

STATE OF NORTH CAROLINA
FRANKLIN COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19-CVS-1081

NORTH CAROLINA LANDSCAPE)
CONTRACTORS' LICENSING BOARD,)
Plaintiff,)
v.)
JUAN TOLENTINO JUAREZ and)
MAGNOLIA LANDSCAPING PRO 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 Chapter 89D of the General Statutes of North Carolina.
2. Defendant Juan Tolentino Juarez ("Defendant Juarez") is:
 - a. A citizen and resident of Franklin County, North Carolina, residing at 290 Harris Road, Youngsville, North Carolina 27596;
 - 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/Manager and Registered Agent of Defendant Magnolia Landscaping Pro LLC ("Defendant Magnolia").
3. Defendant Magnolia is:
 - a. A limited liability company organized and existing under the laws of the State of

North Carolina, with its principal office located at 290 Harris Road, Youngsville, Franklin County, North Carolina 27596; 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.

- 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(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.”

- 6. 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.

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. On or about June 7, 2019, Plaintiff received a complaint alleging that Defendants were performing the unlicensed practice of landscape work costing \$30,000 or more in a one-year period at one site.

10. On or about May 17, 2019, Defendant Magnolia entered into a contract with Modus NC Investments, LLC to provide landscaping services at its properties known as The Saint, located at 714 West Jones Street, Raleigh, Wake County, North Carolina.

11. The above-referenced contract was for labor only services beginning May 17, 2019 and continuing until June 8, 2019; the contract price for labor only was \$28,600. However, the overall cost of the project once plant material was added to the project cost was in excess of \$30,000, within a 12-month period.
12. The Board is entitled to have the Court restrain and permanently enjoin Defendants from any further conduct in violation of the law.
13. The parties agree and stipulate to the above Findings of Fact and agree to be bound by the terms of the 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:**

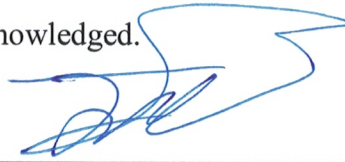
- I. That Defendant Juan Tolentino Juarez be permanently enjoined from the practice of landscape construction or contracting in North Carolina, until such time, if ever, as he is properly licensed by Plaintiff Board.
- II. That Defendant Magnolia Landscaping Pro LLC be permanently enjoined from the practice of landscape construction or contracting in North Carolina, until such time, if ever, as it is properly licensed by Plaintiff 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 \$750.00. Defendants shall remit payment to the Board within thirty (30) days after service of the fully-executed Order.
- IV. That Defendants shall comply with all provisions set forth in N.C. Gen. Stat. §§ 89D-12 and 13.

This the ____ day of _____, 2020.

Superior Court Judge Presiding

CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.



JUAN TOLENTINO JUAREZ

STATE OF NORTH CAROLNA

COUNTY OF WAKE

I certify that JUAN TOLENTINO JUAREZ appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document:

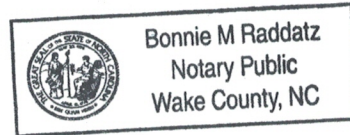
Sworn to and subscribed before me this the 20th day of MARCH 2020.



Notary Public

BONNIE M. RADDATZ
Typed or Printed Notary Name

My Commission Expires: 12/17/2024



CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

MAGNOLIA LANDSCAPING PRO LLC.

By J.T.J
Juan Tolentino Juarez
Print Name
owner
Print Title

STATE OF NORTH CAROLNA

COUNTY OF WAKE

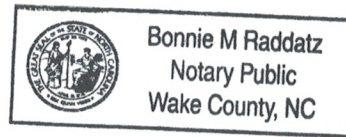
I certify that Juan Tolentino Juarez appeared before me this day, acknowledging to me that he/she is the owner of Magnolia Landscaping Pro LLC and as such is authorized to sign and has voluntarily signed the foregoing document:

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

Bonnie M Raddatz
Notary Public

BONNIE M. RADDATZ
Typed or Printed Notary Name

My Commission Expires: 12/17/2021



WE CONSENT:

Consent to entry of the foregoing is hereby acknowledged.

This the 26 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:

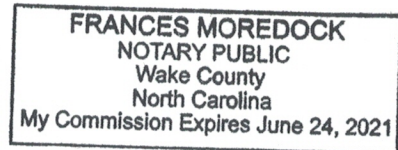
Sworn to and subscribed before me this the 26th day of March 2020.



Notary Public

Frances Moredock

Typed or Printed Notary Name



My Commission Expires: June 24, 2021

NICHOLS, CHOI & LEE, PLLC

By: 

Anna Baird Choi, NCSB # 20836
4700 Homewood Court, Suite 220
Raleigh, NC 27609
Telephone: (919) 341-2636
Facsimile: (919) 647-4485
Email: anna@ncl-law.com
Counsel for Plaintiff Board