSTOM STONE, LLC.

By *April J. Scott*

April J. Scott
Print Name

Owner
Print Title

STATE OF NORTH CAROLNA

COUNTY OF Lincoln

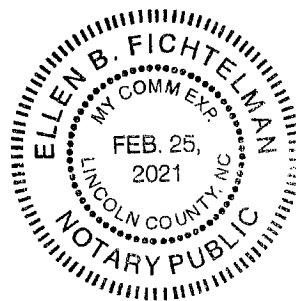
I certify that April J. Scott appeared before me this day, acknowledging to me that he/she is the owner of Lake Norman Custom Stone, LLC and as such is authorized to sign and has voluntarily signed the foregoing document:

Sworn to and subscribed before me this the 26th day of February 2020.

Ellen B. Fichtelman
Notary Public

Ellen B. Fichtelman
Typed or Printed Notary Name

My Commission Expires: 2/25/2021



CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

This the 6 day of March 2020.

**NORTH CAROLINA LANDSCAPE
CONTRACTORS' LICENSING BOARD**

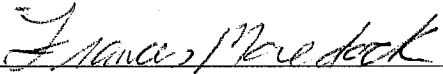
By: 
Chris Mitchell, Chairman

STATE OF NORTH CAROLINA

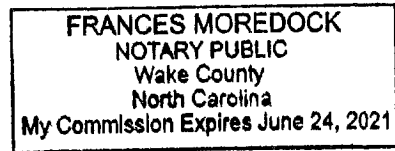
COUNTY OF Wake

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 6th day of March 2020.



Notary Public

Frances Moredock
Typed or Printed Notary Name



My Commission Expires: June 24, 2021

NICHOLS, CHOI & LEE, PLLC

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