

**RECEIVED**

**Nov 10 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas  
Lancaster County Civil Action Number 2018-CP-29-01191

**The Honorable Kristi F. Curtis, Circuit Court Judge,**

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Appellate No. 2019-001143

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**J.A. Seagraves d/b/a J.A. Seagraves City Wide Paving, .....**Appellant,

**v.**

**North Regional III, LLC, .....**Respondent.

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**APPELLANT'S PETITION FOR REHEARING**

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November 10, 2022



J. Nathaniel Pierce, SC Bar No. 102803  
Morton & Gettys, LLC  
P.O. Box 707  
Rock Hill, SC 29731  
803.366.3388

Attorney for Appellant

Other Counsel of Record:  
The McIntosh Law Firm  
Christopher Gelwicks, Esquire  
209 Delburg Street  
Suite 203  
Davidson, NC 28036

**TABLE OF CASES AND AUTHORITIES**

Cases

*Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) .....2

*Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602(1995)..... 2

*Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 615, 703 S.E.2d 221, 224 (2010).....2

*Madren v. Bradford*, 378 S.C. 187, 193, 661 S.E.2d 390, 393 (Ct. App. 2008).....2

*Costa and Sons Const. Co. v. Long*, 306 S.C. 465, 469, 412 S.E.2d 450, 453 (Ct. App. 1991).....2

*Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006).....2

Rules of Court

Rule 12, S.C.R.C.P.....1

Secondary Sources

5 Wright and Miller, *Federal Practice and Procedure Civil 3d*, § 1277 (2004).....2

## ARGUMENT

This Court dismissed Appellant's appeal on October 26, 2022, citing Appellant's failure to remit to this Court (1) the Summons and Complaint; (2) the memo in opposition to respondent's motion to dismiss; and (3) the motion to alter or amend. Because Appellant's counsel failed to submit these documents, the Court held it did not have a sufficient record to rule on the merits of Appellant's argument. These documents are attached to this Petition as Exhibits A, B, and C, respectively. The Appellant makes this motion pursuant to Rule 221 of the South Carolina Rules of Appellate Procedure ("SCRAP").

Appellant filed its Notice of Intent to Appeal this matter on June 24, 2019, and filed its Final Brief on October 15, 2020. From that time through the date of the Court's opinion on October 26, 2022, Appellant's counsel timely responded to the correspondence of the Court, including a request for additional bound copies of the Record on Appeal and Final Briefs received on October 21, 2021. On July 21, 2022, Appellant's counsel received a letter from this Court requesting copies of (1) the Summons and Complaint; (2) the memo in opposition to respondent's motion to dismiss; and (3) the motion to alter or amend. Appellant's counsel's staff immediately compiled the requested documents, and Appellant's counsel reviewed them. Email correspondence reflecting Appellant's actions in response to the Court's request is attached as Exhibit D. Due to an inadvertent mistake by Appellant's counsel, the compiled documents were not submitted to the Court. It was not until Appellant's counsel received the Court's Order of October 26, 2022, that he realized the documents had not been submitted.

Appellant's argument on appeal is predicated upon the trial court considering, upon a motion to dismiss under Rule 12(b)(6), two affirmative defenses which required an inquiry into, and reliance upon, unestablished facts. The affirmative defenses at issue are delineated in

Respondent's Motion to Dismiss filed January 15, 2019, as S.C. Code Ann. § 40-11-370 and S.C. Code Ann. § 29-5-15(a). (R. 7-8). Respondent's trial counsel argued each of these affirmative defenses before the trial court. (R. 13). Appellant's counsel objected to the application of these affirmative defenses. (R. 15). Each of these affirmative defenses are specifically referenced in the trial court's order dismissing Appellant's case. (R. 1-2).

In deciding a motion to dismiss pursuant to 12(b)(6), SCRCPP, the trial court should consider only the allegations set forth on the fact of the plaintiff's complaint. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). Statutory prohibition is in the nature of an affirmative defense precluding enforcement of a contract and should be pled. *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 615, 703 S.E.2d 221, 224 (2010); *Madren v. Bradford*, 378 S.C. 187, 193, 661 S.E.2d 390, 393 (Ct. App. 2008) (citing *Costa and Sons Const. Co. v. Long*, 306 S.C. 465, 469, 412 S.E.2d 450, 453 (Ct. App. 1991)). An affirmative defense ordinarily may not be asserted in a motion to dismiss under Rule 12(b)(6) unless the allegations of the complaint demonstrate the existence of the affirmative defense. *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006). Because the factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint, an affirmative defense usually must be pled in an answer and either resolved in later motions such as a summary judgment or directed verdict or at trial. *Id* (citing 5 Wright and Miller, *Federal Practice and Procedure Civil 3d*, § 1277 (2004)).

Both in its motion and at oral argument, Respondent noted Appellant's licensure status was not pled in the Summons and Complaint. (R. 8, 18). Appellant's counsel addressed Respondent's position at oral argument, arguing further inquiry into the licensure requirement was necessary and objecting to the court's consideration of the licensure requirement on Respondent's 12(b)(6)

motion. (R. 16-17). The Court noted in its order dismissing Appellant's case that "[t]he Complaint does not allege that the Plaintiff is a contractor licensed in South Carolina." (R. 1). The trial court went on to dismiss Appellant's case based on its licensure status. In so doing, the trial court acknowledged that it considered facts not established in the pleadings in reaching its decision.

### CONCLUSION

Appellant's counsel acknowledges its error in failing to remit the documentation requested on July 21, 2022, and recognizes the importance of those documents to this Court's consideration of this issue. Appellant respectfully argues the record already before this Court establishes the reversible error alleged in Appellant's Final Brief, as noted above. Appellant asks this Court to rehear Appellant's case in light of the documents attached as Exhibits A, B, and C.

November 10, 2022

  
\_\_\_\_\_  
J. Nathaniel Pierce, SC Bar No. 102803  
Morton & Gettys, LLC  
P.O. Box 707  
Rock Hill, SC 29731  
803.366.3388

Attorney for Appellant



|  |   |                              |
|--|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|  | ) |                              |
| COUNTY OF LANCASTER  | ) | SIXTH JUDICIAL CIRCUIT       |
|  | ) |                              |
| J.A. Seagraves d/b/a J.A. Seagraves City Wide Paving,                  | ) |                              |
|  | ) |                              |
| Plaintiff,   | ) |                              |
|  | ) |                              |
| v.   | ) | <b>SUMMONS</b>               |
|  | ) |                              |
| North Regional III, LLC; Edgewater Corporate Center Association, Inc.; | ) |                              |
| J&S, Inc.; Loan Trust, LLC;  | ) |                              |
| Sharestates Investments, LLC;  | ) |                              |
|  | ) |                              |
| <u>Defendants.</u>   | ) |                              |

TO: THE DEFENDANTS, AND ALL OTHERS TO WHOM THESE PRESENTS MAY COME:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herewith served upon you, and to serve a copy of your answer to such Complaint upon the subscribers at their offices at 331 East Main Street; Suite 300; Rock Hill, South Carolina 29730, or by United States Mail at P.O. Box 707, Rock Hill, South Carolina 29731, within thirty (30) days after the date of service hereof upon you, exclusive of the day of such service, and if you fail to answer such Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted,

s/ J. Nathaniel Pierce  
Morton & Gettys, LLC  
J. Nathaniel Pierce, SC Bar No. 102803  
Attorney for Plaintiff  
P.O. Box 707, Rock Hill, SC 29731  
T: 803.366.3388  
F: 803.366.4044  
nate.pierce@mortongettys.com

October 15, 2018  
Rock Hill, South Carolina

|   |   |                              |
|---|---|------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS |
|   | ) |                              |
| COUNTY OF LANCASTER   | ) | SIXTH JUDICIAL CIRCUIT       |
|   | ) |                              |
| J.A. Seagraves d/b/a J.A.<br>Seagraves City Wide Paving,                  | ) |                              |
|   | ) |                              |
| Plaintiff,  | ) |                              |
|   | ) |                              |
| v.  | ) | <b>COMPLAINT</b>             |
|   | ) |                              |
| North Regional III, LLC; Edgewater<br>Corporate Center Association, Inc.; | ) |                              |
| J&S, Inc.; Loan Trust, LLC;   | ) |                              |
| Sharestates Investments, LLC;   | ) |                              |
|   | ) |                              |
| <u>Defendants.</u>  | ) |                              |

The Plaintiff, complaining of the above-named Defendants, would respectfully show unto the Court:

**Parties and Jurisdiction**

1. Plaintiff J.A. Seagraves is a resident of Union County, North Carolina d/b/a J.A. Seagraves City Wide Paving and conducting business in Lancaster County, South Carolina.

2. Defendant North Regional III, LLC ("North Regional") is a limited liability company organized and existing under the laws of the State of North Carolina which conducts business and owns property in Lancaster County, South Carolina.

3. Defendant Edgewater Corporate Center Association, Inc. ("Edgewater") is a corporation organized and existing under the laws of the State of South Carolina.

4. Defendant J&S, Inc. ("J&S") is a limited liability company organized and existing under the laws of the State of South Carolina.

5. Defendant Loan Trust, LLC ("Loan Trust") is a limited liability company organized and existing under the laws of the State of Delaware doing business in Lancaster County, South Carolina.

6. Defendant Sharestates Investments, LLC is, upon information and belief, a limited liability company organized and existing under the laws of the State of Delaware doing business in Lancaster County, South Carolina.

7. Defendants Edgewater, J&S, Loan Trust, and Sharestates are named by virtue of their ownership

8. Jurisdiction and venue are proper in this Court.

#### **Factual Background**

9. North Regional is the owner of real property in Lancaster County, South Carolina (the "Property"), more fully described as:

Commencing from a set mag nail in the intersection of S-29-157 and Lengers Way proceed S42°14'40"E 37.08' to a set #5 rebar on the eastern Right of Way of S-29-157 the Point of Beginning, a common corner on the Southern Right of Way of Lengers Way, Plat Book 2006 Page 631 and 632 as recorded in the Lancaster County Register of Deeds, thence with the Right of Way of Lengers Way the next six (6) calls, (1) S85°01'58"E 450.23' passing a found #5 rebar & 450.00' to a point (2) S05°03'59"W 20.26' to a set #5 rebar, (3) S63°23'54"E 215.96' to a set #5 rebar, (4) S87°13'28"E 79.91' to a point, (5) N09°49'32"E 97.18' to a found #4 rebar, (6) S85°01'58"E 179.52' to a found #4 rebar to a common corner with Crisis Hill, Inc., Deed Book 296 Page 264 and Plat 2852, thence with the common line S40°09'34"W 1,282.09' passing a found #4 rebar @ 798.27' to a found #4 rebar a common corner with Crisis Hill, Inc., Deed Book 331 Page 322 and Plat Book 2006 Page 245, thence with the common line N37°14'25"W 657.64' to a set #4 rebar in the eastern Right of Way to SC-29-157, thence with the Right of Way the next two (2) calls (1) a curve to the left a radius of 1,942.85' and arch length of 177.80' and a chord bearing and distance of N05°10'50"E 2691' to a set #4 rebar, (2) N04°47'08"E 533.73' to the Point of Beginning containing 16.586 acres.

Parcel ID No.: 0008-00-026.07

10. Plaintiff entered into an Agreement with North Regional, through its agents, whereby Plaintiff agreed to provide and supply labor, supervision, materials, and services for grading, paving, compacting, and striping (the "Project") on a 73,235 square-foot area on the Property.

11. The labor, materials, and services furnished by Plaintiff were used and incorporated into the Project and Property.

12. All of the labor and materials performed and/or supplied by Plaintiff for the improvement of the Property were done by virtue of an agreement with or by consent of North Regional, the owner of the Property.

13. Although Plaintiff performed, supplied, and completed all its obligations, and although demand for payment has been made to North Regional, Plaintiff has not been paid for the labor and materials supplied.

14. As of today, Plaintiff is owed the sum of \$170,800.00 for Plaintiff's labor, materials, and services.

**FOR A FIRST CAUSE OF ACTION**  
**(Foreclosure of Mechanic's Lien)**

15. Plaintiff incorporates the allegations above into the below cause of action to the extent not inconsistent therewith.

16. Within ninety (90) days of the last date upon which Plaintiff provided labor, materials, and services, Plaintiff filed a Notice and Certificate of Mechanic's Lien on North Regional's interest in the Property by service the Notice and Certificate on North Regional, along with filing the Notice and Certificate with the York County Register of Deeds. See Exhibit "A."

17. Within the preceding six months, Plaintiff furnished and provided labor, materials, and services to the Property for its construction and improvement and with the authorization and/or consent of North Regional; Plaintiff has a lien on the real property pursuant to South Carolina Code Ann. § 29-5-10, *et seq.*

18. The amount due from North Regional for Plaintiff's labor, materials, and services supplied by Plaintiff is \$170,800.00, plus interest, attorneys' fees, expenses, and court costs.

19. The amount owed has not been reduced by partial payment, discount, set-off, or otherwise.

20. Plaintiff is informed and believes there is no set-off or other meritorious reason for denial of its claim for payment, and Plaintiff is entitled to immediate foreclosure of the premises/property owned by North Regional as described herein and/or incorporated herein by reference, and for a determination of the amount due Plaintiff, including interest, attorneys' fees, expenses, and court costs.

**FOR A SECOND CAUSE OF ACTION**  
**(Breach of Contract)**

21. Plaintiff incorporates the allegations above into the below cause of action to the extent not inconsistent therewith.

22. Plaintiff entered into a contract with North Regional to furnish and provide various labor, materials, and services to be used and incorporated into the Project at the Property (the "Contract").

23. A valid and enforceable contract exists between Plaintiff and North Regional with North Regional being bound to pay for the various labor, materials, and services furnished by Plaintiff to North Regional pursuant to the terms of the Contract.

24. Plaintiff supplied its labor, supervision, materials, equipment, tools, and related accessories to North Regional in accordance with the Contract.

25. Plaintiff has performed all obligations imposed upon it pursuant to the Contract.

26. North Regional has refused to pay Plaintiff the amount due for the labor, supervision, materials, equipment, tools, and related accessories supplied by Plaintiff.

27. North Regional breached the contract by failing to pay Plaintiff for the various labor, materials, and services received by North Regional and incorporated into the Project at the Property pursuant to the Contract.

28. As a direct and proximate result of North Regional's breach of the Contract, Plaintiff was damaged in the amount of \$170,800.00, plus interest accruing thereon at the prejudgment interest rate and attorneys' fees.

**FOR A THIRD CAUSE OF ACTION**  
**(Quantum Meruit)**

29. Plaintiff incorporates the allegations above into the below cause of action to the extent not inconsistent therewith.

30. At the specific request of North Regional, Plaintiff furnished various labor, materials, and services for North Regional for use and incorporation into the Project at the Property.

31. North Regional knew Plaintiff expected to be paid for the various labor, materials, and services incorporated into the Project at the Property.

32. North Regional received the benefit of Plaintiff's furnishing of various labor, materials, and services provided, but have refused to pay Plaintiff for the value of the furnished labor, materials, and services.

33. It would be inequitable for North Regional to accept, use, and enjoy the benefits of Plaintiff's various labor, materials, and services without paying the reasonable value thereof.

34. The reasonable value of the labor, materials, and services for which Plaintiff has not been paid is \$170,800.00

35. Plaintiff has requested payment for its labor, materials, and services, but has not received payment.

36. Plaintiff is entitled to a judgment against North Regional for the reasonable value of the labor, materials, and services provided under the equitable doctrine of *quantum meruit* in the amount of \$170,800.00

WHEREFORE, Plaintiff J.A. Seagraves d/b/a J.A. Seagraves City Wide Paving prays for judgment as follows:

- a. As to the first cause of action, that this Court determine the amount due to the Plaintiff for labor, materials, and equipment provided in the construction and improvement of North Regional's real property, and the Plaintiff have judgment in the amount of \$170,800.00 plus interest, attorneys' fees, expenses, and court costs; that the Plaintiff be declared and adjudged a lien on the aforesaid property; that said lien be

foreclosed and the property be sold as provided by law and the proceeds distributed in the priority provided by law in relation to the other liens and encumbrances to pay the Plaintiff and the other lienholders the amount adjudged due to the Plaintiff together with interest, attorneys' fees, expenses, and court costs;

- b. As to the second and third causes of action, for judgment against North Regional in an amount of \$170,800.00, together with interest, costs, and attorneys' fees;
- c. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ J. Nathaniel Pierce  
Morton & Gettys, LLC  
J. Nathaniel Pierce, SC Bar No. 102803  
Attorney for Plaintiff  
P.O. Box 707, Rock Hill, SC 29731  
T: 803.366.3388  
F: 803.366.4044  
nate.pierce@mortongettys.com

October 15, 2018  
Rock Hill, South Carolina



|                         |   |                              |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
|                         | ) |                              |
| COUNTY OF LANCASTER     | ) | SIXTH JUDICIAL CIRCUIT       |

|   |   |
|---|---|
| J.A. Seagraves d/b/a J.A. Seagraves<br>City Wide Paving,                  | ) |
|   | ) |
| Plaintiff,  | ) |
|   | ) |
| v.  | ) |
|   | ) |
| North Regional III, LLC; Edgewater<br>Corporate Center Association, Inc.; | ) |
| J&S, Inc.; Loan Trust, LLC; Sharestates<br>Investments, LLC;              | ) |
|   | ) |
| Defendants.   | ) |

**MEMORANDUM IN OPPOSITION TO  
DEFENDANT NORTH REGIONAL III, LLC'S  
MOTION TO DISMISS**

The Plaintiff, J.A. Seagraves d/b/a J.A. Seagraves City Wide Paving ("Plaintiff"), responding to the Defendant North Regional III, LLC's ("Defendant") Motion to Dismiss pursuant to rule 12 of the South Carolina Rules of Civil Procedure, denies Defendant is entitled to relief, and would allege and show as follows unto this Honorable Court:

1. In deciding a motion to dismiss pursuant to 12(b)(6), SCRPC, the trial court should consider only the allegations set forth on the fact of the plaintiff's complaint. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)).

2. The question on a motion to dismiss pursuant to 12(b)(6), SCRPC, is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Id* (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)).

3. The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Id* (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)).

4. Statutory prohibition is in the nature of an affirmative defense precluding enforcement of a contract and should be pled. *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 615, 703 S.E.2d 221, 224 (2010); *Madren v. Bradford*, 378 S.C. 187, 193, 661 S.E.2d 390, 393 (Ct. App. 2008) (citing *Costa and Sons Const. Co. v. Long*, 306 S.C. 465, 469, 412 S.E.2d 450, 453 (Ct. App. 1991)).

5. An affirmative defense ordinarily may not be asserted in a motion to dismiss under Rule 12(b)(6) unless the allegations of the complaint demonstrate the existence of the affirmative defense. *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006).

6. Because the factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint, an affirmative defense usually must be pled in an answer and either resolved in later motions such as a summary judgment or directed verdict or at trial. *Id* (citing 5 Wright and Miller, *Federal Practice and Procedure Civil 3d*, § 1277 (2004)).

7. Defendant relies solely on two statutory defenses in its motion to dismiss. Because these statutory defenses are in the nature of affirmative defenses and necessarily require examination of facts outside the four corners of the complaint, Defendant's motion to dismiss must be denied.

WHEREFORE, Defendant prays this Court deny Defendant's motion to dismiss.

Respectfully submitted,

s/ J. Nathaniel Pierce

J. Nathaniel Pierce, S.C. Bar No. 102803

Morton & Gettys, LLC

Attorney for Plaintiff

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nate.pierce@mortongettys.com

March 3, 2019  
Rock Hill, South Carolina



|   |   |  |
|---|---|--|
| STATE OF SOUTH CAROLINA                 | ) | IN THE COURT OF COMMON PLEAS             |
|   | ) | SIXTH JUDICIAL CIRCUIT                   |
| COUNTY OF LANCASTER                     | ) | C/A No. 2018-CP-29-01191                 |
|   |   |  |
| J.A. Seagraves d/b/a J.A. Seagraves     | ) |  |
| City Wide Paving,                       | ) |  |
|   | ) |  |
| Plaintiff,                              | ) |  |
|   | ) |  |
| v.                                      | ) | <b>MOTION TO ALTER OR AMEND JUDGMENT</b> |
|   | ) |  |
| North Regional III, LLC; Edgewater      | ) |  |
| Corporate Center Association, Inc.;     | ) |  |
| J&S, Inc.; Loan Trust, LLC; Sharestates | ) |  |
| Investments, LLC;                       | ) |  |
|   | ) |  |
| <u>Defendants.</u>                      | ) |  |

The Plaintiff, pursuant to South Carolina Rule of Civil Procedure 59(e), moves the court to alter or amend the order granting Defendant North Regional III, LLC's ("North Regional") Motion to Dismiss dated June 10, 2019.

1. This matter concerns non-payment for services rendered by Plaintiff toward the improvement of real property owned by North Regional.

2. North Regional moved to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP"), alleging two statutory defenses.

3. Plaintiff and North Regional argued North Regional's motion to dismiss March 4, 2019.

4. For the following reasons, Plaintiff hereby moves the court alter or amend its judgment and deny North Regional's motion to dismiss.

5. In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the fact of the plaintiff's complaint. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)).

6. The question on a motion to dismiss pursuant to 12(b)(6), SCRCP, is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Id* (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)).

7. The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Id* (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)).

8. Statutory prohibition is in the nature of an affirmative defense precluding enforcement of a contract and should be pled. *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 615, 703 S.E.2d 221, 224 (2010); *Madren v. Bradford*, 378 S.C. 187, 193, 661 S.E.2d 390, 393 (Ct. App. 2008) (citing *Costa and Sons Const. Co. v. Long*, 306 S.C. 465, 469, 412 S.E.2d 450, 453 (Ct. App. 1991)).

9. An affirmative defense ordinarily may not be asserted in a motion to dismiss under Rule 12(b)(6) unless the allegations of the complaint demonstrate the existence of the affirmative defense. *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006).

10. Because the factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint, an affirmative defense usually must be pled in an answer and either resolved in later motions such as a summary judgment or directed verdict or at trial. *Id* (citing 5 Wright and Miller, *Federal Practice and Procedure Civil 3d*, § 1277 (2004)).

11. Defendant relies solely on two statutory defenses in its motion to dismiss. Because these statutory defenses are in the nature of affirmative defenses and necessarily require examination of facts outside the four corners of the complaint, Defendant's motion to dismiss must be denied.

WHEREFORE, the Plaintiff respectfully requests the court to alter or amend its judgment as set forth above and for such other and further relief as the court deems just and appropriate.

Respectfully submitted,

s/ J. Nathaniel Pierce

J. Nathaniel Pierce, S.C. Bar No. 102803

Morton & Gettys, LLC

Attorney for Plaintiff

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nate.pierce@mortongettys.com

June 13, 2019  
Rock Hill, South Carolina



**Nate Pierce**

---

**From:** Nate Pierce  
**Sent:** Thursday, July 21, 2022 4:08 PM  
**To:** Catherine Miley  
**Subject:** RE: J.A. Seagraves v. North Regional III, LLC, 2019-001143

Those appear to be the correct documents, yes. Thanks!

---

Nate Pierce, Attorney  
Direct Tel: 803.366.3414



---

**From:** Catherine Miley <Catherine.Miley@mortongettys.com>  
**Sent:** Thursday, July 21, 2022 3:57 PM  
**To:** Nate Pierce <Nate.Pierce@mortongettys.com>  
**Subject:** RE: J.A. Seagraves v. North Regional III, LLC, 2019-001143

These are the docs they are requesting in this letter. If you need them submitted in a particular format please let me know. (these are the filed, clocked versions from the 2018CP2901191 case on the court site).

---

**From:** Leah McCraney <Leah.McCraney@mortongettys.com>  
**Sent:** Thursday, July 21, 2022 3:33 PM  
**To:** Catherine Miley <Catherine.Miley@mortongettys.com>; Shamira Thomas <Shamira.Thomas@mortongettys.com>  
**Subject:** FW: J.A. Seagraves v. North Regional III, LLC, 2019-001143

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**From:** Falin, Stormy <sfalin@sccourts.org>  
**Sent:** Thursday, July 21, 2022 3:32:14 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** Nate Pierce <Nate.Pierce@mortongettys.com>; [bmccoy@mccoylelawfirm.com](mailto:bmccoy@mccoylelawfirm.com) <[bmccoy@mccoylelawfirm.com](mailto:bmccoy@mccoylelawfirm.com)>; [chris@mcintoshlawfirm.com](mailto:chris@mcintoshlawfirm.com) <[chris@mcintoshlawfirm.com](mailto:chris@mcintoshlawfirm.com)>  
**Cc:** Leah McCraney <Leah.McCraney@mortongettys.com>; [chrisgelwicks@gmail.com](mailto:chrisgelwicks@gmail.com) <[chrisgelwicks@gmail.com](mailto:chrisgelwicks@gmail.com)>  
**Subject:** J.A. Seagraves v. North Regional III, LLC, 2019-001143

Dear Counsel:

Attached please find correspondence from the Court of Appeals.

**Do not respond to this email. Send all correspondence to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org).**

Respectfully,

Stormy Falin  
Clerk's Office Team Leader (Civil)  
South Carolina Court of Appeals  
1220 Senate Street  
Ph: (803) 734-1890

E-Filing Email: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

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**RECEIVED**

**Nov 10 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas  
Lancaster County Civil Action Number 2018-CP-29-01191

**The Honorable Kristi F. Curtis, Circuit Court Judge,**

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Appellate No. 2019-001143

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**J.A. Seagraves d/b/a J.A. Seagraves City Wide Paving, .....**Appellant,

**v.**

**North Regional III, LLC, .....**Respondent.


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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Petition for Rehearing complies with Rule 240, SCRAP.

November 10, 2022



J. Nathaniel Pierce, SC Bar No. 102803  
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P.O. Box 707  
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803.366.3388

Attorney for Appellant

**RECEIVED**

**Nov 10 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**PROOF OF SERVICE**

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The undersigned certifies that he has served this Petition for Rehearing of Appellant by emailing it and depositing a copy of it in the United States Mail, postage prepaid, on November 10, 2022, addressed to Chris Gelwicks, Esquire, at [chris@mcintoshlawfirm](mailto:chris@mcintoshlawfirm) and 209 Delburg Street, Suite 203, Davidson, NC 28036.

November 10, 2022



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