

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Cambridge Building, Inc.)
 (License No. 117526),)
)
 Plaintiff,)
)
 vs.)
)
 Robert S. Lotstein, Kristin Huffman,)
 Robert S. Lotstein, Trustee of the Robert)
 S. Lotstein Family Trust dated)
 September 4, 2022, as Amended and)
 Restated, and Kristin S. Huffman,)
 Trustee of the Kristin S. Huffman)
 Family Trust dated September 4, 2022,)
 as Amended and Restated,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2024-CP-07-02002

ORDER

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SC Court of Appeals

Defendants’ Motion to Dismiss dated October 18, 2024 came before me on February 21, 2024. Present was Robert Lotstein and Terry A. Finger, attorney for the Defendants and Lee Anne Walters, attorney for the Plaintiff.

Plaintiff sued Robert S. Lotstein and Kristin Huffman both individually and as Trustee of the two trusts set out in the caption. Plaintiff sued (1) to foreclose a Mechanic’s Lien, (2) for a breach of contract, and (3) for unjust enrichment. Plaintiff’s compliant had five (5) exhibits.

Defendants’ Motion to Dismiss essentially asserted the following grounds: (1) the Mechanic’s Lien was not timely properly served within 90 days of the last work, (2) the Plaintiff’s contract was only with Robert Lotstein, and (3) the contract has a binding arbitration clause.

After reviewing the Pleadings, Exhibits, Memorandum of Plaintiff, and hearing the arguments of counsel, I make the following

FINDINGS OF FACT

1. The Mechanic's Lien states the last day of work was May 1, 2024.
2. The Mechanic's Lien was filed with the Register of Deeds on July 3, 2024.
3. Exhibit A to the Complaint indicates the real property subject to the Mechanic's Lien is owned by the Robert S. Lotstein Family Trust dated September 4, 2002 and the Kristin S. Huffman Trust dated September 4, 2002.
4. Exhibit D to the Complaint is an "Affidavit of Nonservice" dated July 26, 2024.
5. Paragraph 25 of the Complaint states:

To satisfy the statute, the Beaufort County Sheriff's Office served the Mechanic's Lien (*sic*) upon the property manager, Luxury Rentals of Hilton Head, LLC, as the "person in possession" pursuant to S.C. Code Ann. § 29-5-90.
6. Exhibit E to the Complaint is an Affidavit of Service of the Mechanic's Lien on Joanna "Nicky" Gleason.
7. The contract is referenced in Plaintiff's Complaint and is attached as an Exhibit to the Defendants' Motion to Dismiss (hereinafter referred to as the "Contract"). No objection was made to the Contract being considered by the Court.
8. The Contract is between Cambridge Building, Inc., and Frank Guidobono and Robert Lotstein. No other parties signed the Contract.
9. The Contract has an Arbitration provision in Paragraph 10.2. This is a material provision to the Contract.

NOW THEREFORE, based upon the above Findings of Fact, I make the following

CONCLUSION OF LAW

1. Plaintiff did not serve the Mechanic’s Lien on a “person in possession” as required by S.C. Code Ann. § 29-5-90. Exhibit E to the Complaint, which Plaintiff asserts shows service on the “person in possession” is defective, for among other reason, the following:
 - a) The Exhibit E does not reference any Defendant other than “PMIC Luxury Rentals.” PMIC Luxury Rentals is not a party to this lawsuit and there is no reference to this lawsuit whatsoever.
 - b) The service was not made at the subject property.
 - c) The Affidavit of Joanna “Nicky” Gleason was not objected to by Plaintiff. This Affidavit shows Nicky Gleason was not affiliated with the Defendants or the property in any way. She told the Deputy Sheriff that she did not work for Luxury Rentals, she had never been to the property, and she did not know Robert Lotstein or Kristin Huffman. Joanna “Nicky” Gleason could not be considered a “person in possession.” See, *Stovall Building Supplies, Inc. v. Mottett*, 305 S.C. 28, 406 S.E.2d 176 (App. 1990) (Security guard at entrance to community not a responsible person living at the home and not a person in possession); *Reid v. Carr*, opinion No. 2008-UP-541 (S.C. App. 2008) (painting subcontractor at property not a “person in possession.”)
2. Plaintiff attempted to switch and move away from the allegation that a “person in possession” was served and instead argued that Exhibit D complied with S.C. Code Ann. § 29-5-90 for a person that could not be located.
3. Exhibit D does not comply with the required language of the statute if a person cannot be located. In fact, Exhibit D states the Deputy Sheriff located Robert Lotstein, they talked on

the phone, and Defendants were on vacation. Exhibit D states the Sheriff's Department did locate Robert Lotstein, but he was traveling.

4. The Contract was between Cambridge Building, Inc., and Frank Guidobono and Robert Lotstein. Kristin Huffman and the respective trusts were not signatories or parties to the Contract.
5. The Contract contains an enforceable and binding arbitration provision.

NOW THEREFORE, IT IS ORDERED:

1. The Mechanic's Lien and Lis pendens on the subject property are hereby dismissed with prejudice and the First Cause of Action in the Complaint is dismissed.
2. Kristin Huffman, individually, and the Robert S. Lotstein Family Trust dated September 4, 2002 and the Kristin S. Huffman Trust dated September 4, 2002 are dismissed from this case with prejudice.
3. The Breach of Contract and Unjust Enrichment causes of action continue against Robert Lotstein individually. He has 15 days from the date of this Order to file responsive pleadings.
4. Once Robert Lotstein files his responsive pleadings, this case is stayed and the case is ORDERED to binding Arbitration. The parties are free to jointly agree on an arbitrator or go through the process of the American Arbitration Association.

IT IS SO ORDERED.

February _____, 2025

Honorable Benjamin Culbertson



Beaufort Common Pleas

Case Caption: Cambridge Building Inc VS Robert Lotstein , defendant, et al

Case Number: 2024CP0702002

Type: Order/Dismissal

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148