

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
File No. \_\_\_\_\_

STATE OF NORTH CAROLINA, )  
*ex rel.* ROY COOPER, ATTORNEY )  
GENERAL, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BRUCE OLVIN MCBARNETTE and )  
SUMMIT CONNECTION LLC, )  
 )  
Defendants. )  
\_\_\_\_\_ )

FILED  
2010 DEC 21 AM 11:08  
WAKE COUNTY, C.S.C.  
BY \_\_\_\_\_  
CONSENT JUDGMENT

This matter came on to be heard and was heard on the joint motion of the undersigned parties for entry of this Consent Judgment, and the Court finds and concludes that:

**FACTS**

1. Plaintiff is the State of North Carolina, acting on relation of its Attorney General, Roy Cooper.
2. Defendant Bruce Olvin McBarnette ("McBarnette") is a resident of the Commonwealth of Virginia. He resides at 248 Willow Terrace, Sterling, Virginia. He is president and sole shareholder of defendant Summit Connection LLC.
3. Defendant Summit Connection LLC ("Summit Connection") is a Virginia limited liability company registered to do business in North Carolina. Its principal place of business is at 248 Willow Terrace, Sterling, Virginia.

**I. Agreements to Rig Bids.**

**A. 2510 Ashe Street, Durham County**

4. Prior to March 10, 2010, Clara Cothron bid at a public tax sale auction of the property at 2510 Ashe Street in Durham County, North Carolina.
5. On or about March 10, 2010, defendant McBarnette telephoned Cothron and learned from her that the property is adjacent to the church of which she is the pastor, and that she desired to use the property for church purposes.

6. On that date defendant McBarnette told Cothron that they could continue bidding against each other, but offered that if she paid him \$1,200.00 he would not upset her bid.

7. On or about March 11, 2010, defendant McBarnette, acting as president of Summit Connection, entered into an agreement with Cothron whereby Summit Connection agreed not to upset her bid on the property, in exchange for which Cothron agreed to pay Summit Connection \$1,200.00.

8. The date of that agreement was within the upset bid period for the property.

9. In keeping with their agreement, Cothron delivered to Summit Connection's duly authorized agent a certified check in the amount of \$600.00, and made a further deposit of \$600.00 directly into Summit Connection's bank account.

10. Cothron obtained title to the property based on her last bid, which defendants did not upset.

***B. 1202 Truman Street, Durham County***

11. Prior to March 25, 2010, Christopher Moore had submitted a bid at a public tax sale auction in Durham County for a property at 1202 Truman Street.

12. On or about March 25, 2010, defendant McBarnette telephoned Moore and learned that Moore greatly desired to purchase the property for his mother to live in.

13. During that conversation defendant McBarnette threatened to keep bidding against Moore, and told Moore that he would lose unless he agreed to pay McBarnette \$1,000.00.

14. McBarnette eventually lowered his demand to \$800.00.

15. On or about March 26, 2010, defendants McBarnette and Summit Connection, by a duly authorized agent, entered into an agreement with Moore whereby Summit Connection promised not to upset Moore's bid on the property in exchange for Moore paying \$800.00.

16. The date of that agreement was within the upset bid period for the property.

17. In keeping with their agreement, defendant Summit Connection refrained from further bidding on the property, and Moore paid it \$800.00 in cash.

18. Moore obtained title to the property based on his last bid, which defendants did not upset.

**C. 1108 Drew Street and 1100 Hazel Street, Durham County**

19. In late October, 2009, Dr. William Hazel-Height, pastor of the Greater St. Paul Missionary Baptist Church, had bid on properties at 1108 Drew Street and 1100 Hazel Street, both in Durham County File No. 09 CVS 4231, for the purpose of revitalizing the neighborhood near the church.

20. Defendant McBarnette, acting as president of defendant Summit Connection, upset Hazel-Height's bids, and then called him with an offer to sell him the properties for about \$49,000.

21. When Hazel-Height declined, defendant McBarnette then offered to sell his bids to Hazel-Height.

22. Instead of competing for those properties, on or about October 27, 2009, defendant McBarnette, acting as president of Summit Connection, induced Hazel-Height to enter into an agreement whereby Summit Connection assigned its bids for 1100 Hazel Street and 1108 Drew Street to Hazel-Height in exchange for \$1,450 for each property, or a total of \$2,900. (Chavis Affidavit Exhibits 4 and 5)

23. Their agreement also states, "Summit will not make any other bids on this property."

24. On that date Summit Connection's bids were the current high bids for those properties.

25. On that date the upset bid period for each of those properties had not expired.

26. The agreement further provides that if the assigned bids remain the winning bids, and if Hazel-Height does not purchase the properties, then defendant Summit Connection may purchase them and keep the assignment fees.

27. Hazel-Height did not purchase the properties, Summit Connection did based on its earlier bids, and Summit Connection kept the funds it had obtained from Hazel-Height.

28. The owners of the four properties, 2510 Ashe Street, 1202 Truman Street, 1100 Hazel Street and 1108 Drew Street, that were the subject of the aforesaid agreements were damaged in at least the amounts that defendants extracted from other bidders, or \$1,200.00, \$800.00, \$1,450 and \$1,450, respectively.

29. As a result of each of the aforesaid agreements, the purchaser obtained title to the property at a price lower than that which would have resulted from free and open competition, to the detriment of the public interest as well as of the interest of the seller and each other person or

entity who had an interest in the property that was the subject of the sale.

30. Also as a result of the aforesaid agreements, defendants Summit Connection and McBarnette were unjustly enriched in the amount of the payments received in connection with those agreements.

## **II. Solicitations to Rig Bids.**

### ***D. 133 E. Cornwallis Street, Durham County***

31. Prior to December 29, 2009, Bidder A submitted a bid for a property at 133 E. Cornwallis Street being sold at a public tax sale auction in Durham County.

32. On or about December 29, 2009, defendant McBarnette contacted Bidder A while the upset bid period was still open, and threatened to bid against Bidder A unless Bidder A paid him \$700.00.

33. Bidder A declined.

34. In keeping with defendant McBarnette's threat, Summit Connection, by its duly authorized agent, then submitted an upset bid and ultimately obtained the property.

### ***E. 1000 Drew Street, Durham County***

35. Prior to January 7, 2010, Bidder B had submitted a bid for a property at 1000 Drew Street in Durham County being sold at a public tax sale auction, and defendants had caused to be submitted an upset bid.

36. On or about January 7, 2010, defendant McBarnette contacted Bidder B while the bid upset period was still open, stated that it is silly for them to keep bidding against each other, and offered that, in exchange for Bidder B paying him \$5,000.00, he would obtain the property and assign it to Bidder B.

37. Bidder B declined.

38. Defendant Summit Connection, by a duly authorized agent, submitted an upset bid and ultimately obtained the property.

### ***F. 219 N. Briggs Street, Durham County***

39. Prior to March 25, 2010, Bidder C submitted a bid for a property at 219 N. Briggs Street in Durham County being sold at a public tax sale auction, and defendants had submitted an upset bid.

40. On or about March 25, 2010, defendant McBarnette contacted Bidder C by telephone while the upset bid period was still open, stated that they do not need to be in a bidding war, and offered to sell Summit Connection's bid on the property to Bidder C for \$1,000.00.

41. Bidder C declined and subsequently submitted the winning bid for the property.

**G. *814 Walker Street, Durham County***

42. Prior to March 29, 2010, defendants and Bidder D had each submitted bids and upset bids for a property at 814 Walker Street in Durham County being sold at a public tax sale auction in Durham County.

43. On or about March 29, 2010, when Bidder D's bid was the current high bid, defendant McBarnette contacted Bidder D while the bid upset period was still open. McBarnette stated that they do not need to fight each other for the property, that McBarnette would outbid him no matter how high the price, and that if Bidder D wanted the property McBarnette would let him have it for \$700.00.

44. Bidder D declined and told McBarnette that if he cannot afford to bid for the property, then he should just back off.

45. Summit Connection then submitted the winning bid for the property.

**H. *217 S. Cloudman Street, 2518 Pitts Drive, and 636 Blackmon Street, Mecklenburg County***

46. Prior to January 4, 2010, Bidder E had submitted bids for the properties at 217 S. Cloudman Street, 2518 Pitts Drive, and 636 Blackmon Street in Mecklenburg County being sold at public tax sales, and defendant Summit Connection had submitted upset bids.

47. On or about January 4, 2010, when defendant Summit Connection's bids were the high bids for each of those properties, defendant McBarnette telephoned Bidder E while the upset bid period was still open for each of those properties.

48. During that conversation McBarnette stated that, rather than Bidder E having to submit at least the minimum \$750 upset bid amount for each property, defendant McBarnette would convey the property to Bidder E in exchange for some amount less than \$750 for each property.

49. The parties understood that, if Bidder E accepted the proposal, they would refrain from further bidding for the properties.

50. Bidder E gave a non-committal answer, and subsequently submitted the winning bids for each of the properties.

51. Each of defendants' aforesaid acts was done knowingly.

### CONCLUSIONS OF LAW

52. Each of the four agreements to refrain from bidding, as outlined in paragraphs 4 through 30 and 51, is an unlawful contract, combination or conspiracy in restraint of trade in violation of N.C.G.S. § 75-1, and is additionally an unfair or deceptive act or practice and/or an unfair method of competition in violation of N.C.G.S. § 75-1.1.

53. Defendants were unjustly enriched in the amounts they received from other bidders in connection with their contracts, combinations or conspiracies to refrain from bidding.

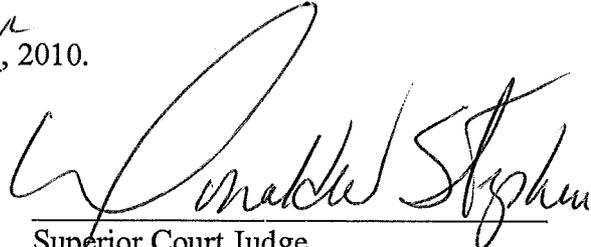
54. Each of the defendants' seven solicitations of other bidders to pay defendants not to bid, as outlined in paragraphs 31 through 51, was an unfair or deceptive act or practice and/or an unfair method of competition in violation of N.C.G.S. § 75-1.1.

It is therefore ORDERED, ADJUDGED AND DECREED that:

1. Defendant McBarnette, individually, Summit Connection LLC and their successors and assigns, including any entities wholly or partially owned or controlled by them, are permanently enjoined from directly or indirectly:
  - a. Entering into any agreement whereby any party thereto agrees to refrain from bidding at any public sale of real property in North Carolina. "Public sale" includes but is not limited to any public tax sale, foreclosure sale, sheriff's sale, and estate sale.
  - b. Soliciting or inviting any person to refrain from bidding, or soliciting or inviting any person to provide anything of value in exchange for an agreement by defendants or either of them to refrain from bidding, at any public sale of real property in North Carolina. "Anything of value" includes but is not limited to a reciprocal agreement not to bid on a different property.
2. Before entry of this Consent Judgment defendants jointly and severally shall pay to the North Carolina Department of Justice civil penalties in the amount of \$20,000.00 ( \$5,000 each) for the four agreements to refrain from bidding; and \$17,500 (\$2,500 each) for the seven solicitations to rig bids, totalling \$37,500. Such payment shall be made by certified check.

3. Before entry of this Consent Judgment defendants jointly and severally shall pay to the North Carolina Department of Justice its reasonable attorney's fees and costs in the amount of \$5,000. Such payment shall be made by certified check.
4. Before entry of this Consent Judgment defendants jointly and severally shall pay to the Clerk of Superior Court of Durham County \$4,900 to be distributed to the former owners of the properties that were the subjects of the defendants' agreements to refrain from bidding, as set forth in paragraph 28. Such payment shall be made by certified check.

This the 17 day of December, 2010.

  
\_\_\_\_\_  
Superior Court Judge

WE CONSENT:

Summit Connection LLC

  
By: Bruce O. McBarnette, President

STATE OF NORTH CAROLINA  
Roy Cooper, Attorney General

  
\_\_\_\_\_  
K. D. Stargis  
Assistant Attorney General

  
Bruce O. McBarnette, Individually

**CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing was this day served upon the Defendants by depositing a copy of the same in the United States Mail, first class postage prepaid and addressed as follows:

Bruce O. McBarnette  
248 Willow Terrace  
Sterling, Virginia 20164-1628

Summit Connection LLC  
248 Willow Terrace  
Sterling, Virginia 20164-1628

This the 21st day of December, 2010.



K. D. Sturgis  
Assistant Attorney General