

NORTH CAROLINA
DAVIDSON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CVS 1400

FERGUSON FIBERS, INC., a North)
Carolina Corporation,)
)
Plaintiff,)
)
vs.)
)
TONY CRAIG FOSTER,)
)
)
Defendant.)

MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION
TO DISQUALIFY COUNSEL

NOW COMES Plaintiff Ferguson Fibers, Inc. (hereinafter "FFI" or "Plaintiff"), through counsel, pursuant to BCR 15.6 and 15.8, and hereby submits the foregoing memorandum in support of its opposition to Defendant's motion to disqualify The Law Offices of J. Calvin Cunningham (the "Cunningham Firm") from serving as counsel for Plaintiff FFI in the above-captioned matter.

PROCEDURAL POSTURE OF CASE

Plaintiff filed suit as an employer versus an employee who negligently and intentionally caused damages and delays to Plaintiff's Mexican operations, caused lost profits, converted to his own use two (2) types of corporate property, and breached an employment contract. Plaintiff seeks punitive damages for intentional acts of sabotage.

Defendant Tony Foster (hereinafter "Foster") denied the allegations in this suit and countersued that he was not sufficiently compensated by FFI as a salaried employee.

After the complaint was filed on April 15, 2009, and served on May 11, 2009, the defendant notified plaintiff that this action should be treated as a Mandatory Complex Business Case. A Designation Order was entered on June 10th. After an Answer and Counterclaim dated July 10th was filed, a Notice of Case Management Conference was ordered on August 12th. The

parties agreed to a Case Management Report on August 28th. Only thereafter, on September 11, 2009, did the Defendant file a Motion to Disqualify.

STATEMENT OF FACTS

FFI has attached two (2) affidavits in response to Foster's motion. They are the Cunningham affidavit (hereinafter "Cunningham") and John H. Ferguson's affidavit (hereinafter "Ferguson"). John H. Ferguson is the president and sole stockholder of FFI. (Ferguson ¶2) (Cunningham ¶4)

Foster was an employee of FFI as a mechanic. (Cunningham ¶6) (Ferguson ¶9) Foster resigned from employment with FFI in 2008. (Ferguson ¶6 and Exhibit "A" to Ferguson's Affidavit) This suit arose from Foster's irresponsible and damaging actions taken against his employer at a time when FFI was seeking to expand its operations into Mexico.

Foster, as a client to the Law Offices of J. Calvin Cunningham, was introduced to Calvin Cunningham (hereinafter "Cunningham") as the attorney for FFI. (Cunningham ¶3) (Ferguson ¶2) Foster ultimately was engaged in two suits, one by his former wife over child support issues, (Cunningham ¶8, also Exhibit "A"), and the other suit surrounding the sale of his current wife's tanning bed business, (Cunningham ¶14, also Exhibit "B"), (hereinafter the "Manecchi suit").

The representation in child support matters was just that, i.e. a question of responsibility to financially support Foster's children by a prior marriage. Cunningham's representation centered around Foster's claim of an offset. (Cunningham ¶9). Foster did not consult with Cunningham about his employment status nor did he seek advice from Cunningham concerning Cunningham's friend and client John H. Ferguson, Jr., nor FFI. (Cunningham ¶10).

At no point during the Manecchi suit was Cunningham consulted by Foster regarding his employment status. (Cunningham ¶18) In fact, most of the dealings Cunningham had with the Manecchi suit were with Nancy Foster, Foster's wife. (Cunningham ¶17)

LEGAL AUTHORITIES

The three requirements to disqualify counsel have been reviewed in the recent case of *Ferguson v. DDP Pharm., Inc.* 174 N.C. App 532 (2005). As stated therein, for a party to prevail, it must show: (1) an attorney-client relationship existed concerning a prior case; (2) the civil lawsuit is the same as or a substantially related matter to the prior case; and (3) the party's position is materially adverse to the moving party's interest. (page 536)

FFI strongly contests the requirement that its current lawsuit is the same as Foster's earlier cases and contests that either suit was a substantially related matter to a prior case. In *Ferguson, op. cit.*, counsel represented the Plaintiff in a criminal case, left the law firm, and the firm sought to defend Plaintiff's civil suit "arising from the same operative facts as the criminal case." (page 537) Here, Exhibits A and B to the Cunningham Affidavit clearly show that neither prior suit was grounded upon facts surrounding Foster's employment relationship.

Additionally, Foster's allegations that Cunningham consulted with him about said relationship is definitely strongly refuted. (Ferguson ¶5, ¶7, ¶12) (Cunningham ¶21, ¶22, ¶23, ¶25) Significantly, Foster's Affidavit is devoid of which exact matters he contends he discussed with Cunningham. Foster doesn't even reference the Complaint in this lawsuit in his Affidavit. Additionally, Foster's Exhibit B defines the former relationship, showing child support matters were the subject of that suit by his former spouse.

Foster, interestingly, attempts to broaden his "consultations" with Cunningham to include his employment relationship with FFI. This is flatly denied. (Cunningham ¶20). This boot strapping maneuver is an attempt to circumvent the "substantially related matter" requirement enunciated in Rule 1.9 (a) and (b). There is no relationship with the prior suits and the broad statements in Foster's Affidavit.

At best, Foster was misguided in his belief that, as FFI's lawyer, Cunningham could or would give Foster any advice on negligently or intentionally damaging the company's machinery (Claims for Relief 1 and 2 in the Complaint), taking of company assets (Claims for Relief 4 and 5 in the Complaint), or going to work for a competitor in violation of a company contract (Claim for Relief 6 in the Complaint). Foster's position is patently unreasonable.

Foster's reliance on Rule 1.7 is also misplaced. It presupposes a concurrent conflict of interest with counsel representing FFI in this suit versus the representation of Foster in a domestic child support action and a contractual dispute. Giving Foster the benefit of the doubt, a chance comment about his dissatisfaction with his job to Cunningham (not inconceivable) are not grounds for disqualification. (See *Ferguson* ¶11) It is not related to representation of the former client.

The three pronged test articulated in *Ferguson* has not been met by Foster. The second requirement is missing. Cunningham's representation of FFI is not related to a matter of former representation of Foster. Cunningham was not consulted by Foster regarding employment (Cunningham ¶21) or financial matters that Foster now contends he had access to (*Ferguson* ¶9). Based upon the first meeting of Foster and Cunningham, at no time in Foster's relationship with Cunningham could Foster even assume he was speaking with Cunningham in confidence in relation to the allegations contained in this suit. Foster's position that the current complaint is a substantially related matter to Foster's alleged conversations about employment is simply untenable. His denials in his answer to this suit pose the pertinent inquiry as to how was it possible for Foster to consult with counsel about a claim which Foster denied as having occurred.

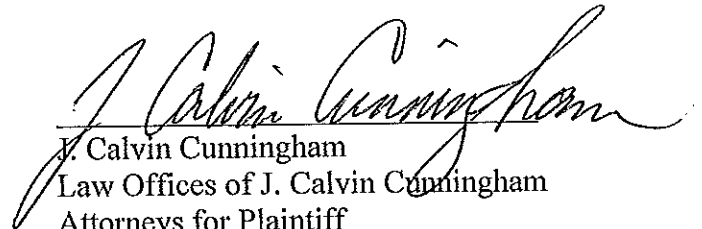
As stated in *Ferguson*, page 537, the rule in North Carolina is "Rule 1.9(a) prohibits representation of an adverse client in a matter that is the same, or substantially related to, that of a former client. Rule 1.9, Comment 2 states, '[t]he underlying question is whether the lawyer

was so involved in the matter that the subsequent representation and be justly regarded as a changing of sides in the matter in question,” That has not even remotely taken place here.

CONCLUSION

Defendant Foster’s allegations of discussions with counsel concerning his employment relationship with FFI in a child support suit or a contractual issued suit, when at all times in question he was aware of Cunningham’s relationship both personally and professionally with Mr. Ferguson and FFI, borders on the incredible and is denied. FFI respectfully requests this Court DENY this Motion to Disqualify Counsel

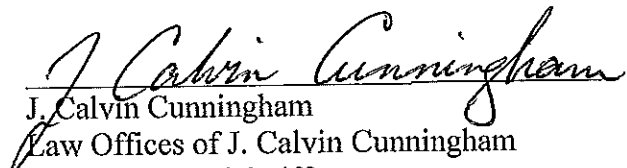
This the 30th day of September, 2009.


J. Calvin Cunningham
Law Offices of J. Calvin Cunningham
Attorneys for Plaintiff
Eighteen South Main Street
Lexington, North Carolina 27292
Telephone: (336) 249-7731

CERTIFICATION

The undersigned hereby certifies that the foregoing brief complies with Business Court Rule 15.8.

This the 30th day of September, 2009.

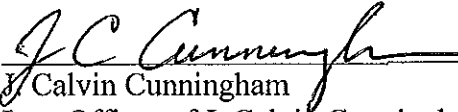

J. Calvin Cunningham
Law Offices of J. Calvin Cunningham
Attorneys for Plaintiff
Eighteen South Main Street
Lexington, North Carolina 27292
Telephone: (336) 249-7731

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a copy of the forgoing Memorandum in Opposition to Defendant's Motion to Disqualify Counsel on the following named individual (s) by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office, or by hand-delivery, properly addressed to:

Bradley A Roehrenbeck
Kilpatrick Stockton, LLP
1001 West Fourth Street
Winston-Salem, North Carolina 27101-2400

This the 30 day of September, 2009.



J. Calvin Cunningham
Law Offices of J. Calvin Cunningham
Attorneys for Plaintiff
Eighteen South Main Street
Lexington, North Carolina 27292
Telephone: (336) 249-7731

NORTH CAROLINA
DAVIDSON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CVS 1400

FERGUSON FIBERS, INC., A North Carolina Corporation,)
)
)
Plaintiff,)
)
Vs.)
)
TONY CRAIG FOSTER,)
)
Defendant.)

AFFIDAVIT OF
JOHN H. FERGUSON, JR.

John H. Ferguson, Jr., having been duly sworn, according to law, doth depose and state, as follows:

(1). I introduced Tony Foster (hereinafter Foster) to Calvin Cunningham (hereinafter Cunningham).

(2). When I introduced Tony to Cunningham, I identified him as Ferguson Fibers Inc.'s (hereinafter FFI) attorney as well as my close personal friend. I solely own all of the stock in FFI.

(3). Cunningham and his wife are friends of mine. He also is an advisor of, friend to, and mentor of my three children. He and his wife took my children to Washington, D.C. for an educational trip for three days in the summer of 2006 and also have had the children for beach trips on more than one occasion.

(4). Foster asked my permission to hire Cunningham to represent Foster in a dispute with his ex wife, Lori. The agreement was that Foster's bills for legal services would be forwarded to FFI and that FFI would advance payment for same. This lawsuit was about Foster's failure to be financially responsible for his children's welfare.

(5). I do not find it to be a credible statement that with Foster's knowledge of Cunningham's relationship with FFI that he would have discussed his employment with FFI with Cunningham.

(6). Further, Foster resigned from the company via the attached e-mail. Foster told me he was going to work with one of his fishery buddies at Salem Electric. This was and is a lie. He went to work for a competitor, KCK and Wayne Dibella. This was done despite a non-compete agreement signed by Foster years ago.

(7). The fact that Foster lied to me about his leaving FFI argues persuasively to me that he is not truthful in his affidavit seeking disqualification of Cunningham. How could he not have known any of the alleged comments he made to Cunningham were made to FFI's lawyer? It would be elementary that to lose the company attorney as our litigator could only make this lawsuit more expensive to FFI. That is the purpose of the motion.

(8). On or about October 10, 2008, less than two (2) weeks before Foster told me he resigned to work for Salem Electric, there was a criminal breaking and entering at FFI. Aside from damage to a door frame, the thieves took only a hard drive and computer. Nothing else was taken.

(9). If Foster indicates he discussed FFI's financial situation with Cunningham, which I don't believe to be truthful, the only way I would believe he had any financial information of FFI would be through the theft of the data. After all, he was only a mechanic at FFI.

(10). I find paragraph eight (8) of Foster's affidavit either to be a lie or the confession of a thief, a burglar, or both. He had no access to the company's financial

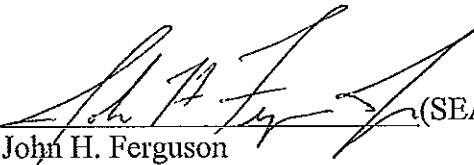
data. I now believe that Foster left FFI's employment in conjunction with Luis Betancourth's plan. Luis Betancourth has admitted to criminal conduct and is currently under criminal indictment in reference to his employment with FFI.

(11). Foster was known around the plant as a "whiner" or someone who always complained about everything. I have no doubt in my mind that he told Cunningham he did not like going to Mexico to work on machinery there. He told me the same thing.

(12). I have read Cunningham's affidavit and affirm it to be truthful in all respects.

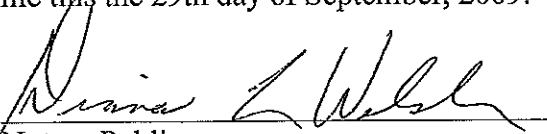
Further your affiant sayeth not.

This the 29th day of September, 2009.


_____(SEAL)
John H. Ferguson
President
Ferguson Fibers, Inc.

NORTH CAROLINA
DAVIDSON COUNTY

Sworn to and subscribed before
me this the 29th day of September, 2009.



Notary Public

My Commission Expires: 12/17/2011

Diana L. Welsh
Notary Public
Davidson County, NC
My Commission Expires 12/17/2011

From: Luis Betancourth [mailto:luis_betancourth@fiiusa.net]
Sent: Tuesday, October 21, 2008 11:24 AM
To: Johnny Ferguson
Subject: Fw: Resignation

----- Original Message -----

From: TONY FOSTER
To: luis_betancourth@fiiusa.net
Sent: Tuesday, October 21, 2008 9:51 AM
Subject: Resignation

Dear Luis and Johnny,

This is to inform you that I have been presented with an opportunity that will enable me to work in the area of my slated preference, electrical controls. Therefore, I am tendering my resignation from The Ferguson Companies and wish to advise that Oct. 24 2008, will be my last day of employment.

I would like to thank you for the experience of having worked for The Ferguson Companies.

Sincerely,
Tony Foster

EXHIBIT

A

NORTH CAROLINA
 DAVIDSON COUNTY

IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION
 09 CVS 1400

FERGUSON FIBERS, INC., A North Carolina Corporation,

 Plaintiff,

 Vs.

 TONY CRAIG FOSTER,

 Defendant.

)
)
)
)
)
)
) AFFIDAVIT OF
) JAMES CALVIN CUNNINGHAM
)
)
)

James Calvin Cunningham, having been duly sworn, according to law, doth depose and state, as follows:

- (1). I am an attorney at law and began practicing in 1974.
- (2). As such, I am counsel for Ferguson Fibers, Inc. (hereinafter "FFI").
- (3). I met Tony Foster when he was introduced to me as FFI's lawyer by John H. Ferguson, Jr.
- (4). John H. Ferguson, Jr. is the sole owner of FFI and is the corporate president.
- (5). Tony Foster (hereinafter "Foster") was an employee of FFI.
- (6). To my knowledge, at all times in question Foster was a mechanic at FFI.
- (7). When I was introduced as corporate attorney for John Ferguson's company and a personal friend of John Ferguson, Foster acknowledged this.
- (8). Afterwards, Foster was sued by his former spouse for failure to pay money to or for the benefit of his children, from that marriage. See exhibit "A", attached.

(9). Foster denied the accusations and the case centered around his documentary production of paper writings to prove he was entitled to an offset from the sums owed.

(10). In this representation, at no time was there an opportunity or inclination on my part to discuss Foster's employee, employer relationship.

(11). At all times during our firm's representation of Foster, I was and am now, FFI's corporate attorney.

(12). Foster acknowledged from the first introduction that I was "John Ferguson's lawyer."

(13). When his former spouse sued Foster, Foster requested FFI's financial assistance for payment of legal fees. FFI agreed to advance payment of Foster's fees.

(14). Much later, Foster and his wife sought legal representation in a commercial dispute with Raymond Manecchi and his wife, Evelyn (hereinafter Manecchi). See Exhibit "B", attached.

(15). This case was contractual in nature wherein Nancy Foster had drafted a contract to sell her tanning bed enterprise to Manecchi, had failed to require a sufficient down payment and had otherwise inexpertly mismanaged this commercial sale.

(16). The Manecchi defense was that Foster and his wife had misrepresented the truth about the business profits and had lied about the income potential of the tanning bed business.

(17). Most of my contact in the Manecchi dispute was with Foster's wife Nancy.

(18). At no time did Foster discuss with me or my associate his employment relationship with FFI.

(19). In fact, I didn't know he had the business background or business knowledge to be able to form an opinion to be critical of FFI's management until I read his affidavit, (Foster's Affidavit, paragraph eight (8))

(20). At no time was my firm retained by Foster, paid by Foster, or consulted by Foster via telephone or in person, or by means of electronic communication or in any other way to discuss, advise, or research any employment issues and certainly not any issues surrounding his actions or inactions stated in the various claims for relief in this lawsuit. Foster never made an appointment with me or this firm to discuss his relationship with FFI.

(21). Foster's affidavit is inaccurate if he contends he discussed his working relationship with FFI with me. I never knew his working relationship with John Ferguson, Jr. was "strained".

(22). I was unaware that Foster contemplated leaving FFI. I was surprised when I learned of this from John Ferguson, Jr.

(23). Neither of the prior suits referenced above are even remotely tied to Foster's working relationship with FFI. To my knowledge, no connection exists between prior representation and this suit.

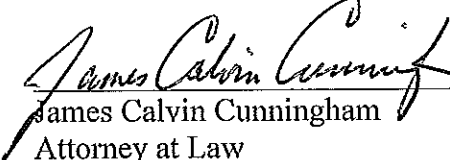
(24). I never believed Foster would concoct an affidavit to misrepresent to a court non-events and conversations which did not take place in order to attempt to gain an unfair advantage in this litigation.

(25). If I even remotely thought Foster's statements of "confidential" ¶7... "thoughts and impressions" ¶11 "advised me" ¶11 "protected by attorney-client

privilege" ¶12 or "unfair advantage in litigation" ¶13 were accurate, I would not have filed this suit on behalf of FFI. These conversations simply did not take place.

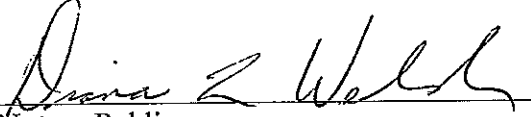
Further your affiant sayeth not.

This the 29 day of September, 2009.

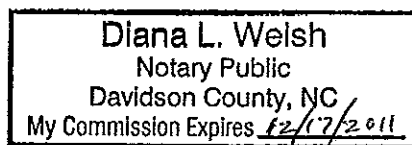
 (SEAL)
James Calvin Cunningham
Attorney at Law

NORTH CAROLINA
DAVIDSON COUNTY

Sworn to and subscribed before
me this the 29th day of September, 2009.


Notary Public

My Commission Expires: 12/17/2011



NORTH CAROLINA
DEPARTMENT OF HUMAN RESOURCES
CHILD SUPPORT ENFORCEMENT

LORI P. WESTNEAT)
Custodian,)
)
VS.)
)
TONY C. FOSTER)
Defendant.)

Absent Parent:
TONY C. FOSTER
SSN# : 241-06-9116
Client Name :
LORI P. WESTNEAT
IV-D # : 0005059808
DOCKET # : DEC 1 (2004)

FILED #40
CLERK OF SUPERIOR COURT
MECKLENBURG COUNTY, N.C.

AFFIDAVIT OF ARREARS

I, the undersigned, affirm and certify:

1. That the above-reference Obligor was ordered to pay child support in the amount of ~~\$-00~~ 21,000 and that a copy of said order and all subsequent modifications of said order are attached hereto by reference into this affidavit.

2. That the aforementioned Obligor is in arrears under the aforementioned order in the amount of ~~\$0-00~~ 21,000 as of 10/21/2004.

Lori P. Westneat
(Custodian Signature)

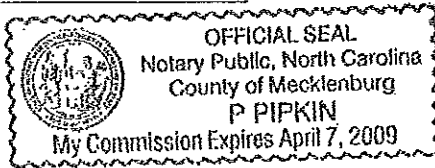
(Agency Representative)

Subscribed and sworn before me

this the 1st day of Nov, 04.

[Signature]
Notary Public

My Commission expires: _____



STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

DOCKET # 91CV02153
IV-D # 0005059808

State of North Carolina)
on behalf of)
LORI P WESTNEAT)
)
vs Plaintiff,)
)
)
TONY C FOSTER)
)
Defendant.)

MOTION TO INTERVENE

FILED #40

DEC 1 12 004

CLERK OF SUPERIOR COURT
MECKLENBURG COUNTY

Pursuant to Rule 24(a) of the Rules of Civil Procedure, the Child Support Enforcement Agency, intervenor, moves the court to intervene as Plaintiff in this action, on the following grounds:

1. An action presently exists between LORI P WESTNEAT and TONY C FOSTER and concerns, among other matters, support of their minor child(ren):
KATIE L FOSTER
HEATHER M FOSTER

2. The Child Support Enforcement Agency is required pursuant to Article 9, Chapter 110 of North Carolina General Statutes to provide child support services to individuals receiving public assistance or upon proper application and payment of the application fee from individuals not receiving public assistance.

3. The custodian/custodial parent, LORI P WESTNEAT, the Obligee in the above captioned action has applied for Child Support Enforcement Services, as evidenced by the attached application and contract.

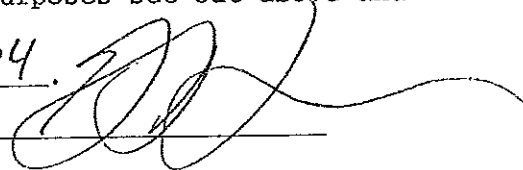
4. In order to provide child support enforcement services to Obligee as mandated by Article 9, Chapter 110 of the General Statutes, and to bring forth the motion in the cause which follows, the Movant Child Support Enforcement Agency seeks to intervene in this action.

5. The Movant is entitled as a matter of law to intervene in this action for the purpose of providing support services for the parties' minor child(ren).

Wherefore, Movant prays the Court to allow movant to intervene as a matter of right as a party Plaintiff in this action for the purposes set out above and contained in the accompanying motion.

This the 9 day of November, 2004.

IV-D ATTORNEY
GARY HENDERSON
500 W TRADE ST, STE 557
CHARLOTTE NC 28202
(704) 342-6325



Docket Number :

MOTION TO REDIRECT

NOW COMES the MECKLENBURG County Child Support Enforcement Agency, on behalf of Obligee pursuant to N.C.G.S. § 110-130.1 and moves the Court to name NC Child Support Centralized Collections as the designated payee for any and all child support payments received in this action and that NC Child Support Centralized Collections be ordered to transmit these child support payments to the North Carolina Department of Health and Human Services for proper disbursement.

Wherefore, MECKLENBURG County Child Support Enforcement Agency prays that the Court order NC Child Support Centralized Collections to serve as the designated payee for any and all child support payments received in this action and that NC Child Support Centralized Collections be ordered to transmit these payments to the North Carolina Department of Health and Human Services for proper disbursement.

MOTION TO MODIFY SUPPORT ORDER

NOW COMES the MECKLENBURG County Support Enforcement Agency, pursuant to N.C.G.S. § 110-130.1, N.C.G.S. § 50-13.7 and N.C.G.S. § 50-13.4 and moves the court to modify the current order for child support and as grounds therefore shows unto the Court the following:

1. An Order was entered by this Court on _____ ordering the Obligor to pay \$0.00 for the support of his/her minor child(ren) (and) pay \$0.00 for medical support of his/her minor child(ren)
- (and) provide medical insurance coverage for his/her minor child(ren)
- (and) pay _____ per towards retroactive support owed to the State in the amount of _____
- (and) pay _____ per towards retroactive support owed to the Client in the amount of _____

2. There has been a change of circumstances since the entry of the Order referred to above which materially affects the welfare of the minor children to wit:

3. The responsibility of the payor to provide support in this matter has changed for the reason(s) above.

Wherefore the Obligee prays that the Order be modified as to the ongoing child support obligation, by:

Ordering all sums paid pursuant to this Order be paid through NC Child Support Centralized Collections for disbursement to the North Carolina Department of Health and Human Services.

Ordering Obligor to continue to pay child support as previously ordered for the child

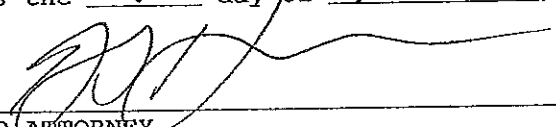
KATIE LAYNE FOSTER
HEATHER MORGAN FOSTER

until the child graduates, otherwise ceases to attend school on a regular basis, reaches the age of twenty or is otherwise emancipated, whichever comes first.

Docket Number :

ORDERING CURRENT OBLIGATION OF 180.00 AND ALL ARREARS

This the 9 day of Nov., 2007.



IV-D ATTORNEY
GARY HENDERSON
500 W TRADE ST, STE 557
CHARLOTTE NC 28202
(704) 342-6325

NORTH CAROLINA
DAVIDSON COUNTY


IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILED

7CV504361

NANCY FOSTER and TONY FOSTER)
Plaintiffs)
DAVIDSON COUNTY, C.S.C.

Vs.

BY 

COMPLAINT

(Jury Trial Demanded Pursuant
to N.C. Gen. Stat. 1A-1, Rule 38)

RAYMOND A. MANECCI and EVELYN)
M. MANECCI,)
Defendants)

Plaintiffs, complaining of the Defendants, say and allege as follows:

I.

The Plaintiffs are citizens and residents of Davidson County, North Carolina.

II.

The Defendants are citizens and residents of Guilford County, North Carolina.

III.

The Defendants operate a business known as Paradise Tanning at 53 South Talbert Boulevard, Lexington, North Carolina.

IV.

On or about March 15, 2007, Plaintiffs entered into an agreement to sell certain tanning equipment to Defendants, with private financing.

V.

The private financing of this sale was evidenced by a Promissory Note. Said Note provided for nine percent (9%) interest.

VI.

The Note further provided for three equal installments of Seven Thousand Dollars (\$7,000.00) each, one on the date of said sale, another on May 1, 2007, and the third installment to be paid on June 15, 2007, all of which reduced the original purchase price of Seventy Thousand Dollars (\$70,000.00).

VII.

Said Note also provided that the balance of the purchase price would be paid in thirty-six (36) monthly installments of Four Hundred Fifty-six Dollars and Seventeen (\$456.17) beginning July 15, 2007 and continuing each month thereafter, on the 15th of each month, until the balance of Fifty Thousand Seven Hundred Dollars and Forty-six Cents (\$50,700.46) was paid in full at nine percent (9%) interest.

VIII.

Said Note contained a provision for late charges of Thirty Dollars (\$30.00) as well as the payment of attorney fees of ten percent (10%) of the unpaid balance should said Note be placed with an attorney for collection purposes.

IX.

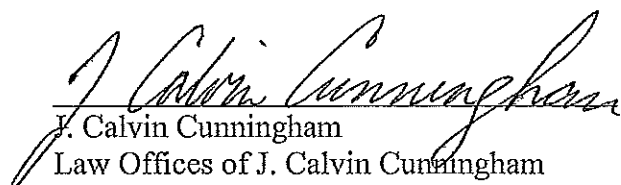
Defendants have defaulted in payments on said Note beginning on May 1, 2007.

X.

The Defendants are indebted to Plaintiffs for Sixty Thousand Eight Hundred Twenty-one Dollars and Thirty-one Cents (\$60,821.31) at nine percent (9%) interest from November 15, 2007 until judgment, and thereafter at the legal rate, late charges for May, June, July, August, September, October and November of 2007, and each month thereafter until judgment, as well as Six Thousand Eighty-two Dollars and Thirteen Cents (\$6,082.13) in attorney fees.

WHEREFORE, Plaintiffs Tony Foster and Nancy Foster pray that they have and recover a judgment against the Defendants Raymond A. Manecchi and Evelyn M. Manecchi in the amount of Sixty Thousand Eight Hundred Twenty-one Dollars and Thirty-one Cents (\$60,821.31), interest per said Note until the date of judgment, and thereafter at the legal rate until paid in full, late fees for each month unpaid, attorney fees, the costs of this action, and for such other and further relief to which the Plaintiffs are entitled.

This the 20th day of November, 2007.


J. Calvin Cunningham
Law Offices of J. Calvin Cunningham
Attorneys for Plaintiffs
Eighteen South Main Street
Lexington, North Carolina 27292
Telephone: (336) 249-7731