NORTH CAROLINA	FINTHE GENERAL COURT OF JUSTICE
WAKE COUNTY	2011 JUN -7 AM 10: SUPERIOR COURT DIVISION
	WAKE COUNTY, C.S.C. File No. 07 CVS 07752
STATE OF NORTH CAROLINA, ex rel. ROY COOPER, ATTORNE GENERAL, Plaintiff,	37
v.)) ORDER HOLDING DEFENDANT
TOMMY EDWARD CLACK, indiv	• •
and as Principal and Owner of NEW HANOVER COUNTY ASPH) CIVIL CONTEMPT OF COURT
COMPANY, INC., and NEW HAN COUNTY ASPHALT COMPANY,	OVER)
Defendants.))

THIS MATTER came on for hearing before the undersigned Judge presiding over the May 23, 2011 civil session of Wake County Superior Court upon plaintiff's motion to have defendant Tommy Edward Clack held in civil contempt for failing to abide by this Court's June 8, 2010 Order permanently banning him from performing or offering to perform any residential driveway paving services in this state. At the aforesaid hearing, Assistant Attorney General David N. Kirkman appeared for plaintiff State of North Carolina while attorney Michael McEnery of the Wake County Bar appeared on behalf of defendant Clack. Defendant Clack was not present at the hearing. Based upon its review of the record in this cause, the arguments of counsel, and the testimony of Mrs. Lettie B. Roberson, the Court finds that:

1. This matter is properly before the Court pursuant to Judge Carl R. Fox's Order of April 14, 2011 directing defendant Tommy Edward Clack to appear and show cause why he should not be punished for civil contempt of Court under N.C. Gen. Stat. Chapter 5A, Article 2, for twice

violating this Court's June 8, 2010 Order banning him from performing or offering to perform residential driveway paving services.

- 2. The show cause hearing set in Judge Fox's Order was continued three times at the request of defendant Clack so that he might obtain new counsel and have that counsel familiarize himself with the case. By order of Judge Abraham Penn Jones, the matter ultimately was set for hearing before the undersigned Judge during the week of May 23, 2011. The undersigned Judge heard the matter on Friday, May 27, 2011.
- 3. Defendant Clack's counsel, Mr. McEnery, reported to the Court at the commencement of the May 27 hearing that his client was aware of the hearing that day but would not be appearing.
- 4. Mr. McEnery did not offer any reason for why defendant Clack was not present in the courtroom despite being properly served with plaintiff's motion for contempt and the Court's show cause orders resulting from it.
- 5. Mr. McEnery made certain arguments on defendant Clack's behalf during the show cause hearing. He also presented to the Court, without objection, a year-old document purporting to be an equipment lease whereby the defendant conveyed his paving equipment to one Jerry Ray Tillman, Jr.
- 6. Plaintiff's April 13, 2011 motion for contempt cited two paving jobs performed by defendant Clack. The first job occurred in mid-July of 2010 and involved home owner Lettie B. Roberson of Chatham County, now 81 years of age. The second job was performed in late March of 2011 and involved home owner Dr. Helen Brooks of Greensboro. Mrs. Roberson paid defendant Clack \$7,600 for a small driveway paving job while Dr. Brooks paid him \$72,000 for work on a longer driveway.
- 7. Counsel for defendant Clack maintained that Mrs. Roberson dealt with a man named Ray

Tillman when she had her driveway paved. In her affidavit filed with the Court and in her testimony on May 27, 2011, Mrs. Roberson clearly identified defendant Clack as the man who sold her the paving job. The Court asked her to review the photograph of defendant Clack that was in its file. She did so and testified without equivocation that defendant Clack was the man who sold her the job.

- 8. The Court considers Mrs. Roberson's affidavit and courtroom testimony persuasive and therefore finds that defendant Clack sold her a driveway paving job in violation of the Court's Order of June 8, 2010.
- 9. Defendant's counsel did not contest that his client had performed driveway work for Dr. Helen Brooks in March of this year. He maintained that the work did not constitute residential driveway paving as defined in the Order of June 8, 2010, since the end result was a gravel driveway rather than an asphalt driveway.
- 10. Plaintiff's counsel noted that Dr. Brooks' lengthy affidavit describes defendant Clack as offering to re-pave her driveway. Defendant's merely offering such a service would be a violation of the Court's June 8, 2010 Order.
- 11. Defendant employed the name "Tommy Clark" rather than "Tommy Clack" while offering and performing the work on Dr. Brooks' driveway.
- 12. The Court finds that defendant Clack initially offered to re-pave Dr. Brooks' driveway, which violates of the Court's June 8, 2010 ban on offering such services.
- 13. The Court finds that re-surfacing Dr. Brooks' driveway with gravel also violates the Court's June 8, 2010 ban against performing residential driveway paving services in North Carolina.
- 14. Both of defendant Clack's violations of the Court's ban, one in Chatham County and one

in Guilford County, were willful.

15. Defendant Tommy Clack has failed to show cause why he should not be held in civil

contempt of Court for the aforesaid violations.

16. The purpose of the June 8, 2010 Order still can be satisfied if defendant Clack

relinquishes the fund's collected from Mrs. Roberson and Dr. Brooks and tenders those funds to

the Clerk.

17. Defendant Tommy Edward Clack's failure to appear and show cause, as ordered, may

constitute criminal contempt and will be addressed in a separate order of this Court.

IT IS THEREFORE ORDERED that Defendant Tommy Edward Clack is hereby found

in civil contempt of Court. Defendant Clack shall present himself immediately to the Sheriff of

Wake County, who shall take him into custody and detain him for a period of ninety days. In

accordance with N.C. Gen. Stat. § 5A-22, defendant may purge himself of civil contempt and

secure his release from custody by paying into the Clerk of Court the sum of \$79,600, which

represents the amounts he collected from Lettie B. Roberson (\$7,600) of 124 Jack Bennett Road,

Chapel Hill, NC 27517 and Dr. Helen Brooks (\$72,000) of 409 Sunset Drive, Greensboro, NC.

The means of payment shall be that specified by the Clerk of Court.

SO ORDERED, this the _____ day of June, 2011.

Michael J. O'Foghludha

SUPERIOR COURT TUDGE