

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
Strecansky and Company of the)
Lowcountry, Inc.)
)
Plaintiff,)
)
vs.)
)
Michael G. Matthews and Laurie Matthews,)
)
Defendants)
_____)

**IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT**

Civil Action No.: 2023-CP-07-01102

**ORDER
DENYING DEFENDANTS'
MOTION TO DISMISS/
SUMMARY JUDGMENT**

This matter came before the Court on Motion to Dismiss or alternatively Summary Judgment seeking the dismissal of the Amended Complaint by the Defendants, Michael G. Matthews and Laurie Matthews. On September 29, 2023, the parties appeared before me in a virtual hearing. For the reasons stated below, I DENY the Motion.

The following facts as presented are undisputed.¹

This matter arises out of a construction contract (“Contract”) between the Plaintiff, Strecansky and Company of the Lowcountry, Inc. (“Strecansky”), a longtime homebuilder, and the defendants, Michael G. Matthews and Laurie Matthews (“Matthews.”) Strecansky agreed to construct a house for the Defendants at 35 Jackfield Road in Bluffton, South Carolina by a contract dated June 3, 2021. Late in the construction process, dispute arose between the parties and the Defendants regarding the payment of \$211,839.69 which Strecansky claimed was owed.

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¹ The Defendants attached various documents to their Motion to Dismiss, which technically converted the Motion to Dismiss a Motion for Summary Judgment. See SCRCP 12(b). The distinction for purposes of this Motion is immaterial, as I do not find a dispute of material fact on the facts pertinent to the Motion.

Strecansky in the Amended Complaint has made claims including for mechanic' lien foreclosure and breach of contract accompanied by a fraudulent act. After Strecansky filed this lawsuit, Defendants moved to dismiss.

Strecansky's legal name is "Strecansky and Co. of the Lowcountry, Inc." This has been its legal name since its Articles of Incorporation were filed with the State of South Carolina on December 1, 2006. This is the legal name for its Internal Revenue Service Employer Indemnification Number issued December 6, 2006. Strecansky has done business in South Carolina since 2007 under this name.

On February 28, 2007, Strecansky applied with the South Carolina Contractor's Licensing Board for a General Contractor's License. In the application, Strecansky's office administrator made a scrivener's error by writing in the name "Strecansky & Co., Inc. of the Lowcountry, Inc." (Emphasis added.) With this Application, Strecansky also submitted the South Carolina Articles of Incorporation and IRS EIN number which each show the correct name of "Strecansky and Co. of the Lowcountry, Inc." The Contractor's Licensing Board issued a General Contractor's license to "STRECANSKY & CO INC OF THE LOW COUNTRY INC" (all caps in original) dated February 28, 2007, the day it applied.

According to Mr. Strecansky's affidavit, for the last sixteen years, Strecansky performed nearly a hundred construction contracts under its legal corporate name of "Strecansky and Company of the Lowcountry, Inc." Mr. Strecansky further swore in his affidavit that he had no intent whatsoever to mislead anyone, including the Defendants, by the use of a license with an additional "Inc." in the name. He also swore that the extra "Inc." in the license application was a scrivener's error by his office administrator.

As stated in his affidavit, Mr. Strecansky personally is the statutory qualifying party for the General Contractor's license, and always has been.² There is no evidence in the record that any member of the public, or the Defendants, could in any way have been deceived as to the actual licensee and company doing the work under the Contract.

The undisputed evidence is also that there is nothing in the circumstances surrounding the execution of the Contract and the use of the name "Strecansky and Company of the Lowcountry, Inc." as opposed to "STRECANSKY & CO INC OF THE LOW COUNTRY INC" that in any way affected the work performed under the Contract. Mr. Strecansky swore in his affidavit that this slight difference did not affect the expectations of the parties for the fulfillment of the terms of the Contract.

Mr. Strecansky submitted evidence that he believes that his company properly performed the work that is the subject of its lawsuit and is entitled to compensation for it.³ Mr. Strecansky believes he substantially complied with the intent of the licensing statute and that forfeiture of the right to sue is an overly harsh remedy that does not comport with the intent behind the statute.⁴

² As the statutory qualifying party for the license, Mr. Strecansky is the individual that sat and passed the examinations necessary to show he is qualified to be a licensed general contractor in South Carolina. See S.C. Code Ann. § 40-11-10(23)(qualifying person is one "who has been issued a certificate to qualify an entity for a license by way of examination in a license classification or subclassification.") See also S.C. Code Ann. § 40-11-230.

³ The issue of Strecansky's performance or non-performance of the Contract is not decided by this Motion.

⁴ Although not necessary for disposition of this Motion, the Court notes that per Mr. Strecansky's affidavit, until the Motion to Dismiss was filed, Mr. Strecansky never noticed the error, nor did anyone else (including his insurance company, accountant, and numerous building officials.) After the Motion to Dismiss was filed, Mr. Strecansky went back to the Contractor's Licensing Board and had the license reissued in the name of "Strecansky and Co. of the Lowcountry, Inc." When Mr. Strecansky got the license reissued, he explained on a short phone call to the Contractor's Licensing Board the error on the original application and received no admonition or comment from the Contractor's Licensing Board when he did so. He told the Contractor's Licensing Board about the error and the person at the Board immediately made the change online, and in two days he received the hard copy revised license with the proper name.

Thus, the general contractor's license was issued to Plaintiff in the name "STRECANSKY & CO INC OF THE LOW COUNTRY INC" and the Contract says "Strecansky and Company of the Lowcountry, Inc."

The only issue for the Court in this Motion is whether Strecansky violated S.C. Code Ann. § 40-11-370 by not using the "exact name" in the Contract, i.e., the use of "and Company" as opposed to "& Co." in the Contract and the failure to add the extra "Inc." in the Contract so that the contracting entity in the Contract was not *exactly* represented to be "Strecansky & Co. Inc. of the Lowcountry, Inc."

S.C. Code Ann. § 40-11-370 provides:

SECTION 40-11-370. License required to use term "licensed contractor"; engaging in construction under assumed name; enforcement of contract.

(A) It is unlawful to use the term "licensed contractor" or to perform or offer to perform general or mechanical construction without first obtaining a license as required by this chapter.

(B) It is unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this chapter. "Engaging in construction" includes marketing, advertising, using site signs, and submitting contracts. This requirement does not include advertising on vehicles, which may use an abbreviated version of the license name so long as the advertising is not misleading.

(C) An entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract. An entity that enters into a contract to engage in construction in a name other than the name that appears on its license may not bring an action either at law or in equity to enforce the provisions of the contract.

S.C. Code Ann. § 40-11-370 on its face does require that a licensee must use the name on its license as the contracting party in a contract for work governed by the licensing statute. Defendants argue that (1) because in the Contract Plaintiff used as part of its name "and Company" instead of "& Co." and (2) because Strecansky's license has an extra "Inc." in the licensee name,

but that extra Inc. was not in Plaintiff's name in the Contract, then the "exact name" on the license was not the "exact name" on the Contract, so per § 40-11-370(B) and (C), Strecansky, using its legal name, was not permitted to execute the Contract. Thus, the Defendants argue that the Contract is void and unenforceable, so that all of Strecansky's claims must be dismissed.

Obviously, the use of "and Company" instead of "& Co." in the Contract and the additional "Inc." in the license itself but not in the Contract means that the name on the license is not Strecansky's "exact name" as the legal name on the Contract. However, the Court's analysis does not stop there. As long ago noted by the Supreme Court, "the law abhors forfeitures, and will seize upon slight evidence to prevent one." *White v. Sovereign Camp, W. O. W.*, 184 S.C. 215, 192 S.E. 161, 164 (1937).

As an initial matter, the Defendants' interpretation of the consequences of the failure to use the "exact name" on a contract is too restrictive and could lead to absurd results. Taken to its logical conclusion, Defendants' argument would mean that a misplaced comma, period, or use of "Co." instead of "Company" on a duly issued license would mean that a licensed contractor that met all of the requirements for licensure and caused no harm to the public or any party would forfeit any contractual right including the right to sue on the contract, even if there was no complaint with the quality of its work.

This simply does not make sense. The language of a statute cannot be construed in a manner that would lead to an absurd result or would not serve the General Assembly's purpose. *Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 735 S.E.2d 453, 455 (2012). The General Assembly's purpose will prevail over the literal import of any particular words, because the words used in a statute are subservient to the General Assembly's purpose rather than the purpose being subservient to the words. *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 626 S.E.2d 6, 10 (2005).

The “spirit and purpose” of the contractor licensing statutes and regulations are to “protect the public.” *W & N Const. Co. v. Williams*, 322 S.C. 448, 472 S.E.2d 622, 623 (1996); *see also* 5 Bruner & O'Connor Construction Law § 16:12 (stating the purpose of construction licensing statutes as protecting a state’s citizenry from “untrustworthy and incompetent contractors” and “safeguarding of the life, health, and property” of a state’s citizens). Defendants’ interpretation of the statute does nothing to further the purpose of the statute to protect the public.

A closer analysis of S.C. Code Ann. § 40-11-370 is warranted. The term “exact name” is used in Subsection (B), *but not* in Subsection (C). Subsection (C) is the subsection that actually forbids a party filing a lawsuit. If the Legislature has intended to state a party that did not use its “exact name” on its license in Subsection (C) as a condition precedent to filing a lawsuit, it could have done so. It did not, implying that the omission means that an “exact name” is not necessary to comply with that Subsection. “A court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law.” *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 599, 654 S.E.2d 284, 290 (Ct. App. 2007).

Finally, as noted in the heading to S.C. Code Ann. § 40-11-370, the purpose of the statute with respect to the name of a contractor is to prohibit “engaging in construction **under assumed name.**” (Emphasis added.) That is clearly not the case here. There is no assumed name and only a scrivener’s error on the license. The Court rejects an interpretation of the statute than (1) the use of “and Company” instead of “& Co.”⁵ in the Contract and (2) the insertion of a random additional “Inc.” in the license name that is a scrivener’s error create a violation of the statute when the

⁵ It is obvious and I take judicial notice that “Co.” is a hyphenation of “Company” and an ampersand means “and.”

licensee contracts to do work under its legal name that is on file with the licensing agency.⁶ “A statutory provision should be given a reasonable construction consistent with the purpose and policy expressed in the statute.” *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 484 S.E.2d 471, 472 (1997)(citing *Jackson v. Charleston Cnty. Sch. Dist.*, 316 S.C. 177, 447 S.E.2d 859 (1994)).

As an independent, alternative basis to deny the Motion, the Court finds that Strecansky substantially complied with the licensing statute by (1) contracting under its legal name, which is substantively identical to the license name; (2) providing the Contractor’s Licensing Board with its legal name and articles of incorporation when it applied for its license; and (3) having the identical qualifying party. As noted, there is no evidence of any prejudice to Defendants by the use of Strecansky’s legal name instead of the exact name on its license.

In such a circumstance, the doctrine of substantial compliance is properly applied.

“Substantial compliance has been defined as ‘compliance in respect to the essential matters necessary to assure every reasonable objective of the statute.’” *Brown v. Baby Girl Harper*, 410 S.C. 446, 453, 766 S.E.2d 375, 379, n.6 (2014), quoting *Orr v. Heiman*, 270 Kan. 109, 12 P.3d 387, 389 (2000). While rejecting the use of the doctrine in that case under that statute, the Supreme Court noted that “we are not precluding the use of substantial compliance in future cases where technical defects in the consent, such as a scrivener's error, may be at stake.” *Id.* at n. 7. See also *Responsible Econ. Dev. v. Florence Consol. Mun. Plan. Comm'n*, No. 2005-UP-584, 2005 WL 7084861, at *2 (S.C. Ct. App. Nov. 16, 2005)(Court recognized that substantial compliance was

⁶ At worst, the added “Inc.” on Strecansky’s license is a scriveners’ error. South Carolina courts in other contexts routinely ignore scriveners’ errors. See e.g., *Smith v. Lawton*, 435 S.C. 179, 188, 865 S.E.2d 782, 787 (Ct. App. 2021); *Holroyd v. Requa*, 361 S.C. 43, 60, 603 S.E.2d 417, 426 (Ct. App. 2004)(“Our courts have corrected scriveners' errors when warranted.”); and *Florence Cnty. Dep't of Soc. Servs. v. Ward*, 310 S.C. 69, 71, 425 S.E.2d 61, 62 (Ct. App. 1992). This Court agrees that it likewise should ignore the additional “Inc.” in the license name as inconsequential.

not defined by the applicable statute but noted that “American jurisprudence generally holds substantial compliance is met if the purpose of the statute is achieved.”)

This has long been the law in South Carolina. *See e.g., Davis*, 326 S.C. 83; *Jordan v. Tadlock*, 223 S.C. 326, 75 S.E.2d 691 (1953); *Victor Fertilizer Co. v. S. Ry. Co.*, 202 S.C. 294, 24 S.E.2d 499, 501 (1943) (“A substantial compliance with the statutory provision is all that is needed.”); *Ex parte Horne*, 437 S.C. 218, 877 S.E.2d 798 (Ct. App. 2022), *reh'g denied* (Sept. 28, 2022); and *S.C. Dep't of Consumer Affs. v. Cash Cent. of S.C. LLC*, 435 S.C. 192, 865 S.E.2d 789 (Ct. App. 2021). Although no South Carolina case has discussed the application of the substantial compliance doctrine in the contractor licensing statute context, courts in other states routinely apply the doctrine when contractors comply with the intent of a statutory licensing scheme but miss one small technicality that does not undermine the intent of the scheme.⁷

Thus, as an alternative basis to find that there is no violation of S.C. Code Ann. § 40-11-370, I find that Strecansky substantially complied with the intent of the statute.

For the aforestated reasons, the Motion is DENIED!

⁷ *See e.g., DeReggi Const. Co. v. Mate*, 130 Md. App. 648, 660–61, 747 A.2d 743, 749 (2000); *Aesthetic Prop. Maint. Inc. v. Capitol Indem. Corp.*, 183 Ariz. 74, 900 P.2d 1210, 1214 (1995); *McNairy v. Sugar Creek Resort, Inc.*, 576 So. 2d 185, 187 (Ala. 1991); *Coleman v. Anderson*, 620 S.W.2d 77, 79 (Tenn. 1981); *Murphy v. Campbell Inv. Co.*, 79 Wash. 2d 417, 486 P.2d 1080, 1083 (1971); *Alaska Prot. Servs., Inc. v. Frontier Colorcable, Inc.*, 680 P.2d 1119, 1122 (Alaska 1984). *See also*, 53 C.J.S. Licenses § 134.



Beaufort Common Pleas

Case Caption: Strecansky And Company Of The Lowcountry Inc VS Michael G Matthews , defendant, et al
Case Number: 2023CP0701102
Type: Order/Dismissal

So Ordered

s/ Robert Bonds, 2770