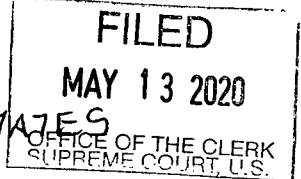


No. 19-7642

IN THE  
SUPREME COURT OF THE UNITED STATES



ANN KARNOFEL,  
PETITIONER,

v.

SUPERIOR WATERPROOFING, INC.  
RESPONDENT.

ON Petition for Writ of Certiorari  
to the Supreme Court of Ohio

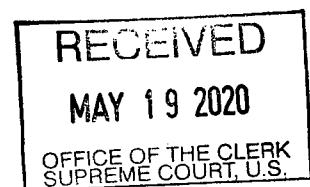
PETITION FOR REHEARING

Ann Karnofel  
1528 Greenwood Ave.  
Cincinnati, Ohio 45220  
(330) 545-6303

Pro Se Petitioner

Ned C. Gold, Jr., Esq.  
7611 E. Market St.  
Warren, Ohio 44484  
(330) 856-6888

Counsel for Respondent,  
Superior Waterproofing,  
Inc.



## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	i-ii
PETITION FOR REHEARING .....	1
CONCLUSION .....	14
CERTIFICATE OF COUNSEL .....	15

## INDEX TO APPENDICES

APPENDIX A	Complaint on Account, Girard Municipal Court, December 11, 2014 .....	1-4
APPENDIX B	Newly Discovered Evidence. The backside of the original CONTRACT .....	5
APPENDIX C	Appellee's Response to Courts June 13, 2019 Entry RE: Attorney Fees .....	6
APPENDIX D	Judgment Entry of State Court of Appeals Denying Continuance, August 13, 2019 .....	7

## TABLE OF AUTHORITIES

### CASES

<u>State v. Pryor</u> 10 <sup>TH</sup> Dist. No. 07-AP-90 2007-Ohio-4275 .....	12
---	----

## Table of Contents continued

PAGE

### STATUTES AND RULES

§ 10:40. Construction contract - Between owner and contractor - General conditions . . .	14
---	----

### OTHER

Code of Judicial Conduct CANON 3, B. (2) . . . . .	10
Code of Judicial Conduct CANON 3, B. (5) . . . . .	10
Code of Professional Responsibility CANON 1, Disciplinary Rules, DR 1-102, Misconduct (4) . .	11
United States Constitution Fourteenth Amendment Due Process clause . . .	1, 7, 11, 12, 14

## PETITION FOR REHEARING

PURSUANT TO Rule 44.1 Rehearing of the Rules of this Court, Petitioner requests this Petition for a Rehearing of the aforementioned case and, in support, respectfully shows:

Petitioner hereby presents substantial grounds that were not previously presented. Petitioner never argued that the TYPED text in the contract was not consistent with Respondent's handwritten notes on the contract, and all of the Courts overlooked it.

Attached hereto as Appendix A is the Complaint on Account that was filed against Petitioner's daughter, Delores Karnof, (hereinafter, "Delores") in a companion case. It was filed to harass and maliciously insure Petitioner and Delores and was not supported with a good faith argument, when the exhibits were not fully considered, resulting in biased and erroneous decisions. Petitioner's due process rights were denied several times in this case — a constitutional issue.

The Complaint on Account erred in stating that Respondent was retained by Petitioner in 2012. It was 2013. The waterproofing services were not performed as the contract stated. Petitioner had to refuse to pay full consideration, when the job was incomplete and not performed correctly. No payment outline was made by Respondent. The inconsistencies in the contract, Exhibit A attached to Appendix A, are as follow:

1. Petitioner met Respondent in May 2013, not 8-26-12.

2. To the right of the diagram of the size of the house, it states "A new front porch will be built..." The job was not completed, and a new front porch was not built.

3. The typewritten language to the left of Frank Kiepper's (hereinafter, "Frank") signature states:

"All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance."

The work was not completed, and the work performed was not performed in a workmanlike manner. The alterations and deviations from

The CONTRACT were NOT supported with a written order. The three items added to the CONTRACT (one from Delores and two from Frank) were performed between the time the job started, September 16, 2013 and when the job ended, October 1, 2013. Even though no written orders existed, the additional work was carried out.

Respondent used Exhibit B, Invoice, attached to the Complaint, as a written order. Although it was fraudulent since it was prepared over one year after the job ended. It was dated October 3, 2014. This document and Respondent's actions of performing the work without written orders, at the time the jobs were being performed, were not consistent with the contract's written text, and the lower courts all overlooked this and the fraudulent INVOICE, Exhibit B, that did not have a signature, to authorize additional work.

4. The typewritten text to the left of Petitioner's signature states:

"Acceptance of Proposal - the above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above."

On reference to the above prices, there was only one price that was indicated on the contract and that was for "\$9500.00." Also, there was no outline of how payment should have been made, including the downpayment; therefore, the filing of the Complaint on Account was a deceitful act. The Complaint on Account should have been dismissed.

All of the judges studied contracts in their Business Law classes and knew the importance of reading fine print and signatures, but none of them considered the noncompliance of Respondent with its contract — the absence of a written order/change order for the additional work, the absence of an outline of payment and the absence of a signature on any document, other than the original contract, to authorize the additional work, so payment could be rendered.

Appendix B Attached hereto is the backside of the contract. It shows Respondent's owner, FRANK KIEPPER'S OWN HANDWRITING of the additional work added to the contract, the dates that payment was made and the amount paid. This is Petitioner's newly discovered evidence that was denied. It is credible evidence that Frank was aware of how change orders develop. It was also made at the time the additional work was being performed and not over one year after the job ended, as Respondent deceitfully stated on its Invoice. Although there was no signature on it either, to authorize the additional work. So there was no written order for the additional work; however, the additional work was performed. This is inconsistent with the text in the contract that was typewritten.

The denial of the Motion for Relief from Judgment with newly discovered evidence was the pleading that prompted Respondent to file a Motion for Sanctions and Attorney's fees. It was the making of a change order, that is why it was denied.



Appendix C is an example of how the Lower Court showed favoritism to Respondent, when Respondent missed the filing date, because ~~its~~ attorney went on vacation. The Response stated:

"By way of exclamation, and not excuse, allow me to advise why I did not respond timely. Just a few days after I received the MAY 16<sup>TH</sup> order, receipt being MAY 20<sup>TH</sup>, I left the office for a 4500-mile driving trip to the west and back. I was gone for a period of a little over two weeks and did not return to the office until June 11<sup>TH</sup>."

Respondent was in possession of the MAY 16<sup>TH</sup> order before the vacation; however, Atty. Gold did not do anything with it until he returned. Further in the Response it states:

"And so when I returned, there were a lot of unexpected issues on my plate, and I flat-out forgot about Magistrate Sheth-Massacci's order until she contacted me. But

before I had a chance to prepare a request for a continuance related to the matters in her MAY 16<sup>TH</sup> order, I received the COURT'S June 13<sup>TH</sup> show cause entry."

MAGISTRATE Sheth-Massacci acted as ATTY. Gold's secretary, when she contacted and reminded him. This is not fair to PRO SE litigants, when ATTORNEYS and PRO SE litigants ARE supposed to be treated AS EQUALS. PETITIONER'S due process rights were denied AGAIN. Respondent's Response to the June 13, 2019 Entry re: Attorney's fees should have been denied. Instead, Judge MARY JANE TRAPP GENEROUSLY GAVE Respondent AN ADDITIONAL SEVEN DAYS TO RESPOND WITHOUT ANY WRITTEN REQUEST FROM Respondent.

When Petitioner filed a Motion for Continuance of the August 15, 2019 Evidentiary Hearing, AS A RESULT of warmer weather and Petitioner's AGE, it was denied. When Petitioner requested a COPY of the CD from the Evidentiary Hearing, PETITIONER received A BLANK CD. PETITIONER did NOT HAVE AN IMPARTIAL TRIBUNAL. APPENDIX D-AUGUST 13, 2019 JUDGMENT ENTRY.

The Complaint on Account was frivolous and fraudulent and should have been dismissed. Sanctions and miscellaneous costs should have been imposed upon Respondent.

This highest court in the United States must hear this case AGAIN AND apply the APPENDICES. It PROVES that PETITIONER WAS framed into a lengthy litigation, AS A RESULT of a fraudulent and frivolous Complaint ON ACCOUNT that made PETITIONER NOT only file a Complaint AGAINST Respondent, but also a Motion for Relief from Judgment that PROVED Respondent WAS A SCAM ARTIST. SCAMMERS NEVER REST. Respondent then filed a Motion for SANCTIONS AND Attorney's fees that the Lower Courts WRONGFULLY APPROVED.

The scales of justice ARE NOT equal, when A PRO SE LITIGANT GOES AGAINST AN UNETHICAL ATTORNEY who has friends in the courts. The Judges NATURALLY FAVOR the PARTY that is REPRESENTED by AN ATTORNEY, because they fear PUBLIC CRITICISM. I AM 97-YEARS-OLD. MY DAUGHTER AND I NEVER did ANYTHING WRONG TO RECEIVE A FAULTY WATER-PROOFING PROJECT that DESTROYED OUR LANDSCAPING and the WALLS of OUR BASEMENT. THEN we were

forced into court cases, as a result of a frivolous and fraudulent Complaint on Account with attached fraudulent exhibits, that the Lower Courts purposely overlooked, to benefit the party that was represented by legal counsel. The typewritten text in the contract was difficult to read because of the small print; however, a secretary could have easily enlarged the print on a copy machine to make it legible. Petitioner quoted the text in this document, so this Court could see that Respondent failed to abide by its own contract, and the Courts overlooked it.

Respondent's attorney is a shyster to not only file fraudulent pleadings, as the Complaint, Contract and Invoice, but to also file a motion for sanctions and attorney's fees, when it was Respondent who harassed Petitioner and her daughter with the Contract, Complaint on Account, Invoice and other pleadings. All of this goes unnoticed, because Respondent has an attorney who shared the same law practice with a former Appellate Court Judge, Judge Mary Jane Trapp then took his place upon his retirement. She is the Judge who

SIGNS the COURT documents in this case. She AND the other Judges violated CANON 3. A Judge shall perform the duties of judicial office impartially AND diligently. B. Adjudicative responsibilities (2) "... A Judge shall not be swayed by PARTISAN interests, public clamor, OR fear of criticism." FRAUD WAS A FACTOR from the very beginning with Respondent's contract. None of the Judges said anything about it. Then, the Girard Municipal Court Judge, in its January 20, 2017 Judgment Entry, misinterpreted the Respondent's Invoice, that was filed over a year after the job ended, AS A Change Order. All of the Lower Courts overlooked this for AN established attorney. The Judges would receive more votes from the attorney's friends, rather than a 97-year-old whose friends comprise a smaller sector of the county. They feared public criticism.

All of the wrongful decisions violated CANON 3. B. (5) "A Judge shall perform judicial duties without bias OR prejudice..." The PARTICIPATING Judges were so corruptive that disciplinary action is appropriate. There has been a pattern of improper activity that

Significantly impacted Petitioner in her life - physically, financially and socially - with the Judges' biased and erroneous decisions. This all violates Petitioner's due process rights.

Respondent's attorney, Ned C. Gold, Jr., violated the Code of Professional Responsibility Canon 1, Disciplinary Rules, DR 1-102. Misconduct (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. No matter what Petitioner or her daughter said or wrote, he responded with lies, as in Respondent's response, Appendix C, wrongfully stating that "Because the Karnofels act pro se and hence avoid attorney's fees; they make a hobby of litigating..." This is false. Delores also does not act as Petitioner's attorney. Petitioner has macular degeneration and has a difficult time writing and holding a pen at her age, so her daughter handwrites her documents. Respondent ruined the house exterior/interior with the faulty water-proofing project and framed Petitioner and her daughter, Delores, into privacy, res judicata and now sanctions and attorney's fees. This is not ethical conduct. Petitioner could not find an attorney, and Legal Aide advised her to quit and file bankruptcy, since the judges in

THE CASES WERE NOT FAIR. PETITIONER AND DELORES WORKED HARD, SMART AND IN HONEST WAYS FOR THEIR INCOME AND SPENT IT WISELY UNTIL THESE CASES DEVELOPED. PETITIONER AND DELORES DO NOT WANT TO FILE BANKRUPTCY. THEY WERE FRAMED INTO THE FRIVOLOUS AND FRAUDULENT CASES, AS A RESULT OF A NEGLIGENT CONTRACTOR AND AN UNSCRUPULOUS ATTORNEY AND JUDGES.

PETITIONER'S DUE PROCESS RIGHTS WERE DENIED SEVERAL TIMES IN THIS CASE, AND IT WENT UNNOTICED. FAVORITISM WAS GIVEN TO RESPONDENT WITH THE OVERSIGHTS OF THE FRIVOLOUS COMPLAINT, FRAUDULENT EXHIBITS AND PLEADINGS AND GIVING RESPONDENT ADDITIONAL TIME WHEN IT MISSED A FILING DATE. THEN THE OPPOSITE FOR PETITIONER, THAT IS, OVERLOOKING PETITIONER'S CONTRACT LAW FOR THE IMPORTANCE OF A CHANGE ORDER, THE INCONSISTENCIES IN THE CONTRACT WITH RESPONDENT'S NOTES ON THE CONTRACT, THE IMPORTANCE OF THE NEWLY DISCOVERED EVIDENCE, THE DENIAL OF A CONTINUANCE OF THE EVIDENTIARY HEARING FOR A 96-YEAR-OLD PRO SE LITIGANT IN AUGUST AND THEN SENDING PETITIONER A "BLANK CD" THAT WAS SUPPOSED TO BE THE EVIDENTIARY HEARING.

IN STATE V. PRYOR 10TH DIST NO 07-AP-90, 2007-OHIO-4275, IT STATES:

"... THE PRO SE LITIGANT IS TO BE TREATED THE SAME AS ONE TRAINED IN THE LAW AS FAR

AS the Requirement to follow procedural law and the adherence to court rules. If the courts treat pro se litigants differently, the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel."

In regards to the above, the lower courts did depart from their duties of impartiality, and it prejudiced the handling of the cases for Petitioner. The lower courts cost Petitioner, Delores and the taxpayers a lot of money and time for their biased and erroneous decisions. Petitioner placed her trust with the courts, and the courts violated the trust. If a contractor, attorney or some public official would harm the judges as they harmed Petitioner, the matter would be resolved, because they know more judges/law than Petitioner. Although the courts not only overlooked the law and authenticity of documents in this case, but they also violated the Code of Judicial Conduct. The highest court in the United States must address these unethical acts. It is well known that scammers take advantage of older people, but the courts should not.



The United States Constitution was written over 200 years ago; however, it does not work as well now as it did then, because there are too many unethical judges. Petitioner presented reasonable questions for review for the Lower Courts, and they did not consider some, and others were not fully considered. They were silent on Petitioner's contract law, §10:40 Construction Contract - Between owner and contractor - General Conditions Article X. Changes in the Work, Section 3 — Without authorization of a change order, a contractor is not entitled to an increase in the contract price; however, Respondent and the Judges believe that it does. Fraud was a factor throughout this case. Due process rights were denied for Petitioner. Penalizing Petitioner is unjust and unreasonable.

### C O N C L U S I O N

WHEREFORE, upon the foregoing grounds, it is respectfully urged that this Petition for a Rehearing be granted and that the November 12, 2019 Entry of the Ohio Supreme Court be upon further consideration reversed.

DATED: MAY 13, 2020

Ann Karnofel  
Ann Karnofel, Pro Se  
1528 Greenwood Ave.  
Girard, Ohio 44420  
(330) 545-6363

Ned C. Gold, Jr., ESQ.  
7011 E. Market St.  
Warren, Ohio 44484  
(330) 856-6888

Counsel for Respondent  
Superior Waterproofing, Inc.

FILED

DEC 11 2014

GIRARD MUNICIPAL  
COURT

GIRARD MUNICIPAL COURT  
TRUMBULL COUNTY, OHIO

Superior Waterproofing, Inc.  
9680 Cain Drive, N.E.  
Warren, OH 44484

Plaintiff

v.

Delores M. Karnofel  
1528 Greenwood Avenue  
Girard, Ohio 44420

Defendant

Case No. 2014 CVF 01065

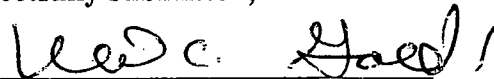
Judge Jeff Adler

COMPLAINT ON ACCOUNT

Plaintiff for its Complaint says as follows:

1. Plaintiff is in the business of waterproofing predominately residences.
2. Plaintiff was retained by Defendant to perform waterproofing services on her home at the address indicated above in 2012. A copy of the agreement is attached as Exhibit A.
3. The total consideration to be paid to Plaintiff was \$9,500.00.
4. Plaintiff performed the services as required pursuant to the contract, but Defendant has refused to pay full consideration and still owes \$6,000.00 to Plaintiff on an account. A copy of the account is attached as Exhibit B.

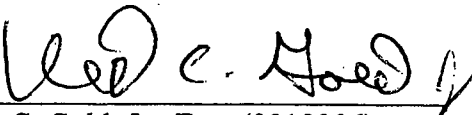
Respectfully submitted,



Ned C. Gold, Jr., Esq. (0018306)  
Ford, Gold, Kovoor & Simon, Ltd.  
8872 E. Market Street  
Warren, OH 44484  
Phone: 330.856.6888 Fax: 330.856.7550  
Email: gold@neo-lawgroup.com

### Instructions for Service

Please serve a copy of the foregoing Complaint with summons on Defendant at the address shown above by certified mail.

  
Ned C. Gold, Jr., Esq. (0018306)

# Proposal

Page No.

of

Pages

EXHIBIT

A

## SUPERIOR WATERPROOFING, INC.

P.O. Box 542  
WARREN, OHIO 44482  
(330) 856-9133

Frank

330-883-337

PROPOSAL SUBMITTED TO

Delores Karnofel

PHONE

545-6303

DATE

8-26-12

STREET

1528 Greenwood ave

JOB NAME

CITY, STATE and ZIP CODE

Girard, OH 44420

JOB LOCATION

ARCHITECT

DATE OF PLANS

JOB PHONE

We hereby submit specifications and estimates for:

Bid is for hand digging 103 feet of basement walls. We will dig down to the footer and replace old footer pipe. New PVC pipe will be installed. All cracks will be repaired. Walls will be sealed with tar. We will backfill with wash gravel. Top soil will be placed on top. Front porch will be taken down.

38'

24'

24'

38'

A new front porch will be built consisting of Birch block and filling to grade. pouring new concrete pad. 15 feet x 6 feet.

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

dollars (\$) 9500.00.

Payment to be made as follows:

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature

Frank Dipper

Note: This proposal may be withdrawn by us if not accepted within

days.

**Acceptance of Proposal** — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance:

6/27/13

Signature

Delores Karnofel

Signature

**Superior Waterproofing, Inc.**  
**9680 Cain Dr.**  
**Warren Ohio 44484**  
**330.883.3372**

**TO:**  
**Ms. Delores Karnofel**  
**1528 Greenwood Avenue**  
**Girard, Ohio 44420**  
**330.545.6303**

[illegible]

Additional 1200.00 for digging around  
Sunroom.

Pay 3000.00 downpayment 9-24-13  
Balance 7,700.00

Waterproofing 9,500.00  
Downspouts 1,600.00  
Sunroom 1,200.00  
Extra French drain 200.00

12,500.00

- 3,000.00 downpayment 9-24-13

9,500.00

- 3,000.00 payment 9-30-13

6,500.00 Balance

APPENDIX B

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO**

**CASE NO. 2018-TR-00055**

**FILED  
COURT OF APPEALS**

JUN 20 2019

TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

**DEFENDANT-APPELLEE.**

## INTRODUCTION

In addition, a few months ago, I made a decision to begin winding down my 53-year practice. (I am nearly 78 years old and it is time to “smell the roses” – as directed (make that ordered) by my wife and children). I advised my partner, Sarah Kovoov, of my plans. We set a

target date of May 31<sup>st</sup>. However, we had not completed a severance agreement by that date. Nevertheless, while on vacation I learned that Attorney Kovoor had abruptly – without any announcement, discussion or warning - left our offices on E. Market St. in Howland over the last weekend in May and moved to a new office - much to my and our staff's surprise and chagrin. Because I was in a western location where cell service is sparse, I did not find out until a few days later. I was taken aback; others affiliated with the firm (employees and those attorneys who are "of counsel") were taken aback as well. It was unclear to all of us what Sarah's intentions were, but, regardless, it threw our small firm into turmoil. And so when I returned, there were a lot of unexpected issues on my plate, and I flat-out forgot about Magistrate Sheth-Massacci's order until she contacted me. But before I had a chance to prepare a request for a continuance related to the matters in her May 16<sup>th</sup> order, I received the Court's June 13<sup>th</sup> show cause entry,

Accordingly, I respond to that entry.

### **RESPONSE**

I do not have to remind the court of the saga that Appellant, Ann Karnofel, and her daughter Delores, have put Appellee, Superior Waterproofing, Inc., and undersigned counsel through over a four-year period as related to a contract entered between the parties for waterproofing at the Karnofel home in Girard. It has been onerous to say the least! This is especially true in view of the relatively insignificant amount of the judgment - \$5,000. The time, effort and money put into this case and the related cases far exceeds the amount of the judgment. And while I have not advised Superior of this, there is no way I can charge it for all the work put into this appeal.

While this case on the outside appears to involve only Ann, Delores is still tied into it by virtue of the earlier case in which Appellee sued Delores on the same transaction for which Ann then brought suit against Appellee. The Common Pleas Court and this Court ruled in summary that, because the same issue involved in these Ann cases was tried and lost by Delores in her case, Ann's cases are barred by the doctrine of *res judicata* and related legal principles, though Ann was not a party in the Delores case. Hence, the cases are inextricably tied together.

And why was the case carried as far as it has? Because the Karnofels act *pro se* and hence avoid attorney's fees; they make a hobby of litigating. All one need do is look at the docket entries for the Karnofels in this Court in this case and several others in Trumbull County; there are literally



dozens of Karnofel cases, all *pro se*. And it is Delores, who is really behind all this, acting as Ann's *de facto* attorney. As this Court well knows, Delores has been deemed a "vexatious litigator" (pursuant to an order in Trumbull County Court of Common Pleas Case No. 2008 CV 874). I believe it is part of the Karnofels strategy to make the opposing party spend money on legal fees so that pursuit against them won't be worth the while.

The Karnofels even assert they are indigent. No one has put them to the test on this but I am convinced this is not true. For one, the home in which they live and apparently have for over 60 years, is nearly free and clear except for a line of credit through Citizens Bank and the judgment lien I have filed in this case. They had enough money to enter the Superior contract and others which they have litigated (and lost).

As all the courts that have been involved in this case and the related cases have determined, there is no merit whatsoever to the Karnofels' contentions. This Court's fee order relating only to this appeal barely touches the incredible amount of time and expense incurred in the single merit issue, but at least it is something. The sanction imposed hopefully will cause the Karnofels to think more than twice before they again start off on a spurious litigation journey.

I guarantee that the response to this memorandum from Delores - speaking through Ann - will be a rehashing of previous spurious arguments advanced by the Karnofels in these cases and go something like this: this court is prejudiced against Ann (read that as Delores as well) because she is a woman and *pro se*; this court is biased in favor of undersigned because my now-deceased law partner, the Hon. Donald Ford, was a long-term distinguished member of this Court; Appellee behaved in a fraudulent manner; because and because and because..... The point is they will continue to rehash the merits long ago found in favor of Appellee by all involved courts, and they will continue to assert procedural irrelevancies.

Maybe ----- just maybe, if one of them is sanctioned financially, maybe they will quit this stuff and find some other hobby.

For all these reasons, this Court determined that fees and expenses are due to undersigned from Ann for her spurious appeal in this case (Case No. 2018-TR-00055), particularly bearing in mind that Ann had filed a previous unsuccessful appeal in this case under Case No. 2017-TR-00026 which, when appealed to The Ohio Supreme Court, was rejected for consideration. Supreme

Court Case No. 2018-0908 dated Sep. 12, 2018. My failure to respond timely (resulting from the reasons noted above) should not deter this court from its previous decisions in this regard.

And again, I apologize to the Court for the extra work it has had to expend in this matter.

### **TURNING TO THE MERITS PER THE MAGISTRATE'S MAY 16 ORDER**

The Magistrate's order directs that I provide pre-hearing evidentiary material supporting the fees associated with this appeal and address the relevant factors set forth in Rule 1.5 of the Ohio Rules of Professional Conduct.

#### **My Normal Hourly Rate and Charges to Client:**

I cannot in good conscience charge Superior Waterproofing – which really means its sole owner, Frank Kiepper - for the time and effort put into this appeal. I have represented Superior for nearly 20 years. My charges to Superior are based on my normal hourly rate at the time services are rendered. That rate is and has been for a few years \$275 per hour. Even though I am not charging Superior for the appeal in this case – as said earlier, I have never advised Superior that I do not plan to charge - Ann is nevertheless no less responsible for the fees.

Lest it be asserted that because I have not charged Superior for the legal work, I cannot include that time in my fee motion. To be clear, as far as my client is concerned, he has never been told that I am not going to charge for the appellate work; as far as he understands he is legally obligated to pay my legal fees. In the case of *Grove v. Gamma Cntr*, 2015-Ohio-1180, the 3<sup>rd</sup> District, in construing the term “incurred” as used in R.C.2323.51, the statute providing for fee motions as well as, held that when a party has a legal obligation to pay legal fees or otherwise becomes legally accountable for them, regardless of whether the fees have been or will be paid, they have been “incurred” and therefore may be assessed against the defaulting party. See also *Marshall v. Cooper & Elliott*, 2017-Ohio-4301 (8<sup>th</sup> Dist.) at ¶31, *et seq.* (Also pertinent are Civ. R. 11 and R. App, P. 23.)

**My Qualifications:**

As a lawyer who has been in practice 53 years and represented many classes of clients from steel mills and hospitals with thousands of employees to one-man band companies, I have vast experience in many aspects of law and am well worth \$275 per hour or more. If you do a Lexis search on my name, you will see the extensive appellate experience I have had representing many varieties of clients in numerous fields of law and usually prevailing. Had I not had to respond to the spurious claims in this case I easily could have filled in the time with work for clients who routinely pay my normal hourly rate. Instead, I had to take up my time with this case on which I can earn nothing except what Ann might be ordered to pay, and then catch up on other lucrative work in time I would rather have been spending with my family. Whether I will ever receive any award adjudicated herein is quite speculative.

**Potential Expert Witness:**

Either Atty. Michael Grove or Atty. Tom Nader will vouch for the reasonability of fees at the hearing.

**Hours Spent on the Appeal:**

Frankly, because I made a decision that I would not charge Superior for work on this appeal, I have not kept the meticulous time records I normally do. So, I am giving an estimate of the number of hours spent on the actual appeal. That time includes: review of the initial appeal - .2 of an hour; review of the 17 page brief - about 1 hour; an abbreviated response (abbreviated because what was raised was nothing new and nothing but a repeat of Case No. 2017-TR-00026) - about 1 hour; prep for oral argument - about .5 of an hour; attendance at oral argument - about 1.5 hour (which includes travel and waiting time); motion for sanctions - about .5 of an hour; and this pre hearing memo related to the court's order for sanctions for attorney's fees and costs - 4.2 hours and that figure is exact inasmuch as I have kept time on that. **Total: 8.9 hours X \$275 = \$2,337.50.**

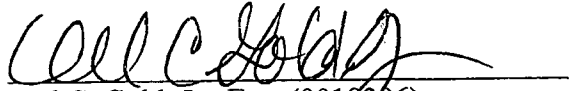
In addition, the further time that will be spent on prep for and trying of the sanctions issues.

There are no expenses directly attributable to this appeal other than copying charges and mail costs which are nominal.

#### UPDATE

**This matter just won't stop! We see by way of the court docket, that Appellant has filed a Motion for Reconsideration today. We have yet to receive a copy. This has got to be brought to an end.**

Respectfully submitted,



Ned C. Gold, Jr., Esq. (0018306)  
Ford, Gold, Kovoor & Simon, Ltd.  
**Attorney for Defendant-Appellee**  
8872 E. Market Street, Warren, OH 44484  
Phone: 330.856.6888 Fax: 330.856.7550  
Email: [Gold@neo-lawgroup.com](mailto:Gold@neo-lawgroup.com)

#### CERTIFICATE OF SERVICE

A copy of Appellee's Response to Court's June 13, 2019 Entry re: Attorney Fees was sent via U.S. regular mail on May 20, 2019, to:

**Ms. Ann Karnofel**  
**1528 Greenwood Avenue**  
**Girard, Ohio 44420**  
***Pro Se Plaintiff-Appellant***



Ned C. Gold, Jr., Esq. (0018306)  
Ford, Gold, Kovoor & Simon, Ltd.  
*Attorney for Defendant-Appellee*

APPENDIX D

STATE OF OHIO                     )  
  ) SS.  
COUNTY OF TRUMBULL         )

IN THE COURT OF APPEALS  
ELEVENTH DISTRICT

ANN KARNOFEL,  
Plaintiff-Appellant,

JUDGMENT ENTRY

- vs -

CASE NO. 2018-T-0055


SUPERIOR WATERPROOFING,  
INC.,

Defendant-Appellee.

Appellant's August 12, 2019 pro se motion to stay the evidentiary hearing scheduled for August 15, 2019, is hereby denied.

The evidentiary hearing shall take place as scheduled on August 15, 2019.

THOMAS R. WRIGHT, P.J.,  
TIMOTHY P. CANNON, J.,  
concur.

  
JUDGE MARY JANE TRAPP

FILED  
COURT OF APPEALS

AUG 13 2019

TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

COPY