



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO. 18-CP-10-3825

K-CON, INC.,

Plaintiff,

v.

KING STREET ENTERPRISES, LLC, and  
OHIO IMAGING ASSOCIATES, INC.,

Defendants.

**NOTICE OF MOTION  
AND MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT**

FILED  
CLERK OF COURT  
2019 APR 18 PM 3:36  
J. J. ARNETT, III

**YOU WILL PLEASE TAKE NOTICE** that the Plaintiff, K-Con, Inc., by and through its undersigned counsel, moves before this Court for an Order permitting the Plaintiff to amend the Complaint.

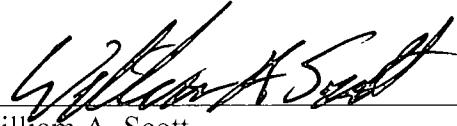
The Plaintiff moves to amend the Complaint to assert claims of fraud in inducement and negligent misrepresentation against Mary Ann Kanters Cook a/k/a Mary Ann Kanters and claims of interference with a contract and negligent misrepresentation against Dr. Albert James Cook, II. A copy of the proposed Amended Complaint is attached.

In accordance with Rule 11 (SCRCP), I affirm that I have communicated with opposing counsel and have attempted in good faith to resolve the matter contained in this Motion.

[SIGNATURE ON NEXT PAGE]

Respectfully submitted,

PEDERSEN & SCOTT, P.C.



William A. Scott

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ATTORNEY FOR PLAINTIFF

Dated this 14 day of April, 2019

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO. 18-CP-10-3825

K-CON, INC.,

Plaintiff,

v.

KING STREET ENTERPRISES, LLC, OHIO  
IMAGING ASSOCIATES, INC., MARY  
ANN KANTERS COOK a/k/a MARY ANN  
KANTERS COOK, and DR. ALBERT  
JAMES COOK, II,

Defendants.

**AMENDED SUMMONS**  
(Jury Trial Demanded)  
(Mechanics Lien Foreclosure, Breach of  
Contract, Unjust Enrichment/Quantum  
Meruit, Fraud and Negligent  
Misrepresentation, and Interference with a  
Contract)

**TO THE DEFENDANTS ABOVE NAMED:**

YOU ARE HEREBY SUMMONED AND REQUIRED to file with the Clerk of Court an answer to the Complaint in the above-captioned case, a copy of which is herewith served upon you, and to serve a copy of your Answer to the subscriber at the office of PEDERSEN & SCOTT, P.C., 775 St. Andrews Blvd., Charleston, South Carolina 29407, within thirty (30) days after the service hereof, exclusive of the day of service. If you fail to answer or otherwise plead within the time aforesaid, the Plaintiff herein will apply to the Court for the relief demanded in the Complaint.

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William A. Scott  
Pedersen & Scott, P.C.  
775 St. Andrews Blvd.  
Charleston, SC 29407  
(843) 556-5656  
ATTORNEY FOR PLAINTIFF

Dated \_\_\_\_ day of April, 2019

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO. 18-CP-10-3825

K-CON, INC.,

Plaintiff,

v.

KING STREET ENTERPRISES, LLC, OHIO  
IMAGING ASSOCIATES, INC., MARY  
ANN KANTERS COOK a/k/a MARY ANN  
KANTERS COOK, and DR. ALBERT  
JAMES COOK II,

Defendants.

**AMENDED COMPLAINT**

(Jury Trial Demanded)

(Mechanics Lien Foreclosure, Breach of  
Contract, Unjust Enrichment/Quantum  
Meruit, Fraud and Negligent  
Misrepresentation, and Interference with a  
Contract)

The Plaintiff, complaining of the Defendants above named, alleges and shows unto this Honorable Court the following:

1. The Plaintiff, K-Con, Inc., is a corporation organized and existing under the laws of the State of South Carolina.
2. The Defendant, King Street Enterprises, LLC (hereinafter "King Street"), is a limited liability company organized and existing under the laws of the State of South Carolina, and is the owner (hereinafter "Owner") of the premises located at 484 King Street, Suite 205, Charleston, County of Charleston, South Carolina, and hereinafter described in Exhibit "A" attached hereto.
3. The Defendant, Ohio Imaging Associates, Inc. (hereinafter "Ohio Imaging"), is a corporation organized and existing under the laws of the State of Ohio. Ohio Imaging leased Suite 205 from King Street Enterprises, LLC.
4. The Defendant, Mary Ann Kanters Cook a/k/a Mary Ann Kanters (hereinafter "Mary Ann Cook" or "Ms. Cook"), is a resident of the State of South Carolina. Upon information and

belief, Ms. Cook is not a shareholder of Ohio Imaging Associates, Inc. Ms. Cook is authorized to act on behalf of Ohio Imaging. Ms. Cook is not a member of King Street Enterprises, LLC. Upon information and belief, Ms. Cook is an authorized manager for King Street Enterprises, LLC. At all times relevant herein, Ms. Cook knowingly participated in, authorized, ordered, and helped perpetuate the tortious actions against the Plaintiff alleged herein.

5. The Defendant, Dr. Albert James Cook, II (hereinafter “Dr. Cook”), is, upon information and belief, married to the Defendant, Mary Ann Kanters Cook. Dr. Cook is not a shareholder of Ohio Imaging and is not a member of King Street. Dr. Cook is the President of Ohio Imaging. At all times relevant herein, Dr. Cook knowingly participated in, authorized, ordered, and helped perpetuate the tortious actions against the Plaintiff alleged herein.
6. Upon information and belief, Ms. Cook and Dr. Cook control both King Street and Ohio Imaging through their ownership interest in, and positions as directors, officers, members and managers of King Street and Ohio Imaging, and the companies or entities that are shareholders and/or members of King Street and Ohio Imaging.
7. This Court has jurisdiction.
8. Venue is proper in Charleston County because it is where the work was performed and where all of the tortious acts took place.

#### **GENERAL FACTUAL ALLIGATIONS**

9. In 2017, Ohio Imaging, Ms. Cook and Dr. Cook solicited proposals from K-Con and other entities for an up-fit to 484 King Street, Suite 205, Charleston, South Carolina.
10. The plans and specifications for the up-fit were provided by Ohio Imaging.
11. On or around October 20, 2017, K-Con submitted a proposal for the up-fit. The proposal

specifically stated that the scope of work in the proposal defined the entirety of the products and services K-Con proposed to provide. Among other things, the proposal stated that K-Con would provide one (1) 30-gallon hot water heater instead of an individual hot water heater for each restroom.

12. On or around October 27, 2017, K-Con and Ms. Cook, allegedly acting as the representative for Ohio Imaging, entered into a written contract for the up-fit to Suite 205. The Contract specifically incorporated K-Con's proposal as part of the Contract. The Contract, including Addendum A and Addendum B (K-Con's proposal) are collectively referred to hereinafter as "the Contract."
13. At the time the Contract was executed, Ohio Imaging and Ms. Cook did not advise K-Con that it objected to any of the terms or conditions in K-Con's proposal. Specifically, Ohio Imaging and Ms. Cook did not advise K-Con that they did not accept K-Con's change to install one (1) 30-gallon hot water heater instead of an individual hot water heater for each restroom.
14. During the course of performance of the Contract, K-Con submitted Requests for Information (RFIs) to obtain information necessary to complete the work because the drawings and specifications provided by Ohio Imaging were not complete and accurate, or otherwise lacked the necessary information to complete the work required by the Contract.
15. Ohio Imaging and Ms. Cook failed to respond to many of the RFIs submitted by K-Con and/or failed to respond in a timely manner.
16. During the course of performance, K-Con requested Ohio Imaging and/or Ms. Cook to inspect the work and provide information necessary to complete the project; however, Ohio Imaging and Ms. Cook failed to respond or failed to respond in a timely fashion.
17. During the course of performance, Dr. Cook directed K-Con to perform different work than

the work required by the Contract and made demands on K-Con that were not required by the Contract. Among other things, Dr. Cook, specifically directed K-Con to install insta-heat hot water heaters as opposed to the one (1) 30-gallon hot water heater as specified in K-Con's proposal.

**FOR A FIRST CAUSE OF ACTION**

(Breach of Contract as to Ohio Imaging Associates, Inc.)

18. The allegations set forth in the preceding paragraphs are repeated and realleged as fully as if said matters were set forth herein verbatim.
19. The Defendant, Ohio Imaging, breached the aforesaid Contract, in among other ways, by :
  - a. Providing defective plans and specifications;
  - b. Failing to cooperate, failing to provide responses to RFIs, or not providing responses to RFIs in a timely fashion, failing to inspect the work when requested and failing to provide information to K-Con necessary to complete the work;
  - c. Delaying and disrupting K-Con's work;
  - d. Improperly assessing liquidated damages; and
  - e. Failing to pay K-Con for the work performed.
20. As the direct and proximate result of the Defendant's breach, the Plaintiff suffered actual damages in the amount of \$80,101.23, plus incidental, and consequential damages, all in an amount to be determined by the trier of fact.

**FOR A SECOND CAUSE OF ACTION**

(Unjust Enrichment/Quantum Meruit as to Defendant, King Street Enterprises, LLC)

21. The allegations set forth in the preceding paragraphs are repeated and realleged as fully as if said matters were set forth here verbatim.
22. The Plaintiff provided labor and material to the premises owned by the Defendant, King Street, thereby conferring a benefit to the Defendant.



23. The Defendant realized a benefit from the services provided by the Plaintiff.
24. The Defendant's retention of the benefits provided by the Plaintiff is unjust without compensating the Plaintiff for the value of the services provided to the Defendant, plus interest and the costs of this action, all in an amount to be determined by the trier of fact.

**FOR A THIRD CAUSE OF ACTION**

(Mechanic's Lien Foreclosure)

25. The allegations set forth in the preceding paragraphs are repeated and realleged as fully as if said matters were set forth here verbatim.
26. The Plaintiff, K-Con, duly filed its Mechanic's Lien on June 12, 2018, and Amended Mechanic's Lien on June 15, 2018, in the RMC Office for Charleston County (attached hereto as Exhibits "A and "B") and were duly served on the Defendants.
27. The Plaintiff herein are entitled to have the aforesaid Amended Mechanic's Lien declared valid and binding on the Defendants, on the described premises and sold according to the law.

**FOR A FOURTH CAUSE OF ACTION**

(Fraud in the Inducement and Negligent Misrepresentation  
as to Ohio Imaging and Mary Ann Kanters Cook)

28. The allegations set forth in the preceding paragraphs are repeated and realleged as fully as if said matters were set forth here verbatim.
29. K-Con's proposal specifically stated that the scope of work in the proposal defined the entirety of the products and services K-Con proposed to provide. Among other things, K-Con's proposal specifically stated that K-Con would provide one (1) 30-gallon hot water heater instead of an individual hot water heater for each restroom.
30. K-Con's proposal was included as part of the Contract documents as Addendum B (attached hereto as Exhibit "C").

31. Prior to entering into the Contract that included K-Con's proposal as Addendum B, Ohio Imaging and Ms. Cook did not tell K-Con that one (1) 30-gallon hot water heater would not be accepted instead of an individual hot water heater for each restroom.
32. By agreeing to the Contract that included K-Con's proposal, Ms. Cook and Ohio Imaging represented that the work would be performed in accordance with K-Con's proposal. Among other things, Ms. Cook and Ohio Imaging specifically represented that one (1) 30-gallon hot water heater would be installed instead of an individual hot water heater for each restroom.
33. Ohio Imaging and Ms. Cook knew that their representations that K-Con's proposal was accepted and a part of the Contract was false, and that the representations were made with reckless disregard for the truth.
34. The representation that K-Con's proposal was accepted and a part of the Contract was material to the formation of the Contract for the project.
35. Ohio Imaging and Ms. Cook had a duty not to make false representations to K-Con, and a duty to inform K-Con if its proposal, or any part of its proposal, was not acceptable.
36. Ohio Imaging and Ms. Cook had a pecuniary interest in making the false representations to K-Con.
37. K-Con did not know that the misrepresentations by Ohio Imaging and Ms. Cook concerning inclusion of K-Con's proposal in the Contract were false.
38. By signing the Contract that included K-Con's proposal as Addendum B, Ohio Imaging and Ms. Cook breached its duty and intentionally misrepresented that they intended K-Con to rely that its proposal was a part of the Contract.
39. K-Con had a right to rely that the work set forth in its proposal was the work required by the Contract.

40. Ms. Cook and Ohio Imaging refused to accept the work with one (1) 30-gallon hot water heater installed instead of an individual hot water heater for each restroom.
41. Dr. Cook, in the presence of Ms. Cook, directed K-Con to install three (3) insta-hot water heaters as opposed to the one (1) 30-gallon hot water heater.
42. K-Con installed three (3) insta-hot water heaters.
43. Ohio Imaging and Ms. Cook now claim that the three (3) insta-hot water heaters are not acceptable and that K-Con was required to install four (4) insta-hot water heaters and one (1) 30-gallon hot water heater.
44. As the direct and proximate result of the fraud and negligent misrepresentations by Ohio Imaging and Ms. Cook, which were intentional, reckless and wrongful, K-Con has incurred actual damages and is entitled to incidental, consequential and punitive damages in an amount to be determined by the trier of fact.

**FOR A FIFTH CAUSE OF ACTION**

(Interference with a Contract as to the Defendant, Dr. Cook)

45. The allegations set forth in the preceding paragraphs are repeated and realleged as fully as if said matters were set forth here verbatim.
46. K-Con entered into a valid contract with Ohio Imaging.
47. Dr. Cook was aware of the contract entered into between K-Con and Ohio Imaging.
48. Dr. Cook was aware of the terms and conditions of the Contract between K-Con and Ohio Imaging.
49. Dr. Cook intentionally directed K-Con to install hot water heaters in Suite 205 that were different from what was required by the Contract as stated in K-Con's proposal, and thereby directed K-Con to breach the Contract with Ohio Imaging.
50. Dr. Cook had no justification for directing K-Con to install the heaters differently than as

K-Con proposed, other to cause harm to K-Con.

51. Upon information and belief, Dr. Cook also directed Ms. Cook and Ohio Imaging to assess liquidated damages and not pay K-Con for the work performed.
52. As the direct and proximate result of Dr. Cook's interference with the Contract, which was intentional, reckless, and wrongful, K-Con has incurred actual damages as a result of Ohio Imaging's failure to pay K-Con, and K-Con is entitled to an award of punitive damages in an amount to be determined by the trier of fact.

**FOR A SIXTH CAUSE OF ACTION**

(Negligent Misrepresentation as to the Defendant, Dr. Cook)

53. The allegations set forth in the preceding paragraphs are repeated and realleged as fully as if said matters were set forth here verbatim.
54. Dr. Cook directed K-Con to install three (3) insta-hot water heaters as opposed to the one (1) 30-gallon hot water heater, and directed K-Con to perform other work relating to the up-fit of Suite 205 that was not required by the Contract.
55. Dr. Cook misrepresented that three (3) insta-hot water heaters would be acceptable as opposed to the one (1) 30-gallon hot water heater in K-Con's proposal.
56. Dr. Cook had a duty not to make false representations to K-Con concerning the installation of hot water heaters.
57. Dr. Cook breached the duty owed to K-Con by directing K-Con to install three (3) insta-hot water heaters as opposed to the one (1) 30-gallon hot water heater in K-Con's proposal, and that the installation of the installation of the three (3) insta-hot water heaters would be acceptable.
58. Dr. Cook had a pecuniary interest in making the false representations to K-Con.
59. K-Con had a right to rely on Dr. Cook's representations and installed installed three (3)

insta-hot water heaters.

60. Ohio Imaging, Ms. Cook and Dr. Cook now claim that the three (3) insta-hot water heaters are not acceptable and that K-Con was required to install four (4) insta-hot water heaters and one (1) 30-gallon hot water heater.

61. As the direct and proximate result of the negligent misrepresentations by Dr. Cook, which were intentional, reckless and wrongful, K-Con has incurred actual damages and is entitled to incidental, consequential and punitive damages in an amount to be determined by the trier of fact.

**WHEREFORE**, the Plaintiff prays for judgment against the Defendant, Ohio Imaging, for actual, incidental and consequential damages under its breach of contract cause of action; for judgment against the Defendant, King Street, for actual, incidental and consequential damages under its unjust enrichment/quantum meruit cause of action; and prays that the premises of the Defendant, King Street, as herein described be sold and the proceeds of such sale be distributed to the satisfaction of the Amended Mechanic's Lien for the Plaintiff including interest and attorneys' fees and any balance thereof be distributed according to the law; and for judgement against the Defendants on the tort causes of action for actual, incidental, consequential, and punitive damages, and for such other and further relief as this Court deems just and proper.

Respectfully submitted.

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William A. Scott  
PEDERSEN & SCOTT, P.C.  
775 St. Andrews Blvd.  
Charleston, SC 29407  
(843) 556-5656  
ATTORNEY FOR PLAINTIFF

Dated this \_\_\_\_ day of April, 2019

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
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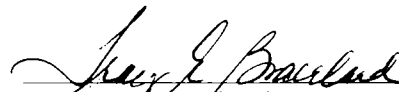
APR 18 2019

**JULIE J. ARMSTRONG  
CLERK, C.P. & G.S.**

**CERTIFICATE OF SERVICE**

The undersigned paralegal at Pedersen & Scott, P.C., hereby certifies that a copy of the NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE AMENDED COMPLAINT in the above-captioned matter has been emailed and placed in an envelope, and addressed and mailed via U.S. Mail to:

Brent Halversen, Esq.  
Brent Souther Halversen, LLC  
751 Johnnie Dodds Blvd., Suite 200  
Mount Pleasant, SC 29464



Tracy E. Braceland  
Paralegal

Dated this 16<sup>th</sup> day of April, 2019

**PEDERSEN & SCOTT, P.C.**  
ATTORNEYS AT LAW

P 843-556-5656  
F 843-556-5635  
bscott@pslawpc.com

April 16, 2019

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401

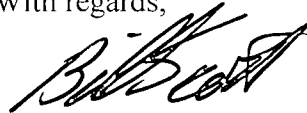
RE: K-Con, Inc. v. King Street Enterprises, LLC and Ohio Imaging Associates, Inc.  
C.A. No. 2018-CP-10-3825

Dear Ms. Armstrong:

Enclosed for filing in the above-referenced matter, please find an original and one copy of the Motion Slip and Notice of Motion and Motion for Leave to File Amended Complaint, together with a check in the amount of \$25.00. Please file the original and return a stamped-in copy in the enclosed return addressed stamped envelope.

Your assistance in this matter is greatly appreciated. Please call me if you have any questions.

With regards,



William A. Scott

WAS/teb

Enclosures

cc: K-Con, Inc. (w/encs.)  
Brent S. Halversen, Esq. (w/encs.)