

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PC Construction of Greenwood, Inc., and  
Safeco Insurance Company of America,

Plaintiff,

vs.

Gaylor, Inc. of North Carolina and Western  
Surety Company

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2013-CP-26-423

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**ORDER**

THIS MATTER came before me for a hearing on August 26, 2013 for argument on a Motion for Summary Judgment filed by Plaintiff PC Construction of Greenwood, Inc. ("PC Construction") and Necessary Party Plaintiff Safeco Insurance Company of America ("Safeco") as to counterclaims asserted by Defendant Gaylor, Inc. of North Carolina. E. Wade Mullins, III, Esquire and Matthew H. Stabler, Esquire appeared on behalf of PC Construction and Safeco. M. Caroline Lindsey, Esquire appeared on behalf of Gaylor, Inc. of North Carolina. Based upon the pleadings, affidavits, memoranda of law, applicable law, and arguments of counsel, I make the following Findings of Fact and Conclusions of Law:

**Factual and Procedural History**

PC Construction desired to bid on a contract with Coastal Carolina University (the "Owner") to construct the Coastal Carolina Student Recreation/Convocation Center, State Project No.: H17-9557-MJ, in Horry County, South Carolina (the "Project"). PC Construction solicited bids from subcontractors for the various trades needed to complete the Project. Gaylor, Inc. of North Carolina submitted a bid for the electrical portion of the Project in the name "Gaylor, Inc. of North Carolina." PC Construction was the successful bidder for the Project and

*[Handwritten signature]*

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entered into a contract with the Owner on or about May 20, 2010. Safeco issued a payment bond for the Project naming PC Construction as principal and Safeco as surety. On or about July 8, 2010, PC Construction entered into a subcontract with Gaylor, Inc. of North Carolina for the electrical portion of the Project.

On January 18, 2013, PC Construction filed suit against Gaylor, Inc. of North Carolina for breach of the subcontract and for indemnity. By consent of the parties, Safeco was added as a Necessary Party Plaintiff. Subsequently, on or about April 3, 2013, Gaylor, Inc. of North Carolina served its Answer and Compulsory Counterclaims against PC Construction and Safeco. On April 18, 2013, PC Construction filed an Amended Complaint naming Western Surety Company, Gaylor, Inc. of North Carolina's performance bond surety, as an additional defendant. After filing an initial Answer to the Amended Complaint, on or about May 16, 2013, Gaylor, Inc. of North Carolina served its Amended Answer and Counterclaims to the Amended Complaint. Gaylor, Inc. of North Carolina raises four counterclaims: breach of contract and unjust enrichment causes of action against PC Construction, a claim on the payment bond against Safeco, and a claim against PC Construction and Safeco for attorneys' fee under S.C. Code Ann. §§ 27-1-15, 29-5-10 & 38-59-40. In all filed Replies to Gaylor Inc. of North Carolina's Counterclaims and Amended Counterclaims, both PC Construction and Safeco raise S.C. Code Ann. § 40-11-370 as an affirmative defense.

On May 2, 2013, PC Construction and Safeco filed a Motion for Summary Judgment on the grounds that Gaylor, Inc. of North Carolina's Counterclaims cannot be pursued because "Gaylor, Inc. of North Carolina" is not licensed to do business as a contractor. The name appearing on Gaylor, Inc. of North Carolina's Mechanical Contractor's license is "Gaylor, Inc." The name appearing on the subcontract with PC Construction is "Gaylor, Inc. of North

Carolina.” Gaylor, Inc. is an Indiana corporation. When Gaylor, Inc. registered with the North Carolina Secretary of State to do business in that State, it could not register under the name “Gaylor, Inc.” as another, unrelated entity already operated under that name. Gaylor, Inc. chose to register to do business in North Carolina as “Gaylor, Inc. of North Carolina.” The day of the hearing, Gaylor filed a Motion to reform the subcontract to change the name on the subcontract from “Gaylor, Inc. of North Carolina” to “Gaylor, Inc.” Gaylor, Inc. of North Carolina requested a continuance so that its Motion could be heard simultaneously with PC Construction and Safeco’s Motion.

#### Standard of Review

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 33, 530 S.E.2d 369, 371 (2000) (citations omitted). “Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact.” *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2002) (citations omitted). “Once the moving party carries its initial burden, the opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*.” *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986)) (internal quotations omitted) (emphasis and italics in original). “In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Vermeer Carolina’s Inc. v.*

*J. H. J.*

*Wood/Chuck Chipper Corp.*, 336 S.C. 53, 59, 518 S.E.2d 301, 304 (Ct. App. 1999) (citations omitted).

### Conclusions of Law

PC Construction and Safeco filed their Motion for Summary Judgment on May 2, 2013. At the hearing August 26, 2013, on PC Construction and Safeco's Motion, Gaylor, Inc. of North Carolina requested a continuance so that the Motion they had filed that day requesting reformation of the subcontract could be heard simultaneously with PC Construction and Safeco's Motion. Given this delay and the prejudice to PC Construction and Safeco in delaying a hearing on their Motion, I find Gaylor, Inc. of North Carolina's request for a continuance untimely and deny the same.

Pursuant to S.C. Code Ann. § 40-11-370(B), "[i]t is unlawful to engage in construction<sup>1</sup> under a name other than the exact name which appears on the license issued pursuant to this chapter [Chapter 11 of Title 40]." Pursuant to S.C. Code Ann. § 40-11-370(C), "[a]n 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." "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 361 (2013) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). The statute at issue "is plain and unambiguous, and conveys a clear and definite meaning . . . ." *C-Sculptures, LLC*, 403 S.C. at 56, 742 S.E.2d at 361.

S.C. Code § 40-11-370 is not confusing and is clear on its face. It is not ambiguous. Although the result of enforcing this statute may be harsh in some circumstances, there is no

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<sup>1</sup> "Engaging in construction" includes marketing, advertising, using site signs, and submitting contracts." S.C. Code Ann. § 40-11-370(B).

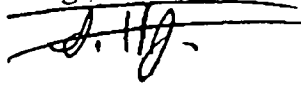


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need, nor does the Court have any leeway, to resort to considerations of fairness or public policy. South Carolina courts have repeatedly enforced the statutory scheme that prohibits unlicensed contractors or licensed contractors who do not adhere to the licensing statutes from enforcing contracts. *See, e.g., C-Sculptures*, 403 S.C. 53, 742 S.E.2d 359 (general contractor operating outside of license category cannot enforce contract); *Duckworth v. Cameron*, 270 S.C. 647, 244 S.E.2d 217 (1978) (unlicensed homebuilder prohibited from enforcing contract with owner by statute); *see also Wagner v. Graham*, 296 S.C. 1, 3, 370 S.E.2d 95, 96 (Ct. App. 1988) (“The Court has consistently honored the statute even though the result in some of the cases appears to be drastic.”) (regarding analogous section dealing with residential homebuilders). The Court must enforce the legislature’s will as expressed in this plainly written statute.

The South Carolina Board of Labor, Licensing, and Regulation issued the license used by Gaylor on the Project to “Gaylor, Inc., 11711 N. College Ave. #150, Carmel, Indiana 46032.” The subcontract with PC Construction was in the name of “Gaylor, Inc. of North Carolina, 1200 Corporation Parkway, Suite 115, Raleigh, North Carolina 27610.” Gaylor, Inc. of North Carolina entered into a contract in a name other than the name appearing on its mechanical license. Gaylor, Inc. of North Carolina’s argument that its name appears on the contract but is simply followed by additional information is unavailing. When read as a whole, it is clear that S.C. Code Ann. § 40-11-370 requires an entity to use the exact name appearing on its license. The Court cannot ignore the fact that “Gaylor, Inc. of North Carolina” is the name on the subcontract and that “Gaylor, Inc.” is the name on the mechanical license. Gaylor, Inc. of North Carolina’s argument that PC Construction drafted the subcontract and should not be entitled to rely upon S.C. Code Ann. § 40-11-370 is similarly unavailing. This statute is mandatory, and the parties are not allowed to agree to alter its affect or contract around it. *See Wagner v. Graham*,

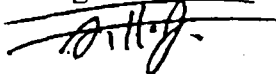
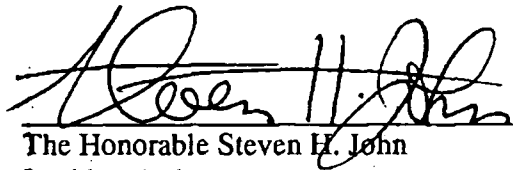


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296 S.C. 1, 370 S.E.2d 95 (Ct. App. 1988) (holding estoppel on the grounds that the homeowner knew the residential builder was unlicensed at the time of contracting is not a defense to a similar statute relating to residential home builders, reasoning that "[i]f one might avoid the impact of the statute by applying the law of estoppel, one could, by a similar reasoning, avoid the act by agreement between the Contractor and Homeowner.").

Because Gaylor, Inc. of North Carolina entered into a contract to engage in construction in a name other than the name that appears on its license, it may not bring an action either at law or in equity to enforce the provisions of the contract. Therefore, Gaylor, Inc. of North Carolina cannot pursue its counterclaims against PC Construction or Safeco. Therefore, it is ORDERED that PC Construction and Safeco's Motion for Summary Judgment as to Gaylor, Inc. of North Carolina's counterclaims is GRANTED.



The Honorable Steven H. John  
Resident Judge  
Fifteenth Judicial Circuit

September 4, 2013

Conway, South Carolina