

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 013236

NORTH CAROLINA LANDSCAPE)
CONTRACTORS' LICENSING BOARD,)

Plaintiff,)

v.)

WATERSPIRIT, INC. and)
STEVEN ROBBAT,)

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 North Carolina General Statutes.
2. Defendant Waterspirit, Inc. ("Defendant Waterspirit") is:
 - a. A corporation organized under the laws of North Carolina with a principal place of business at 451 Pacolet Pond Lane, Tryon, Polk County, North Carolina; and
 - 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).
3. Defendant Steven Robbat ("Defendant Robbat") is:
 - a. A citizen and resident of Polk County, North Carolina who resides at 451 Pacolet Pond Lane, Tryon, Polk County, North Carolina;

- 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. President and Registered Agent of Defendant Waterspirit.
4. Defendant Waterspirit was administratively dissolved by the North Carolina Secretary of State on May 26, 2021.
5. 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.

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 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-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:

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. N.C. Gen. Stat. § 89D-13(5) provides a limited exception for projects “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).”
10. Defendant Waterspirit’s website states: “We focus on creating beautiful landscape environments for those who want very high quality and understand the costs associated with using the best materials and craftsmen.” A true and accurate copy of the website page is attached to Plaintiff Board’s Complaint as Exhibit 1.
11. Defendant Waterspirit’s website also states: “Our construction technique has been refined over the years with a priority on long-term enjoyment and low maintenance. We are very proud to state that we have never had a waterscape leak in the 32 years we have been creating them.”

12. By advertising online as providing landscape design and environments, waterscapes, and other landscape services, Defendants have violated N.C. Gen. Stat. § 89D-12.
13. On or about April 12, 2021, Howard Shiffman filed a complaint with Plaintiff Board alleging Defendants engaged in the unlicensed practice of landscape contracting.
14. On May 19, 2020, Defendants entered into a Purchase Agreement with Howard Shiffman to “create a custom waterscape with landscaping” at 2445 Patton Road, Franklin, Macon County, North Carolina. The total contract price was \$187,000.00. A true and accurate copy of the contract is attached to Plaintiff Board’s Complaint as Exhibit 2.
15. The Design Outline for the above-referenced project listed the following: water feature, boulder wall, flagstone patio and pathway, fire pit, landscaping, and lighting.
16. By entering into a contract for landscaping services in excess of \$30,000 during a 12-month period without first either obtaining requisite licensure from Plaintiff Board or qualifying for any of the licensure exemptions set forth in N.C. Gen. Stat. § 89D-13, Defendants have engaged in the unlicensed practice of landscape construction and contracting.
17. Plaintiff Board is entitled to have the Court restrain and permanently enjoin Defendants from any further conduct in violation of the law.
18. 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 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 Defendants be permanently enjoined from the practice of landscape construction or contracting in North Carolina, until such time, if ever, Defendants are 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 Defendants' violation, be taxed against Defendant in the amount of \$1,500.00. Defendants shall remit payment to the Board within thirty (30) days after service of the fully-executed Order.
- III. That Defendants shall comply with all provisions set forth in N.C. Gen. Stat. § 89D-12 and 13.

This the ____ day of February, 2022.

Superior Court Judge Presiding

CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

WATERSPIRIT, INC.

By Steven Robbat
STEVEN Robbat
Print Name

STATE OF NORTH CAROLINA

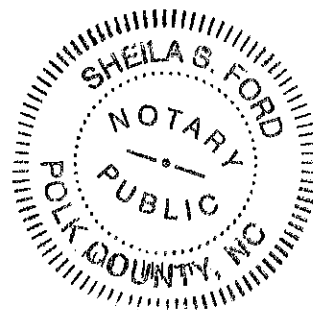
COUNTY OF Polk

I certify that Steven Robbat appeared before me this day, acknowledging to me that he/she is the President of WATERSPIRIT, INC. and as such is authorized to sign and has voluntarily signed the foregoing document:

Sworn to and subscribed before me this the 7 day of March 2022.

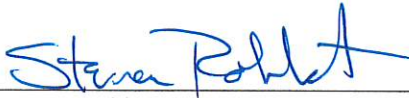
Sheila S Ford
Notary Public
Sheila S Ford
Typed or Printed Notary Name

My Commission Expires: 6-13-2025



CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

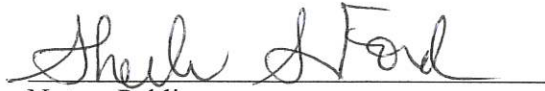


Steven Robbat

STATE OF NORTH CAROLINA

COUNTY OF Polk

Sworn to and subscribed before me this
the 7th day of March 2022.



Notary Public

Sheila S Ford

Typed or Printed Notary Name

My Commission Expires: 6-13-2025



CONSENTS:

Consent to entry of the foregoing is hereby acknowledged.

This the ___ day of _____ 2022.

NORTH CAROLINA LANDSCAPE
CONTRACTORS' LICENSING BOARD

By: _____
Kerry Danger, Chairman

STATE OF NORTH CAROLINA

COUNTY OF _____

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 _____ day of _____ 2022.

Notary Public

Typed or Printed Notary Name

My Commission Expires: _____

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