

TRACI BOLICK,

Plaintiff,

v.

TODD ESTON SIPE, ESTON BUSINESS  
GROUP INCORPORATED and ESTON  
INDUSTRIAL, LLC,

Defendants,

v.

JASON FINGER, WINK FINGER, and  
Unknown Defendants, each acting in their  
personal capacity and doing business as  
“Classi Clean,”

Third Party Defendants.

MEMORANDUM OPPOSING  
PLAINTIFF’S MOTION TO AMEND  
SUMMONS

NOW COMES THE DEFENDANTS AND THIRD PARTY PLAINTIFFS, by and through counsel, responding to Plaintiff’s Motion to Amend Summons and Memorandum supporting the same, states the following:

**I. MAREADY V. HARRIS DOES NOT SUPPORT AMENDING THE SUMMONS AS TO MOLLY MOPS CLEANING SERVICES, LLC**

Plaintiff cites *Harris v. Maready* as its sole support to amend the summons. Defendant acknowledges that the 1984 *Harris v. Maready* decision clearly established that trial courts have the discretionary authority to amend a summons to correct a “misnomer”. The Supreme Court further held that trial courts cannot amend a summons so that filing relates back if the amendment results in the substitution or addition of a party. Applying the facts at hand, the *Maready* rule would permit correcting the misnomer as to the name of Eston Business Group Incorporated; however, “Molly Mops, LLC” is not the same party as Molly Mops Cleaning Service, LLC (hereinafter, “MMCS”). Neither the *Maready* decision nor current case law

permits amendment to substitute or add MMCS. Plaintiff's motion is an attempt to substitute a party and not correct a misnomer.

In addition, *Maready* is distinguishable both factually and legally from this case. In *Maready*, a partner in a law firm was named personally and his law firm was also a named party. Each actually received summons and the complaint which had their names on both Complaint and Summons. Each filed to have the lawsuit dismissed for service defects. The law firm filed a motion to dismiss because the summons and the complaint characterized the firm as a Professional Association (as that term refers to a corporation). The law firm was actually a partnership with the exact same name, except without the "P.A.". In making its decision, the North Carolina Supreme Court acknowledged that both the summons and the complaint are important, and their sufficiency for notice and service of process must be considered independently. Only if both summons and complaint are sufficient for courts to have jurisdiction over a party. Both the Summons and original Complaint identified "Molly Mops, LLC" and not MMCS. Based on the testimony and affidavits to date, Plaintiff actually attempted to serve a sole-proprietorship or partnership by a different name which Plaintiff acknowledged is the party she intended to sue. Similarity of the name is not enough to claim "misnomer" when there are two distinct parties.

In determining that service on the individual *Maready* was appropriate, the court discussed a duty of diligence in investigating and timely correction of fatal defects apparent in the Summons and Service of Process. *See Maready* at 543. In *Maready*, the Plaintiff could not have discovered one of the service defects even with diligence. This is opposed to the case at hand, in which Plaintiff showed no diligence in attempting to identify the necessary party to the litigation. The North Carolina Secretary of State public records reveal the existence of "Molly

Mops Cleaning Services, LLC”, but does not reveal the existence of “Molly Mops, LLC”.

Plaintiff failed to correct the defect after actual notice of the defect, including after: (1) Plaintiff’s own testimony dated May 30, 2007; and (2) numerous Motions by Defendant filed on June 29, 2007 seeking clarification of the identities and scope of representation. Now that the statute of limitations as to MMCS have expired, permitting amendment would be prejudicial as to defendant MMCS.

Plaintiff’s motion states that the summons identifying “Molly Mops, LLC” was served on the Registered Agent of Molly Mops Cleaning Service, LLC. However, nowhere is it asserted or alleged that Kevin McIntosh or MMCS served as an agent of Molly Mops, LLC. *Maready* states that it may be permissible to serve an agent of a party, when the “name of the defendant is sufficiently stated in the caption of the summons and the complaint.” In neither the original complaint nor the summons has the name “Molly Mops Cleaning Services, LLC” appeared. The only time that MMCS appeared was in the purportedly “Amended Complaint.” At a minimum, Plaintiff’s testimony attached at **Exhibit 5** attached show that Plaintiff specifically intended to sue a company named Molly Mops, LLC and that she didn’t know of and wasn’t sure who MMCS (see **Exhibit 4**), proving there was confusion as to identity of the named Defendant. Even in the event of actual notice and receipt of the Complaint by a registered agent (which has not occurred), failure to meet the strict requirements of statute precludes exercise of jurisdiction over the defendant by the courts. *See Thomas & Howard Company, Inc. v. Trimark Catastrophe Services, Inc.*, 151 N.C.App. 88, 564 S.E.2d 569 (2002). Further, “where a statute specifically prescribes the method by which to notify a party against whom a proceeding is commenced, service of the summons and complaint must be accomplished in that manner.” *See Fulton v. Mickle*, 134 N.C. App. 620, 623, 518 S.E.2d 518, 520-21 (1999). While a defective service of

process may give the defending party sufficient and actual notice of the proceedings, such “actual notice does not give the court jurisdiction over the party.” See *Johnson v. City of Raleigh*, 98 N.C. App. 147, 149, 389 S.E.2d 829, 851, disc. review denied, 327 N.C. 140, 394 S.E.2d 176 (1990). “Absent valid service of process, a court does not acquire personal jurisdiction over the defendant and the action must be dismissed.” See *Glover v. Farmer*, 127 N.C. App. 488, 490, 490 S.E.2d 576, 577 (1997), disc. review denied, 347 N.C. 575, 502 S.E.2d (1998) .

## II. MAREADY V. HARRIS IS NOT CONTROLLING

The *Maready* decision has been expressly abrogated and the jurisprudence surrounding amendment modified in a manner more favorable to Defendants. Further, since the *Maready* decision more than twenty-three (23) years have passed in which the jurisprudence has been modified and clarified.<sup>1</sup> In fact, the *Maready* decision has been expressly abrogated by the *Piland v. Hertford County* decision. See *Piland v. Hertford County Board of Commissioners*, 141 N.C. App. 293, 539 S.E.2d 669 (2000). Plaintiff fails to assert in its motion or in its memorandum that Molly Mops, LLC is the same party as Molly Mops Cleaning Services, LLC. Based on the Exhibits 2 through 6 (also attached to Defendant’s Memorandum Supporting Motions to Dismiss for Failure to State a Claim, Insufficiency of Process and Running of Statute of Limitations), both the Plaintiff and the Defendant appear to agree that Molly Mops, LLC is not the same party as MMCS. Permitting a change in the party to the lawsuit is a material change to the claims made pursuant thereto. With the substitution of the party, the represented Defendant’s answers would necessarily vary as compared to another party being substituted or added.

Even assuming (for the sake of argument only) that the summons could be amended, at this stage in the litigation, permitting a Motion to Amend the Summons manifestly prejudices the

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<sup>1</sup> See Exhibit 1 history of citation of the *Maready* decision.

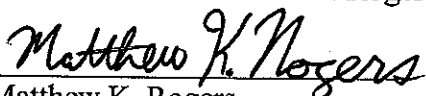
Defendant. Plaintiff has been aware of this fatal defect at least since the deposition of Plaintiff of the difference and distinction between Molly Mops, LLC and MMCS. Only after facing a fatal motion to dismiss did Plaintiff attempt to correct the fatal defect. Defendant has incurred substantial cost and effort to plead, research and brief the issues. Permitting amendment of the summons at this stage would invite even more abusive scenarios in which parties could amend improper summons later in the process, even right before litigation.

### CONCLUSION

“Molly Mops, LLC” is not the same party as “Molly Mops Cleaning Services, LLC”. Accordingly, discretionary amendment of Summons to correct a misnomer is not permissible. Both factually and legally, amendment to add MMCS as a new party and for the summons to relate back is not permitted.

This the 21<sup>st</sup> day of January, 2008.

Law Offices of Matthew K. Rogers, PLLC

  
Matthew K. Rogers  
Attorney for Defendants


OF COUNSEL:  
LAW OFFICES OF MATTHEW K. ROGERS, PLLC  
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## EXHIBIT 1

## Citing References

(Showing 154 documents)

## Negative Cases (U.S.A.)

 SELECT TO PRINT, EMAIL, ETC.

## Abrogation Recognized by

- H** 1 Piland v. Hertford County Bd. of Com'rs, 539 S.E.2d 669, 674, 141 N.C.App. 293, 300 (N.C.App. Dec 29, 2000) (NO. COA 99-1173) ★ ★ **HN: 8 (S.E.2d)**

## Distinguished by

- P** 2 Fulton v. Mickle, 518 S.E.2d 518, 521+, 134 N.C.App. 620, 624+ (N.C.App. Aug 17, 1999) (NO. COA98-1046) ♪ ★ ★ ★ **HN: 7 (S.E.2d)**

## Positive Cases (U.S.A.)

## ★ ★ ★ ★ Examined

- H** 3 Hazelwood v. Bailey, 453 S.E.2d 522, 523+, 339 N.C. 578, 581+ (N.C. Feb 10, 1995) (NO. 544PA93) ♪ **HN: 6,7 (S.E.2d)**

## ★ ★ ★ Discussed

- 4 Glover Const., Co., Inc. v. North Carolina Dept. of Transp., 628 S.E.2d 260, 260+, 177 N.C.App. 286, 286+ (N.C.App. Apr 18, 2006) (Table, text in WESTLAW, NO. COA05-525) ♪ **HN: 2,7 (S.E.2d)**
- C** 5 Wetchin v. Ocean Side Corp., 606 S.E.2d 407, 410+, 167 N.C.App. 756, 756+ (N.C.App. Jan 04, 2005) (NO. COA03-1684) **HN: 2,7 (S.E.2d)**
- P** 6 Franklin v. Winn Dixie Raleigh, Inc., 450 S.E.2d 24, 28+, 117 N.C.App. 28, 34+ (N.C.App. Nov 15, 1994) (NO. 9310SC1039) ♪ **HN: 8 (S.E.2d)**
- C** 7 Goss v. Battle, 432 S.E.2d 156, 159+, 111 N.C.App. 173, 176+ (N.C.App. Jul 20, 1993) (NO. 9221SC900) ♪ **HN: 11,12 (S.E.2d)**
- P** 8 Foy v. Hunter, 418 S.E.2d 299, 302+, 106 N.C.App. 614, 618+ (N.C.App. Jul 07, 1992) (NO. 9118SC649) ♪ **HN: 11,12 (S.E.2d)**
- H** 9 Stokes v. Wilson and Redding Law Firm, 323 S.E.2d 470, 477+, 72 N.C.App. 107, 117+ (N.C.App. Dec 28, 1984) (NO. 8317SC1220) ♪ **HN: 11,12 (S.E.2d)**
- P** 10 Shelton v. Fairley, 323 S.E.2d 410, 413+, 72 N.C.App. 1, 4+ (N.C.App. Dec 18, 1984) (NO. 8426SC164) ♪ **HN: 7,10 (S.E.2d)**

## ★ ★ Cited

- 11 Robert A. LEVERETTE, on behalf of himself and all other persons similarly situated, v. BATTS TEMPORARY SERVICES, INC. d/b/a Labor Works or Labor World, Bill C. Schleuning, Lorraine Schleuning, and Sean A. Fore., 2004 WL 1869934, \*1869934+ (Appellate Petition, Motion and Filing) (N.C. Aug 10, 2004) **Petition for Discretionary Review Under G.S. 7A-31** (NO. 411P04)
- P** 12 Lemons v. Old Hickory Council, Boy Scouts of America, Inc., 367 S.E.2d 655, 659, 322 N.C. 271, 278 (N.C. May 05, 1988) (NO. 438PA87) (*in dissent*) **HN: 6 (S.E.2d)**
- H** 13 In re D.B., 652 S.E.2d 56, 58 (N.C.App. Nov 06, 2007) (NO. COA06-1426-2) ♪ **HN: 2 (S.E.2d)**
- P** 14 In re D.B., 647 S.E.2d 688, 688 (N.C.App. Aug 07, 2007) (Table, text in WESTLAW, NO. COA06-1426)
- C** 15 In re A.B.D., 617 S.E.2d 707, 711, 173 N.C.App. 77, 81 (N.C.App. Sep 06, 2005) (NO. COA04-941) ♪ **HN: 2 (S.E.2d)**
- 16 Reyes v. Ray, 616 S.E.2d 693, 693, 172 N.C.App. 592, 592 (N.C.App. Aug 16, 2005)

- ☐ (Table, text in WESTLAW, NO. COA04-1129) \*\*
- ☐ **H** 17 Deans v. Terry, 609 S.E.2d 498, 498, 168 N.C.App. 728, 728 (N.C.App. Mar 01, 2005) (Table, text in WESTLAW, NO. COA04-495) **HN: 11 (S.E.2d)**
- ☐ **H** 18 Granville Medical Center v. Tipton, 586 S.E.2d 791, 797+, 160 N.C.App. 484, 493+ (N.C.App. Oct 07, 2003) (NO. COA02-1180) \*\* **HN: 2 (S.E.2d)**
- ☐ **C** 19 Spencer v. Albemarle Hospital, 577 S.E.2d 151, 154, 156 N.C.App. 675, 679 (N.C.App. Mar 18, 2003) (NO. COA02-505) **HN: 11,12 (S.E.2d)**
- ☐ **H** 20 Adams v. Bank United of Texas F.S.B., 564 S.E.2d 320, 320, 356 N.C. 297, 297, 150 N.C.App. 713, 713 (N.C.App. Jun 04, 2002) (Table, text in WESTLAW, NO. COA01-773) \*\*
- ☐ **H** 21 Patterson v. Sweatt, 553 S.E.2d 404, 410, 146 N.C.App. 351, 359 (N.C.App. Oct 02, 2001) (NO. COA00-746) \*\* (in dissent) **HN: 11 (S.E.2d)**
- ☐ **P** 22 Fender v. Deaton, 503 S.E.2d 707, 709+, 130 N.C.App. 657, 661+ (N.C.App. Sep 01, 1998) (NO. COA 97-1252) \*\* **HN: 10 (S.E.2d)**
- ☐ **C** 23 Post & Front Properties, Ltd. v. Roanoke Const. Co., Inc., 449 S.E.2d 765, 769, 117 N.C.App. 93, 98 (N.C.App. Nov 15, 1994) (NO. 945SC35) \*\* **HN: 2 (S.E.2d)**
- ☐ **P** 24 Storey v. Hailey, 441 S.E.2d 602, 605+, 114 N.C.App. 173, 178+ (N.C.App. Apr 05, 1994) (NO. 926SC1188) \*\* **HN: 10 (S.E.2d)**
- ☐ **H** 25 City of Raleigh v. College Campus Apartments, Inc., 380 S.E.2d 163, 166, 94 N.C.App. 280, 285 (N.C.App. Jun 20, 1989) (NO. 8810SC825)
- ☐ **H** 26 Rivenbark v. Southmark Corp., 378 S.E.2d 196, 200+, 93 N.C.App. 414, 420+ (N.C.App. Apr 18, 1989) (NO. 8818SC607) \*\* **HN: 11,12 (S.E.2d)**
- ☐ **C** 27 Olschesky v. Houston, 352 S.E.2d 884, 887, 84 N.C.App. 415, 418 (N.C.App. Feb 17, 1987) (NO. 865SC561) **HN: 8 (S.E.2d)**
- ☐ **P** 28 Humprey v. Sinnott, 352 S.E.2d 443, 446+, 84 N.C.App. 263, 266+ (N.C.App. Feb 03, 1987) (NO. 861SC810) **HN: 7 (S.E.2d)**
- ☐ **C** 29 Miller v. Ferree, 351 S.E.2d 845, 847+, 84 N.C.App. 135, 136+ (N.C.App. Jan 20, 1987) (NO. 8623SC731) \*\* **HN: 11,12 (S.E.2d)**
- ☐ **P** 30 Stevens v. Nimocks, 346 S.E.2d 180, 181, 82 N.C.App. 350, 352 (N.C.App. Aug 05, 1986) (NO. 8512SC1047) \*\* **HN: 10 (S.E.2d)**
- ☐ **H** 31 SUNBELT RENTALS, INC., a North Carolina Corporation, Plaintiff, v. HEAD & ENGQUIST EQUIPMENT, L.L.C., d/b/a H&E HI-Lift, Robert Hepler, Douglas Kline, Michael Quinn, Gregg L. Christensen, Patrick C. Muldoon, Michele U. Dougherty and Brian W. Pearsall, Defendants., 2001 WL 35952552, \*35952552 (Trial Order) (N.C.Super. Jul 26, 2001) **Order and Opinion** (NO. 00-CVS-10358)
- ☐ **H** 32 PML North America, LLC v. ACG Enterprises of NC, Inc., 2006 WL 334269, \*4 (E.D.Mich. Feb 13, 2006) (NO. 05-CV-70404-DT) \*\* **HN: 9 (S.E.2d)**
- ☐ **H** 33 Wright v. N.C. State University, 1998 WL 937273, \*5, 14 NDLR P 38, 38 (E.D.N.C. Nov 18, 1998) (NO. 5:98-CV-644BR3) \*\* **HN: 2 (S.E.2d)**
- ☐ **H** 34 Rich v. KIS California, Inc., 1988 WL 47605, \*1+ (M.D.N.C. Apr 25, 1988) (NO. C-87-801-WS) **HN: 7 (S.E.2d)**
- ☐ **P** 35 Richards & Associates, Inc. v. Boney, 604 F.Supp. 1214, 1218 (E.D.N.C. Mar 28, 1985) (NO. 83-89-CIV-7)
- ☐ **P** 36 Oberlin Capital, L.P. v. Slavin, 2000 WL 33954582, \*11, 2000 NCBC 6, 6 (N.C.Super. Apr 28, 2000) (NO. 99-CVS-03447)

★ **Mentioned**

- ☐ **H** 37 Stack v. Union Regional Memorial Medical Center, Inc., 614 S.E.2d 378, 382, 171 N.C.App. 322, 322 (N.C.App. Jul 05, 2005) (NO. COA04-914) **HN: 2 (S.E.2d)**
- ☐ **C** 38 Wilder v. Wilder, 553 S.E.2d 425, 427, 146 N.C.App. 574, 576 (N.C.App. Oct 16, 2001)

(NO. COA00-1121) **HN: 11,12 (S.E.2d)**

- C** 39 Creech v. Denning, 148 F.R.D. 545, 546 (E.D.N.C. May 05, 1993) (NO. 92-789-CIV-5-BO) **HN: 12 (S.E.2d)**
- H** 40 Burgess v. Andrews, 657 F.Supp. 1153, 1156 (W.D.N.C. Apr 10, 1987) (NO. C-C-86-503-P) **HN: 12 (S.E.2d)**



# EXHIBIT 2

STATE OF NORTH CAROLINA  
CATAWBA COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 07-CVS-1400

TRACI BOLICK,  
Plaintiff )  
)  
vs. )  
)  
TODD SIPE, )  
and )  
ESTON INDUSTRIAL, LLC, )  
Defendants )  
)  
vs. )  
)  
JASON FINGER, WINK FINGER, and )  
Unknown Defendants, each acting in their )  
personal capacity and doing business as )  
"Classic Clean". )

Affidavit of Todd Eston Sipe


I, the undersigned, Todd Sipe, first being duly sworn, depose and say:

- (1) I am over the age of 18 and competent.
- (2) Traci Bolick did work for a company she called "Molly Mops" prior to performing any work on behalf of Eston Business Group, Incorporated.
- (3) In October of 2003, my father (C.L. Sipe Jr.), Traci and I discussed Traci working for one of the companies I owned. On October 10, 2003, Traci agreed to accept a flat monthly amount, which was more than she was then earning, to work with Eston Business Group, Incorporated.
- (4) Eston Business Group, Incorporated started cleaning accounts that Traci Bolick previously cleaned as "Molly Mops". Traci Bolick began working with Eston Business Group, Incorporated ("Eston") in late October 2003. She was contracted to perform work for Eston and other companies that used laborers contracted by Eston.
- (5) Eston contractors started cleaning "Molly Mops" accounts starting at the latest on November 1, 2003. Traci Bolick did not clean any of those accounts after November 1, 2003 and Eston paid for all of the labor, and as necessary, supplies for those accounts.
- (6) Eston paid its subcontractors on a monthly basis, and typically paid in the month following the month that work was performed.
- (7) Payments to Traci Bolick were made out to "Molly Mops, LLC". The first payment made to "Molly Mops, LLC" was dated November 25, 2003. This check included payment for work performed in October of 2003 by Traci Bolick.
- (8) Molly Mops Cleaning Services, LLC was established on November 3, 2003.

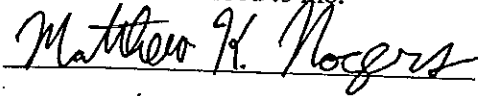
- (9) I am the sole Member and Manager of Molly Mops Cleaning Services, LLC.
- (10) Traci Bolick was offered the opportunity to be a Member of Molly Mops Cleaning Services, LLC, and knew that she would have to pay for her interest in the company, but she failed to make any payment.
- (11) Traci Bolick was to contribute money for her potential Membership Interest in Molly Mops Cleaning Services, LLC but she never paid me nor the company any money. I never issued her any Capital Units and she never requested that I issue any Capital Units.
- (12) Traci Bolick signed an Operating Agreement for Molly Mops Cleaning Services, LLC, but she never paid for her interest and, I never issued her the Capital Units.
- (13) At the time of signing the Operating Agreement, Traci knew that she was not entitled to any profits, unless I believed that the Company should distribute profits.
- (14) At no point did Molly Mops Cleaning Service, LLC ever hire or contract anyone other than Eston. In fact, at all times, it was common knowledge that Eston was responsible for cleaning those accounts and all laborers wore shirts with the name "Eston" on the front.
- (15) Since its inception, Traci Bolick never requested any tax information for Molly Mops Cleaning Service, LLC and I have never provided any such information.
- (16) In August of 2003, Eston Business Group Incorporated was already a party to a cleaning services contract with CommScope. Pursuant to that contract, Eston started cleaning additional CommScope facilities. Eston started cleaning the CommScope Claremont facility on or about April 1, 2004.
- (17) In September of 2004, Eston agreed to and did in fact terminate its then existing contract with CommScope. Because Eston was already a party to the contract with CommScope, it was able to terminate that contract, and enter into another agreement with the same price terms with CommScope, Inc. of North Carolina for the same facilities, but with "Molly Mops Cleaning Services, LLC" as the contractors entity. Eston contractors continued to clean all CommScope facilities as if no contract change ever occurred.
- (18) Eston offered to assist, and did assist, Traci with certain cleaning accounts, including but not limited to the Hickory Police Department business, which Traci said was with "Molly Mops, LLC".
- (19) Traci asked me if she could submit a bid to the City of Hickory Police Department for and on behalf of "Molly Mops, LLC". Traci submitted a bid for "Molly Mops, LLC" prior to September 3, 2004. Molly Mops, LLC won the bid and Traci sent invoices, including the invoice attached as Exhibit 1.
- (20) Eston Business Group, Incorporated paid and Traci received at least one check per month made out to "Molly Mops, LLC" for at least FORTY (40) months prior to the filing of this lawsuit.
- (21) Starting in approximately August 2006, I became aware that Traci was holding herself out as "Molly Mops, LLC" and submitting competitive bids without discussing any of those bids with me. At that time, I believed she was doing this to try to solicit business on her own.
- (22) Eston Business Group, Incorporated issued "Molly Mops, LLC" a 1099 at the end of every year which included revenues paid to Traci Bolick.

(23) Eston did not start cleaning any accounts that had previously been "Molly Mops" accounts after November 1, 2003. Further, at no time, did Molly Mops Cleaning Services, LLC receive or clean any accounts or revenues from accounts previously cleaned by Traci Bolick.

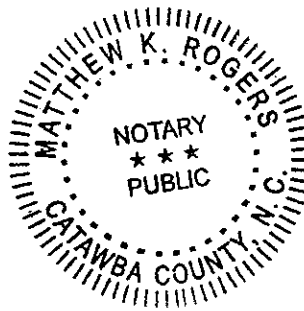
This the 7<sup>th</sup> day of December, 2007.

  
Todd Sipe - Affiant

Sworn and subscribed to me:




this the 7<sup>th</sup> day of ~~November~~, 2007.  
December



# EXHIBIT 3

Quote



Tel: (828) 244-0019

**Remit To**  
 Freightliner  
 Attn: Karen  
 630 Hwy 70 S. E.  
 Hickory, North Carolina 28601

**Information**  
 Invoice No.  
 Customer No: 102970  
 Quote Issue Date: 08-09-06

**Return Address**  
 Molly Mops LLC  
 Attn: Traci Bolick  
 4957 Water Wheel Drive  
 Conover, North Carolina 28613

Quote	Description	Date	Add'l Work	Net Amount
	Strip and Wax all VCI flooring			
				\$1035.00

Thank You For Your Business  
 Please make checks payable to Molly Mops LLC

**DEFENDANT'S**  
 EXHIBIT NO. Bolick #4  
 FOR IDENTIFICATION  
 DATE: 5-30-07  
 RPTR: GH

# EXHIBIT 4

Bolick v Sipe

Traci Bolick

5/30/07

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1 (Defendant's Exhibit #12 was marked for  
2 identification.)

3 Q. This is Exhibit 12. Do you recognize what this is?

4 A. It looks like scribbling on a piece of paper, yes,  
5 sir.

6 Q. Do you recognize it at all? Do you have any  
7 knowledge of it?

8 A. No, sir.

9 Q. You have never seen this before?

10 A. No, sir.

11 (Defendant's Exhibit #13 was marked for  
12 identification.)

13 Q. I'm going to introduce Exhibit 13. Take a minute to  
14 look through it. Did you draft this contract?

15 A. This?

16 Q. Yes.

17 A. Absolutely not.

18 Q. Who drafted it?

19 A. Kevin McIntosh.

20 Q. When did Molly Mops Cleaning Services, LLC, get  
21 added?

22 A. Todd said he wanted one for Molly Mops and one for  
23 Eston and one for both of them together. And so Kevin did  
24 it.

25 Q. You are sure you didn't ask for that?

1 A. I didn't.

2 Q. Who was Molly Mops Cleaning Services, LLC?

3 A. It's not. It's Molly Mops, LLC.

4 Q. This contract says Molly Mops Cleaning Services,  
5 LLC.

6 A. I see what it says.

7 Q. Well, who is that?

8 A. Your guess is as good as mine.

9 Q. I know who it is. This contract was entered into by  
10 an entity called Molly Mops Cleaning Services, LLC, not  
11 Molly Mops, LLC, right? Is that your handwriting?

12 A. Yes, sir.

13 Q. So you wrote on this page?

14 A. Yes, I did.

15 Q. You wrote in all that information about Hanes  
16 Industries, Newton?

17 A. Yes, I did.

18 Q. And you are asking me who Molly Mops Cleaning  
19 Services, LLC, is.

20 MR. WHITE: Objection. She's not asking you.

21 MR. ROGERS: She said your guess is as good as mine.  
22 I'm just trying to figure out. She signed a contract that  
23 she filled in the words for a company. I'm just trying to  
24 figure out who it is.

25 MR. WHITE: And I understand that. But she is not

1 asking you who it is. If she knows, she'll answer the  
2 question.

3 Q. (By Mr. Rogers) So you are filling in contracts for  
4 companies that you don't know about. Is that what this is?

5 A. I didn't know. I didn't look to see closely that  
6 Kevin had printed it wrong. Instead of Molly Mops, LLC, he  
7 put Molly Mops Cleaning Service or maybe his assistant Terri  
8 did. But I was told I had to sign it under Eston, so that's  
9 what I did.

10 Q. Did you didn't sign under Molly Mops Cleaning  
11 Service?

12 A. No, I didn't because I was told I had to sign but I  
13 couldn't sign anything under Molly Mops.

14 Q. Would it surprise you to know that Molly Mops, LLC,  
15 is not a registered company?

16 A. Okay. Would it surprise me? Yeah.

17 Q. Why? I mean you supposedly signed an operating  
18 agreement for this company, right?

19 A. Yes.

20 Q. Can you produce that operating agreement?

21 A. I may have a copy in the storage unit.

22 Q. And you said you have done all this work for Molly  
23 Mops, LLC, correct?

24 A. Yes.

25 Q. And that was an independent entity different from

1 Molly Mops Cleaning Service, LLC; is that correct?

2 MR. WHITE: Objection. You can answer if you know.

3 A. I don't know who. I don't know.

4 Q. So is Molly Mops Cleaning Service, LLC, the same  
5 company as Molly Mops, LLC?

6 MR. WHITE: Objection. She just said she doesn't  
7 know.

8 A. I don't know.

9 MR. WHITE: Asked and answered.

10 Q. Did you put together the first page of this, this  
11 package?

12 A. I think I put together the whole thing.

13 Q. Okay. And let me go back to the back page. Is that  
14 your signature under Eston Business Group, Inc.?

15 A. Yes, it is.

16 Q. And did you raise a specific objection about signing  
17 that contract?

18 A. I did, but it never did any good.

19 Q. But you still signed it, correct?

20 A. I did.

21 Q. And the date for that contract was September 29,  
22 2006?

23 A. Yes.

24 Q. Now, would that have been after the date that you  
25 entered into a non-compete agreement with Molly Mops, LLC?



# EXHIBIT 5

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1 of Tenet Healthcare?

2 A. No.

3 Q. Dr. Robinette, DDS?

4 A. Nope.

5 Q. Harris-Teeter?

6 A. Nope. Oh, yeah, Harris-Teeter we used to strip and  
7 wax floors.

8 Q. When you said "we," whom are you talking about?

9 A. I had several meetings with several people in  
10 Winston-Salem about stripping and waxing floors through our  
11 company for Harris-Teeter when they built new stores.

12 Q. Which company are you talking about?

13 A. Eston.

14 Q. Okay. Were any of those accounts Molly Mops'  
15 accounts?

16 A. No.

17 Q. Okay. I'm going to try to just get some stuff  
18 clarified, okay, because I'm a little confused about the  
19 lawsuits and about these companies and whatnot.

20 In your lawsuit you are a plaintiff, right? Do you  
21 know what that is? You're the party bringing the lawsuit?

22 A. Correct.

23 Q. And you are suing a company named Molly Mops, LLC,  
24 right?

25 A. Correct.

1 Q. Is that the formal legal name of the company?

2 A. Yes.

3 Q. Okay. So from here on out when I refer to Molly  
4 Mops, and I'm not making any characterization about what  
5 Molly Mops, LLC, is, if it's an existing corporation or not.  
6 But I'm going to be talking about this company. Okay.

7 And every time I talked about it before, I just want  
8 to make sure because I'm not sure that that's an actual  
9 company.

10 (Defendant's Exhibit #4 was marked for  
11 identification.)

12 Q. Let me give you what's identified as Exhibit 4.  
13 Okay. Do you recognize what this is?

14 A. I've never seen it.

15 Q. You have never seen this before?

16 A. No.

17 Q. Have you ever seen anything with that letterhead on  
18 it?

19 A. Yes.

20 Q. Where would something with that letterhead on it be  
21 generated?

22 A. Todd made it.

23 Q. How do you know that Todd made this?

24 A. Todd made that for me because he used to invoice.

25 He used to make the invoice for the police department, and

1 that was the only one he made under Molly Mops.

2 Q. So Todd made invoices for Molly Mops?

3 A. Yes.

4 Q. So when he would bill, he would send Molly Mops?

5 A. He would the police department.

6 Q. Why would he make an invoice that says return to  
7 your attention or a quote to return to your attention?

8 A. I don't know.

9 Q. It says Molly Mops, LLC, and that's the company you  
10 are talking about, right?

11 A. It does, yes.

12 Q. And you say the return address says Traci Bolick.

13 A. I do.

14 Q. It has got your home address?

15 A. Yes, I see that.

16 Q. Explain that to me. I mean why would he do that?  
17 You guys have got a business address, right, or you had one?

18 A. Correct.

19 Q. Why would he create this quote with those parameters  
20 on it?

21 A. I don't know.

22 Q. Do you know what system created these invoices, what  
23 computer system?

24 A. No.

25 Q. You don't know, QuickBooks or some other program?

# EXHIBIT 6

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1 A. Correct.

2 Q. What were those funds used for?

3 A. It was to pay me.

4 Q. For what?

5 A. Work.

6 Q. Okay. Would this be identified on Molly Mops'  
7 accounting systems?

8 A. Yes.

9 Q. Okay. Where are those accounting systems held?

10 A. All my accounting information is at Davidson,  
11 Holland & Whitesell.

12 Q. So you possess all the accounting information for  
13 Molly Mops?

14 A. Yes.

15 Q. Do you know that your lawyers asked me for that  
16 information?

17 A. Yes.

18 Q. Do you know that I said you possess them, and they  
19 responded with, "No, we don't have them"?

20 A. I possess Molly Mops' information. Molly Mops'  
21 account is CommScope. Todd Sipe's sole manager has checks  
22 payable on a Molly Mops account to Eston Business Group,  
23 deposits them in an Eston Business Group account.

24 Q. I'm sorry. I'm just trying to find out about Molly  
25 Mops' accounting records. You are saying that you are

1 authorized to take checks and write checks from Molly Mops,  
2 right?

3 A. Yes.

4 Q. And you accepted payments from Molly Mops; is that  
5 correct?

6 A. Yes.

7 Q. Okay. And you said you provided Molly Mops'  
8 accounting records to Davidson, Holland & Whitesell, your  
9 accountants; is that correct?

10 A. Yes.

11 Q. So I'm asking in my questions, who actually  
12 possesses the accounting records for Molly Mops?

13 MR. WHITE: I think what you are doing, if you had  
14 asked the question in reference to some information that had  
15 been requested by her attorneys, I think she was indicating  
16 to you what information that was requested. But answer the  
17 question.

18 Q. I specified the question, who possesses the  
19 accounting records of Molly Mops?

20 A. Say that again.

21 Q. Who possesses the accounting records of Molly Mops?

22 MR. WHITE: What records are we speaking of?

23 MR. ROGERS: Accounting records, records kept in the  
24 standard course of business, things like checks.

25 A. Anything that was made out to Molly Mops, even

1 though CommScope was a Molly Mops company and the checks  
2 were supposed to be made to Molly Mops, they weren't. I  
3 possess the Molly Mops accounting for what Eston paid me.

4 Q. So you possess and control the Molly Mops accounting  
5 records?

6 A. For what I was paid by Todd.

7 Q. Okay. But this is a Molly Mops checking account,  
8 right?

9 A. Correct.

10 Q. And it says it's addressed to you at your home?

11 A. Yes, sir.

12 Q. So you received all these?

13 A. Yes, sir.

14 Q. So Todd wouldn't have any idea. Did you ever give  
15 him these bank records?

16 A. He never wanted anything to do with my Molly Mops  
17 bank records.

18 Q. Did you ever give him these bank records?

19 A. I asked him if he needed them, and he said no.

20 Q. Did you ever--

21 A. No, sir.

22 Q. So he wouldn't know what was being written out of  
23 these accounts?

24 A. No.

25 Q. So he never had any idea what Molly Mops' business

**CERTIFICATE OF SERVICE**

The undersigned, being an attorney licensed to practice law in the State of North Carolina, hereby certifies that a copy of the foregoing *Memorandum Opposing Plaintiff's Motion to Amend Summons* was served upon attorneys of record as follows:

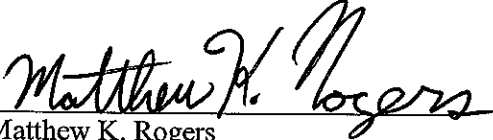
- \_\_\_\_\_ By personally delivering a copy of same to them or to one of their employees at their office;
- \_\_\_\_\_ By fax transmission;
- X   By depositing a copy of the same in the U.S. Mail, first class postage prepaid, addressed to them as follows:

Jason White  
Sigmon, Clark, Mackie, Hutton, Hanvey & Ferrell, P.A.  
420 3<sup>rd</sup> Avenue, SW  
Hickory, NC 28601

AND

Wes W. Barkley  
Sigmon, Sigmon & Isenhower  
P.O. Box 88  
Newton, NC 28658

This the 21<sup>st</sup> day of January, 2008.

  
Matthew K. Rogers  
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