

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

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20 CVS 15037

WAKE CO., C.S.C.

NORTH CAROLINA LANDSCAPE)
CONTRACTORS' LICENSING BOARD,)

Plaintiff,)

v.)

RYAN MILLWOOD dba)
ASHEVILLE LANDSCAPING)
SERVICES,)

Defendant.)

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 North Carolina General Statutes.
2. Defendant Ryan Millwood ("Defendant Millwood") is:
 - a. A citizen of Buncombe County, North Carolina, who resides at 19 Streamview Lane, Arden, NC 28704;
 - b. Not presently and was not previously licensed by Plaintiff Board as a "Landscape contractor," as that term is defined by N.C. Gen. Stat. § 89D-11(3); and
 - c. Owner of Asheville Landscaping Services.
3. Asheville Landscaping Services is not a business organized under North Carolina law and is not a registered business under North Carolina law.

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(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 constitutes 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) requires that a person first obtain licensure as a landscape contractor before providing landscape construction or contracting services, unless the person qualifies for one or more of the exemptions set forth in N.C. Gen. Stat. § 89D-13.
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. Plaintiff Board received a complaint and conducted an investigation into whether Defendant was engaging in the unlicensed practice of landscape work costing \$30,000.00 or more in a one-year period at one site.
10. Defendant entered into a contract with Clarendon Properties to provide landscaping and irrigation services at its property for a Fairfield Inn & Suites, located at 25 Fairfield Approach Drive, Weaverville, Buncombe County, North Carolina.
11. The above-referenced project was to install plants, trees, shrubs, a drip irrigation system, pine needle straw, landscape lighting, and stone edging around flower beds. The total contract price was \$53,484.00.
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.

CONCLUSION 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 Defendant, 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.

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

- I. That Defendant Millwood 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 the costs of this action, including Plaintiff Board's reasonable costs associated with the investigation and prosecution of Defendant's violation, be taxed against Defendant in the amount of \$1,500.00. Defendant shall remit payment to the Board within thirty (30) days after service of the fully-executed Order.
- III. That Defendant shall comply with all provisions set forth in N.C. Gen. Stat. §89D-12 and 13.

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This the 24th day of March, 2021.




Superior Court Judge Presiding

CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

RYAN MILLWOOD dba ASHEVILLE LANDSCAPING SERVICES


By 
Ryan S Millwood
Print Name

STATE OF NORTH CAROLNA

COUNTY OF Buncombe

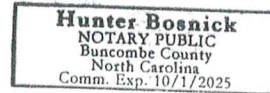
I certify that Ryan Millwood appeared before me this day, acknowledging to me that he/she is the Owner of Asheville Landscaping Services and as such is authorized to sign and has voluntarily signed the foregoing document:

Sworn to and subscribed before me this the 9th day of March 2021.


Notary Public

Hunter Bosnick
Typed or Printed Notary Name

My Commission Expires: 10-1-2025



CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

This the 11 day of March 2021.

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 11th day of March 2021.



Notary Public

Frances Moredock
Typed or Printed Notary Name

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

My Commission Expires: June 24, 2021

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