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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-in-Equity Judge
Trial Court Case No. 2021-CP-10-001711

Appellate Case No. 2025-000089

John Michael Barnett……..……..…..……..…Respondent,

v.

CNT Foundations, LLC and Christopher T. Bedson, Defendants, of Which CNT Foundations, LLC is the Appellant …….……...……..…….Appellant.

INITIAL BRIEF OF APPELLANT

Charles A. Krawczyk
SC Bar #: 16832
2118 Bayberry Ct.
Columbia, South Carolina 29206
(803) 261-9809
Charley@CAK-LAW.com
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

Statutes

STATEMENTS OF ISSUES ON APPEAL

1. Did the Master In Equity abuse its discretion by denying CNT's Motion to Stay or Dismiss and subsequent Motion to Alter or Amend?
2. Was the Master In Equity required to stay the action because Respondent failed to provide proper notice to CNT, thus dismissing the case because the opportunity to cure is impossible?

STATEMENT OF THE CASE

On September 15, 2019, Respondent John Michael Barnett ("Respondent") entered into a service contract ("Contract") with Appellant CNT Foundations, LLC ("CNT") to perform existing foundation repairs and foundation setting for an additional structure at 603 Atlantic Street in Mount Pleasant, South Carolina ("Subject Property"). CNT was hired by Respondent to complete the work as a subcontractor. (Tr. 120:7-9, R.____). CNT completed the contracted work per the terms of the Contract and Respondent paid the contracted amount. Thereafter, Respondent alleges defects arose from CNT's work at the Subject Property. Respondent originally filed a Summons & Complaint in the Small Claims Court in Charleston County for breach of contract. Respondent later amended the Complaint to include an additional allegation for failing to secure a permit, causing the alleged damages to exceed the jurisdictional limit of the Small Claims Court (Pl.'s Amend. Compl., R.___). The case was transferred to Master In Equity on March 24, 2021.

By agreement of the parties, the case was referred to the Master in Equity of Charleston County by the Master In Equity on February 21, 2024. Prior to the start of trial, the parties agreed that some of the causes of action in the Amended Complaint were resolved and agreed to the dismissal of Defendant Christopher T. Bedson. (Order, 1, Nov. 25, 2024, R.____). On September 13, 2024, CNT filed a Motion to Stay or Dismiss pursuant to S.C. Code Ann. § 40-59-830 based on Respondent's failure to comply with the notice requirements under the statute. (Tr. 5, R.____).

The case went to trial on September 19, 2024, and the Master in Equity, in a subsequent Order dated November 25, 2024, denied CNT's Motion to Stay or Dismiss and ruled for Respondent, in the amount of $7,228.56 plus costs. (Final Order, 1-2, Nov. 25, 2024, R.___).

On October 4, 2024, CNT filed a Motion to Reconsider seeking to have the Court permit the amendment. On October 9, 2024, the Court denied the Motion to Reconsider. On December 5, 2024, CNT filed a Motion to Alter or Amend Judgment to reflect Respondent's failure to comply with S.C. Code Ann. § 40-59-640 and failure to show proof of damages. (Defs' Mtn.to Amend, 2, 4, R.___). The Court denied CNT's Motion to Alter or Amend on December 18, 2024, stating again that the amendment would prejudice the Respondent, and CNT's Motion was unjustifiably delayed. (Order Denying Defs' Mtn, R.___). The Court adopted Respondent's Memorandum in Opposition as the basis for its denial. (Pl.'s Memo. In Opp'n, R.___). In separate Orders, dated December 18, 2024, the Court granted Respondent's Motion for Costs and Interest on the Judgment and amended the judgment to include interest and costs to total $12,667.06. (Order Granting Pl.'s Mtn. for Costs, R.___) (Am. J. for Costs, R.___).

CNT timely filed their Notice of Appeal on January 10, 2025. (Notice of Appeal, R.___).

ARGUMENT

I. THE MASTER IN EQUITY ABUSED ITS DISCRETION BY DENYING CNT'S MOTION TO STAY OR DISMISS THE CASE AND DENYING CNT'S MOTION TO ALTER OR AMEND.

A. STANDARD OF REVIEW

On appeal, the trial court's "finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred." *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 153, 723 S.E.2d 835, 840 (Ct. App. 2012). An abuse of discretion occurs when the trial court's ruling "had no reasonable factual support, resulted in prejudice to the right of appellant, and therefore amounted to an error of law." *Culbertson v. Clemens*, 322 S.C. 20, 24, 471 S.E.2d 163, 165 (1996).

B. THE ISSUE WAS NOT WAIVED PRIOR TO TRIAL AND RESPONDENT DID NOT COMPLY WITH THE NOTICE REQUIREMENTS UNDER S.C. CODE ANN. § 40-59-840.

Our Supreme Court has recognized that the Right to Cure Act (RCA) affords substantial rights to the builder. In *Grazia v. South Carolina State Plastering, LLC*, the Court found that "§ 40-59-840 imposes an absolute condition precedent to the filing of lawsuits that qualify under the Right to Cure Act [, and] encompasses civil lawsuits filed against a contractor or subcontractor, and *requires* the claimant to serve written notice no later than ninety days before filing the action." *Grazia v. South Carolina State Plastering, LLC*, 390 S.C. 562, 570, 703 S.E.2d 197, 200-01 (2010) (emphasis in original); *See* S.C. Code Ann. § 40-59-840.

CNT contends that the Master In Equity effectively disregarded both the notice and stay requirements under the RCA, which was an abuse of discretion. In the Master In Equity's reasoning for denying CNT's Motion to Stay or Dismiss, Judge Scarborough stated: "One, I think there has been notice[,]" and "two, I think there's been a waiver by failure to allege it." (Tr. 13:9-13, R.___). This was upheld in all post-trial motions, including the denial of CNT's Motion to Alter or Amend where Judge Scarborough added that such amendment would prejudice Respondent. (Order Denying Defs.' Mtn., R.___).

1. Respondent's Notice did not meet the statutory requirements.

In *Grazia*, the Court upheld that the notice requirements under the RCA "impose an *absolute condition precedent* to the filings of lawsuits that qualify." *Grazia*, 390 S.C. at 570, 703 S.E.2d at 200-01 (2010) (emphasis added); *See* S.C. Code Ann. § 40-59-840. Specifically, "notice of a claim must contain the following: (1) a statement that the claimant asserts a construction defect; (2) a description of the claim in reasonable detail sufficient to determine the general nature of the construction defect; and (3) a description of any results of the defect, if known." S.C. Code Ann.

§ 40-59-840. Further, § 40-59-850 provides that "the contractor or subcontractor has thirty days from service of the notice to inspect, offer remedy, offer to settle with the claimant, or deny the claim." S.C. Code Ann. § 40-59-850. Service is defined as "personal service or delivery by certified mail to the last known address of the addressee." S.C. Code Ann. § 40-59-820(5).

The alleged notices provided by Respondent to CNT do not comport to the "mandatory plain language of the notice requirements." *Grazia*, 390 S.C. at 571, 703 S.E.2d at 201 (2010). The first alleged notice that CNT received was a phone call from Respondent. (Tr. 130: 20-131:1, R.___). The second alleged notice of issue at the Subject Property was a letter dated February 10, 2020. (Tr. 7:9-20, R.___). This letter was not notice of a defect pursuant to the RCA but rather a demand from Respondent for repayment of work. The letter detailed repairs that Respondent made to the foundation of the Subject Property and the costs of such repairs, and it was sent almost three months after those repairs were completed. If notice under the RCA is intended to allow CNT the opportunity to inspect, offer to remedy or settle a claim, or deny the claim, the February letter did not comply. Respondent likewise conceded at trial that "there's no evidence of [notice and opportunity to inspect] being in writing." (Tr. 10:2-8, R.___). Therefore, there was no notice pursuant to § 40-59-840.

2. The prejudice to CNT for denying the Motion to Stay and Motion to Alter or Amend outweighs any prejudice to Respondent.

As stated above, the RCA affords substantial rights to the builder, and South Carolina Courts have held that the Act "imposes an absolute condition precedent to the filing of lawsuits that qualify under the Right to Cure Act." *Grazia v. South Carolina State Plastering, LLC*, 390 S.C. 562, 570, 703 S.E.2d 197, 200-01 (2010) (emphasis in original). CNT contends that the Master In

Equity's denial of CNT's motions to enforce its rights under the RCA resulted in significant prejudice.

The failure to enforce CNT's statutory rights deprived them of the opportunity to address and potentially rectify the alleged defects before Respondent filed this action with the Master In Equity. Further, this oversight has significant implications for CNT's ability to effectively manage and mitigate potential damages and reputational harm, both with Respondent and future clients. The statutory language is clear in its intent to provide builders with a fair chance to cure defects. By allowing Respondent's action to proceed, without first enforcing CNT's right to cure, the Master In Equity placed CNT at a distinct disadvantage that not only prejudiced CNT's legal position but also undermined the legislative intent behind the RCA.

Additionally, In *Grazia*, when discussing the intentions of § 49-50-830, Justice Pleicones, in concurrence stated, "policy reasons militate against an interpretation that not only excuses but encourages ignorance of the law." *Grazia*, 390 S.C. at 578, 790 S.E.2d at 205 (2010). Respondent took on the role as general contractor for this construction at the Subject Property, and hired CNT, a Charleston-based small business, as a subcontractor for this project. (Tr. 76:19-77:21, R.___). Respondent had no professional background as a contractor, and while a licensed expertise was not required for the role that Respondent took on, he could not be ignorant of the law by which he must abide. By denying CNT's rights under the RCA, the Master In Equity has undermined the procedural safeguards afforded to builders and has implied that ignorance of law may be excused for any homeowner who takes on the role of contractor, without professional expertise.

II. THE MASTER IN EQUITY WAS REQUIRED TO STAY THE ACTION.

A. STANDARD OF REVIEW

The second issue on appeal is a question of law, specifically statutory interpretation. In South Carolina, questions of law are reviewed de novo, meaning this Court can decide the issue without deference to the trial court's conclusions. *Catawba Indian Tribe v. Stat*e, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

B. BECAUSE RESPONDENT FAILED TO COMPLY WITH THE STATUTE REQUIREMENTS, THE MASTER IN EQUITY WAS REQUIRED TO STAY THE ACTION UNTIL COMPLIANCE COULD BE MET.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). However, "where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.*

The RCA plainly states that when a party fails to comply with the purported absolute duty of notice in the RCA, "on motion of a party to the action, the court *shall* stay the action until the claimant has complied with the requirements of this article." S.C. Code Ann. § 40-59-830 (emphasis added). Based on the plain and ordinary meaning of the statue, a stay pursuant to the Right to Cure Act is mandatory, and "a court can no more disregard the stay requirements than it can disregard the notice requirements." *Grazia*, 390 S.C. at 571, 703 S.E.2d at 201 (2010).

In *Grazia*, the Court held that the plain language of § 40-59-830 did "not restrict its application beyond a claimant who files an action in court before first complying with the requirements of this article." *Grazia*, 390 S.C. at 569, 703 S.E.2d at 200 (overruling the Master In Equity's holding that this statute would only apply in accidental situations). Despite the application

of plain and ordinary meaning, the Court also discussed the legislative intent of the RCA. The "express public policy intent of the Right to Cure Act is: (1) addressing the need for an alternative dispute resolution method to promote settlement of construction disputes without litigation, while adequately protecting the rights of homeowners, and (2) requiring a would-be plaintiff in certain construction defect matters to file a notice of claim with the would-be defendant and provide an opportunity to resolve the claim without litigation." *Grazia*, 390 S.C. at 572, 703 S.E.2d at 202 (2010). (citing 2003 South Carolina Laws Act 82 (S.B. 433)). Therefore, "the stated public policy, . . . is not abridged when a court, on motion, is required to stay a proceeding in order to require compliance with the Right to Cure Act's notice provisions." *Id.* (emphasis in original). Pursuant to § 40-59-840, CNT was entitled to a stay of proceedings until Respondent could comply with the notice requirements under, and anything other than a stay of the proceedings, is in direct contradiction to the plain and unambiguous language used, a violation of CNT's rights, and inconsistent with the legislative intent. *See* S.C. Code Ann. § 40-59-840. The Master In Equity was required to allow a stay of the proceedings.

Additionally, CNT contends that this matter should be permanently stayed, thus dismissed, because CNT will not be afforded their rights under the RCA. In *McIntire v. Seaquest Dev. Co.*, Justice Toal, sitting as a Judge in a Circuit Court matter reasoned that a homeowner, who did not comply with the RCA prior to filing an action against a contractor and "substantially repaired and remodeled their home," thus "foreclosed even the possibility of compliance with the Right to Cure Act." *McIntire v. Seaquest Dev. Co.*, No. 2016 CP-10-1833, 2017 S.C. C.P. LEXIS 252, at *8-9 (Charleston Cnty. Cir. Ct., Jan. 17, 2017). Referring to the holding in *Grazia*, Justice Toal further declared that "a court, on motion is required to stay a proceeding in order to require compliance with the Right to Cure Act's notice provisions," and due to the circumstances in *McIntire,*

compliance was impossible in the circumstances, thus "the stay must be permanent; [and] as a practical matter, a permanent stay is a dismissal." *Id.; See Grazia,* 390 S.C. at 572-73, 703 S.E.2d at 202. While not mandatory on this Court, Justice Toal's opinion in *McIntire* offers sound guidance to the interpretation of § 40-59-830. *See* S.C. Code Ann. § 40-59-830.

Similar to the homeowner in *McIntire*, Respondent began repairs on the foundation almost immediately after CNT finished the contracted work in October 2019. (Tr. 86:22-87:8, R.___). These repairs were substantially completed before CNT received the February 20, 2020, letter from Respondent and before Respondent filed this action on April 14, 2021. Respondent had no intention of affording CNT their rights afforded under the RCA as further evidence by the fact that Respondent has since sold the Subject Property to a third-party.

CONCLUSION

The Master In Equity abused its discretion by denying CNT's Motion to alter or Amend and Motion to Stay or Dismiss pursuant to S.C. Code Ann. § 40-59-810 *et seq*. because CNT did not waive the defense, there was no notice, and CNT experienced substantial prejudice. The Orders denying CNT's Motion to Alter or Amend should be reversed and remanded, and the Master In Equity should be instructed to find that under § 40-59-830 a stay of the proceedings was required and because compliance with the statute was impossible that the stay must now be permanent; and as a practical matter, a permanent stay is a dismissal, thereby a full and final dismissal of the case is proper.

Respectfully submitted,

CHARLES A. KRAWCZYK, ESQ.
SC Bar #16832
2118 Bayberry Ct.
Columbia, South Carolina 29206
(803) 261-9809
Charley@CAK-LAW.com

____s/ Charles A. Krawczyk_____
Charles A. Krawczyk
SC Bar #: 16832
Attorney for Appellant

Columbia, South Carolina
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