

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Circuit Judge

Case No. 2016-CP-21-1230

Harvey R. Campbell, Jr., d/b/s Metal Construction and Roofing., Appellant,

Vs.

Lee Lyerly and Ellen Marie Stone Lyerly Respondents

BRIEF OF APPELLANT

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QUESTIONS PRESENTED

DID THE TRIAL COURT ERR IN GRANTING JUDGMENT ON THE PLEADING BECAUSE THE AMENDMENT TO THE STATUTE RELIED ON BY THE COURT TO BAR APPELLANT CLAIM MEANT THAT THE APPELLANT COULD PROCEED ONCE HIS LICENSE HAD BEEN REINSTATED.

STATEMENT OF THE CASE

Appellant, Campbell brought this suit on a contract for residential construction work by complaint filed May 17, 2016. The complaint alleged that Appellant had a contract for residential construction with Respondents, Lyerly, that Appellant performed the contract and Respondents refused to pay. The complaint also alleged that Appellant has been licensed as a residential contractor, but that the license had expired at the time the contract was performed. The complaint alleged that Appellant's residential license had been reinstated.

Respondent's filed a timely answer and motion for judgment on the pleadings arguing that because Appellant did not have a valid residential builder's license at the time the work was performed barred his claim.

The motion for judgment on the pleading came before Judge William H. Seals, Jr. and Judge Seals granted the Respondent's motion dismissing the Complaint by order entered on October 12, 2016. RoA p.3 Respondent filed and served the Notice of Appeal on November 14, 2016.

ARGUMENT

QUESTION ONE: THE TRIAL COURT ERRED IN GRANTING JUDGMENT ON THE PLEADING BECAUSE THE AMENDMENT TO THE STATUTE RELIED ON BY THE COURT TO BAR APPELLANT CLAIM MEANT THAT THE APPELLANT COULD PROCEED ONCE HIS LICENSE HAD BEEN REINSTATED.

This is an appeal for the dismissal of a complaint and is appealable.

The Plaintiff argues that the licensing statute has been amended and does not bar Plaintiffs claim.

Previous South Carolina case laws held that a Residential Homebuilder cannot sue if he did not have a license at the time contract was made. *Duckworth v. Cameron*, 244 S.E.2d 217, 270 S.C. 647 (S.C., 1978). The Duckworth case was decided on South Carolina Code § 40-59-130. At that time that section read:

"(n)o residential home builder who does not have the license required herein may bring any action either at law or in equity to enforce the provisions of any contract for residential home building which he entered into in violation of this chapter."

The current statute §40-59-30 reads:

(B) Notwithstanding Section 29-5-10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this

chapter.

Chapter 59 of Title 40 was completely revised in 2002 by Act 237. It was amended again in 2009 (RoA p. 26) to its current form;

Section 40 59 30. (A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or registering with the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) Notwithstanding Section 29-5-10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into violation of this chapter.

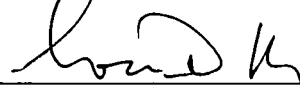
Appellant argues that the current language of the statute allows a contractor who obtains or reinstates his license may thereafter sue on the contract. In *Duckworth supra*. the Supreme Court decided the language of the then current statute prohibited a residential contractor from enforcing a contract made without a current license. This is a very harsh penalty. The statute focused on the status of the license at the time the contract was made. The Legislature subsequently amended the licensing statute to change the prohibition on enforcing the contract to add the language “who first has not

procured a license” may not enforce the contract. This language has no meaning unless it is to allow enforcement of the contract after obtaining the proper license and there would be no purpose for the amendment. It changes to focus of the licensing from the time the contract was made to the time the suit is filed.

CONCLUSION

If the amendments to the licensing statute made in 2002 and 2009 are to have any meaning or purpose they should be construed to allow enforcement of a residential contractor who has a valid license at the time the enforcement action brought.

Respectfully submitted,



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March 2, 2017

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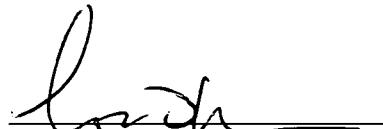
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CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Brief complies with Rule 211(b), SCACR.



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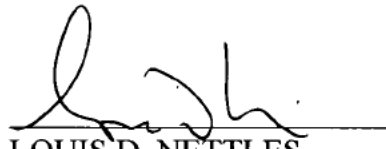
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CERTIFICATE OF SERVICE

I certify that I have served the Appellant's Final Brief, on
Respondent's Attorney by depositing copies of the same in the United States
Mail, postage prepaid, on March 3, 2017 addressed to the following
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A handwritten signature in black ink, appearing to read "Louis D. Nettles", is positioned above a horizontal line.

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