

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JAMES B. BERRY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1:07-cv-00374-KD-B
)	
ROBERT EDWARD LEE and)	
PLANT DEVELOPMENT)	
SERVICES, INC.,)	
)	
Defendants.)	

JUDGMENT

The parties having advised the Court that Plaintiff consents to the entry of this final Judgment, it is hereby ORDERED, ADJUDGED, AND DECREED:

1. This Court has jurisdiction over plaintiff James B. Berry and over defendants Robert Edward Lee ("Lee") and Plant Development Services, Inc. (collectively "Defendants")¹ and over the subject matter in issue and venue is proper.

2. Counts 1 through 31 of the Amended Complaint (Doc. 71) were previously DISMISSED WITH PREJUDICE, and plaintiff agrees that plaintiff is not an inventor of any of the plants covered by the patents in Counts 1 through 31.

3. Count 32 of the Amended Complaint is DISMISSED WITH PREJUDICE. This Judgment is intended to and shall preclude plaintiff James B. Berry, his heirs, successors, assigns, agents, servants, employees, and/or any company or business with which he is

¹ Defendants Gregory L. Smith, Jr.; Jerry B. Pittman; Ellis Ollinger; Randall M. Jacobs; Flowerwood Nursery, Inc.; Flowerwood Management, Inc.; Flowerwood Liners, Inc.; already obtained summary judgment in their favor as reflected in the Court's Orders dated August 1, 2008, August 6, 2008, and September 9, 2008, so they are no longer parties to this action.

associated from ever again challenging the validity of any of the patents in Counts 1 through 31

("the Patents"), namely:

COUNT	PATENT NO.	TRADEMARK	CULTIVAR NAME
COUNT 1	10,438	ENCORE AUTUMN ROUGE	Conlea
COUNT 2	10,579	ENCORE AUTUMN CHEER	Conlef
COUNT 3	10,567	ENCORE AUTUMN AMETHYST	Conlee
COUNT 4	10,568	ENCORE AUTUMN CORAL	Conled
COUNT 5	10,580	ENCORE AUTUMN ROYALTY	Conlec
COUNT 6	10,581	ENCORE AUTUMN EMBERS	Conleb
COUNT 7	10,689	ENCORE SOUTHERN MAIDEN	Conlem
COUNT 8	10,687	ENCORE SOUTHERN GRACE	Conlel
COUNT 9	10,688	ENCORE SOUTHERN BEAUTY	Conlej
COUNT 10	10,702	ENCORE SOUTHERN GLORY	Conlei
COUNT 11	10,703	ENCORE SOUTHERN BLUSH	Conlek
COUNT 12	10,704	ENCORE SOUTHERN FLAME	Conleg
COUNT 13	11,616	ENCORE SOUTHERN PRIDE	JimRonFeyrer
COUNT 14	11,628	ENCORE AUTUMN BRAVO	Conlen
COUNT 15	11,640	ENCORE AUTUMN MONARCH	Conleo
COUNT 16	12,068	SUPERGREEN GIANT	Merton Jacobs
COUNT 17	12,142	ENCORE AUTUMN PRINCESS	Roblea
COUNT 18	12,110	ENCORE AUTUMN RUBY	Conler
COUNT 19	12,109	ENCORE AUTUMN EMPRESS	Conles
COUNT 20	12,111	ENCORE AUTUMN CARNIVAL	Conlet
COUNT 21	12,133	ENCORE AUTUMN TWIST	Conlep
COUNT 22	13,681	ENCORE SOUTHERN CELEBRATION	Robleb
COUNT 23	15,077	ENCORE AUTUMN SANGRIA	Roblee
COUNT 24	15,043	ENCORE AUTUMN STARLITE	Roblem
COUNT 25	15,227	ENCORE AUTUMN ANGEL	Robleg
COUNT 26	15,862	ENCORE AUTUMN CHIFFON	Robled
COUNT 27	15,339	ENCORE AUTUMN CARNATION	Roblec
COUNT 28	16,249	ENCORE AUTUMN SWEETHEART	Robleja
COUNT 29	16,248	ENCORE AUTUMN SUNSET	Roblen
COUNT 30	16,184	ENCORE AUTUMN SUNDANCE	Roblef
COUNT 31	16,278	ENCORE AUTUMN DEBUTANTE	Roblel

The Patents are good, enforceable in law, and not invalid for any reason.

4. At all times material hereto the Patents and all rights thereto and thereunder have been owned by defendants PDSI and Lee.

5. Plaintiff James B. Berry, his heirs, officers, successors, assigns, agents, servants, employees, and/or any corporation or business associated with him or which he is in active concert or participation with are hereby permanently restrained and enjoined from directly or indirectly growing, using, selling, offering for sale or importing any of the plants covered by the Patents.

6. Count 33 of the Amended Complaint was previously DISMISSED WITH PREJUDICE.

7. Count 34 of the Amended Complaint was previously DISMISSED WITH PREJUDICE.

8. Each party shall bear their own costs and expenses, including attorney fees, except as otherwise agreed by the parties. However, if Plaintiff James B. Berry breaches any of the terms of this Judgment or the parties' settlement agreement, defendants shall be entitled to move for an award of their attorney fees and/or costs incurred therein.

9. The Court retains jurisdiction over this matter to the extent necessary to enforce this Judgment.

10. Defendants shall have judgment accordingly, and Defendants' counterclaim is hereby dismissed by consent.

IT IS SO ORDERED THIS 16th day of September, 2008.

s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE