

# Appellant's Exhibit 2

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Harrell's Interior Components, LLC d/b/a BH Contracting Group, LLC,

Plaintiff,

v.

Ronald M. Tripp and Ruth S. Tripp,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT  
CASE NO. 2023CP1800680

**AMENDED FINAL ORDER**

**RECEIVED**

**Sep 26 2025**

**SC Court of Appeals**

This matter comes before the Court upon a Rule 59(e) Motion filed by Plaintiff, Harrell's Interior Components, LLC d/b/a BH Contracting Group, LLC (hereinafter "Plaintiff") on October 21, 2024, seeking to Alter or Amend this Court's Order Granting Summary Judgment in favor of the Defendants, Ronald M. Tripp and Ruth S. Tripp (hereinafter "Defendants"). A hearing on Plaintiff's Motion was scheduled and held on February 18, 2025, before the Honorable Diane Goodstein, where Plaintiff was represented by Steven M. Murdaugh, and the Defendants were represented by Steven L. Smith.

Having carefully reviewed the pleadings, the parties' memoranda of law, exhibits thereto, and having heard and considered the arguments of counsel, this Court hereby UPHOLDS AND REAFFIRMS its prior Order granting Defendants' Motion for Summary Judgment, for the reasons more fully set forth below.

## **PROCEDURAL BACKGROUND**

On or around August 9, 2022, Defendants entered into a contract with BH Contracting Group, LLC (hereinafter "BH") for construction work to be performed on their property (hereinafter the "Project"). Following a dispute between the parties, Plaintiff filed a Mechanic's Lien and Lis Pendens on April 11, 2023, alleging unpaid amounts due upon completion of the Project. On May 5, 2023, Plaintiff initiated this action against the Defendants by filing a Summons

and Complaint alleging breach of contract. Defendants filed their Answer on June 19, 2024, denying all causes of action alleged in the Plaintiff's Complaint and asserting affirmative defenses.

On February 6, 2024, Defendants filed a Motion for Summary Judgment seeking a dismissal of all claims and entry of judgment in their favor. Following a hearing on August 5, 2024, this Court granted Defendants' Motion for Summary Judgment by Order dated October 10, 2024. Plaintiff subsequently filed its Rule 59(e) Motion to Alter or Amend this Court's Order on October 21, 2024. A hearing for Plaintiff's Motion was held on February 18, 2025. This Final Order now follows.

### **STANDARD OF REVIEW**

Summary Judgment is proper when the moving party shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c) SCRCP. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002).

To withstand a motion for summary judgment "the party opposing the motion must show a reasonable inference to be drawn from the evidence." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). "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 there is a genuine issue for trial." *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct. App. 2004).

Upon hearing a Rule 59(e) motion to alter or amend a judgment, "the trial judge shall retain jurisdiction of the action for the purpose of hearing and disposing of such motion" and "[t]he motion may in the discretion of the court be determined on briefs filed by the parties without oral argument." Rule 59(e) SCRCP. "A party cannot for the first time raise an issue by way of a Rule

59(e) motion which could have been raised at trial." *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995).

### **FINDINGS OF FACT**

On August 3, 2015, Harrell's Interior Components, LLC (hereinafter "Harrell's") was formally recognized as a limited liability company by the South Carolina Secretary of State and remained in good standing at all relevant times to this action. Thereafter, on August 15, 2015, Harrell's obtained a general contractor's license by the South Carolina Board of Commercial Contractors, which expired on October 31, 2024.

On July 31, 2021, BH was formally recognized as a limited liability company by the South Carolina Secretary of State and remains in good standing at the time of this Final Order. On August 9, 2022, Defendants entered into a written contract with BH, which outlined the details of the Project along with terms which governed the agreement (hereinafter the "Contract"). It was and remains undisputed that BH was not in possession of a general contractor's license at the time it entered into the Contract with Defendants, nor at the time of the filing of the mechanics' lien or this action.

The Contract listed BH as the sole "Contractor." Moreover, the Contract was executed on BH letterhead and made no reference to Harrell's or any other licensed contractor whatsoever. The Contract specified that the total amount due for the agreed-upon services was \$49,000.00, with half of the purchase price (\$24,500.00), to be provided upfront and the remaining half (\$24,500.00) due "upon completion of the project." It was and remains undisputed that Defendants furnished the up-front payment to Plaintiff in full.

The Contract also included a clause stipulating that "Contractor [BH] shall comply with the policies, standards, and regulations of the Client [Defendants], including local and State laws", and that "[t]his Agreement shall be governed by and construed in accordance with the laws of the

State of South Carolina.” Importantly, the Contract also included a clause stipulating that “in the event a suit or action is filed to enforce this Agreement or with respect to this Agreement, the prevailing Party or Parties shall be reimbursed by the other Party for all costs and expenses incurred in connection with the suit or action, including, without limitation, reasonable attorney’s fees at the trial level and on appeal.”

On or around March 10, 2023, the Defendants sent a letter to BH outlining numerous deficiencies in the work performed on the Project. These deficiencies included issues with the structural foundation, door headers, door borders, building edges, insulation, floor sealing, and two concrete slabs. In the letter, Defendants offered to remit to Plaintiff an adjusted final payment of \$17,498.00 to account for the incomplete and deficient work on the Project. In response, Defendants received a letter from the Plaintiff’s attorney, demanding \$21,500.00 for the delivered, yet deficient work on the Project. Defendants declined to remit this payment, as there were still unresolved deficiencies with the work they had contracted for with the Plaintiff. This action was initiated as a consequence of the parties’ inability to settle the dispute.

Upon receiving a Summons and Complaint from Plaintiff, Defendants filed a Motion for Summary Judgment with this Court. After considering arguments made by both parties in their legal memoranda and at the hearing on the Defendants’ Motion, this Court granted summary judgment in favor of Defendants by Order dated October 10, 2024. In that Order, this Court determined that BH violated S.C. Code § 40-11-370 by entering into a construction contract with Defendants without holding a valid contractor’s license. This statutory violation rendered Plaintiff legally barred from enforcing the contract against the Defendants.

Despite having relied exclusively on S.C. Code § 40-11-370 in the arguments put forth in its Memorandum in Opposition of Defendants’ Motion for Summary Judgment, and at the August 5, 2024 hearing on the Motion, Plaintiff, for the first time, raised an entirely new statutory

argument in its Proposed Order and its Rule 59(e) Motion. Specifically, Plaintiff cited a subsection of S.C. Code § 40-11-360, which had previously been repealed in its entirety by the South Carolina Legislature, and asserted that this repealed language overrides the plain and controlling provisions of S.C. Code § 40-11-370.

The Defendants objected to this newly raised argument in their Memorandum in Opposition to Plaintiff's Rule 59(e) Motion. Defendants asserted that introducing a new legal theory in the post-hearing phase, one which could have been raised previously in the Plaintiff's pleadings, memoranda of law, or at the summary judgment hearing, was improper under established South Carolina law. Defendants further argued that permitting the Plaintiff to introduce new arguments post-hearing would unfairly prejudice the Defendants as it denies them an opportunity to address the additional arguments before the Court.

### **CONCLUSIONS OF LAW**

#### **I. Plaintiff Violated S.C. Code § 40-11-370 and is Barred from Enforcing the Contract.**

S.C. Code § 40-11-370(a) provides "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." Furthermore, S.C. Code § 40-11-370(b) provides "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."

It was and remains undisputed by Plaintiff that at the time the Contract was executed, and at all times relevant to this action, BH did not hold a valid contractor's license. Plaintiff also does not dispute that the Contract was executed in BH's name and on BH letterhead. The failure on behalf of Plaintiff to deny or rebut these undisputed facts indicates that there is no genuine issue as to the material fact that BH entered into the Contract with Defendants in direct violation of S.C.

§§ 40-11-370(a) and (b).

S.C. Code § 40-11-370(c) further provides “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 that appears on its license may not bring an action either at law or in equity to enforce the provisions of the contract.” In *Duckworth v. Cameron*, the Supreme Court stated “As a general rule, when a statute is plain and unambiguous, it should be applied literally because the legislative design is unmistakable... Any builder who violates this chapter [Chapter 40] by entering into a contract for home construction without obtaining the required license simply cannot enforce the contract.” *Duckworth v. Cameron*, 270 S.C. 647, 649 (1978).

At the hearing on the Defendants’ Motion for Summary Judgment, Plaintiff argued that although the Contract was executed between BH and the Defendants, the construction of the Project was carried out solely by Harrell’s. Even if Harrell’s performed the work, as Plaintiff asserted, S.C. Code § 40-11-370 is clear and unambiguous in its language, that entering into a contract under an unlicensed name is itself a violation, thus rendering the Contract unenforceable.

## **II. Plaintiff’s Post-Hearing Arguments Were Untimely and Cannot be Considered.**

South Carolina courts have consistently held that all legal claims, defenses, and arguments asserted by the parties thereto must be introduced prior to the judgment phase. The South Carolina Supreme Court has opined “When counsel for either side prepares the proposed order, the order must include findings of fact and conclusions of law as to all issues *raised* by an applicant.” *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 590 (2019) (*emphasis added*). Further reinforcing this standard of raising all applicable arguments prior to the judgment phase, the South Carolina Court of Appeals has held “A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial.” *Patterson v. Reid*, 318 S.C. 183, 185,

456 S.E.2d 436, 437 (Ct. App. 1995).

These well-established and consistently upheld precedents stand to prevent parties from introducing new and unheard post-hearing arguments, thereby providing the opposing party with a fair opportunity to respond to all positions asserted against it. These principles also ensure fairness and eliminate any opportunity for an opposing party to strategically withhold arguments to gain an unfair procedural advantage in filing proposed orders or post-judgment motions.

In the matter at hand, it is undisputed that Plaintiff relied solely on S.C. Code § 40-11-370 prior to judgment, both in its Memorandum in Opposition of Defendants' Motion for Summary Judgment and during the August 5, 2024 hearing on the Motion. It is also undisputed that Plaintiff did not raise or rely upon S.C. Code § 40-11-360 in any of its legal arguments prior to filing its Proposed Order and Rule 59(e) Motion.

This directly contravenes the precedent established in *Fishburne* and *Patterson* and deprives the Defendants of the opportunity to respond to these newly raised positions in the presence of a judiciary. Accordingly, this Court declines to consider Plaintiff's newly asserted reliance on repealed statutory language and reaffirms its prior determination that Defendants are entitled to summary judgment under the plain language of S.C. Code § 40-11-370.

### **III. Defendants are Entitled to Reasonable Attorneys' Fees as Provided for by the Contract and pursuant to Section 29-5-10 et seq. SCRCP as amended**

In *Fici v. Koon*, the Supreme Court held "As with any affirmative defense, the party successfully asserting it is a prevailing party and therefore entitled to attorney's fees where provided by contract." *Fici v. Koon*, 372 S.C. 341, 349 (2007). It was and remains undisputed that the Contract entered into between the parties expressly provides "In the event a suit or action is filed to enforce this Agreement or with respect to this Agreement, the prevailing Party or Parties shall be reimbursed by the other Party for all costs and expenses incurred in connection with the suit or action, including, without limitation, reasonable attorney's fees at the trial level and on

appeal.” Therefore, as the prevailing party under their affirmative defense, the Defendants are hereby entitled to reasonable attorney’s fees incurred as a result of Plaintiff’s action against them.

Further, pursuant to South Carolina Code Ann. §29-5-10(a), “[t]he costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party.” The amount of the attorney’s fee to be awarded is left to the sound discretion of the court. *T.W. Morton Builders, Inc. v. von Buedingen*, 450 S.E.2d 87, 316 S.C. 388, 403 (S.C. App. 1994). In doing so, the “court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” *Efco v. Renaissance On Charleston Harbor*, 635 S.E.2d 922, 370 S.C. 612 (S.C. App. 2006). I have received and reviewed the affidavit of fees submitted by the Defendants. The Affidavit of Attorney’s Fees and Costs filed with this Court on February 24, 2025, shows that the Defendants actually incurred \$18,111.25 in fees, however \$5,000 was paid to a previous attorney who had his law license suspended and could not participate in the defense of this action. I find that the amount paid to him should not be awarded against this Plaintiff.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

THIS COURT UPHOLDS AND REAFFIRMS its prior ruling that Plaintiff violated S.C. Code § 40-11-370 by entering into the construction contract without a valid contractor’s license.

FURTHER, THIS COURT UPHOLDS AND REAFFIRMS that the Defendants are entitled to summary judgment as a matter of law.

FURTHER, THIS COURT UPHOLDS AND REAFFIRMS that the Plaintiff is barred from seeking enforcement of the provisions of the contract in an action at law or in equity.

FURTHER, THIS COURT FINDS that the Defendants are entitled to the reasonable attorney's fees and costs in the amount of \$17,260.54, and judgment shall be granted against the Plaintiff in the amount of \$17,260.54.

IT IS SO ORDERED!

**END OF DOCUMENT**

**ELECTRONIC SIGNATURE PAGE TO FOLLOW**

**STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE COURT OF COMMON PLEAS**

**FORM 4**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2023 CP-1800680**

Harrell's Interior Components LLC d/b/a

Ronald M. Tripp and Ruth S. Tripp

BH Contracting Group, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Steven L. Smith	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : Final Order

<b>INFORMATION FOR THE JUDGMENT INDEX</b>		
<b>Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.</b>		
<b>Judgment in Favor of (List name(s) below)</b>	<b>Judgment Against (List name(s) below)</b>	<b>Judgment Amount To be Enrolled (List amount(s) below)</b>
Ronald M. Tripp and Ruth S. Tripp	Harrell's Interior Components LLC d/b/a BH Contracting Group LLC	\$17,260.54
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**





Dorchester Common Pleas

**Case Caption:** Harrells Interior Components Llc , plaintiff, et al VS Ronald M Tripp ,  
defendant, et al  
**Case Number:** 2023CP1800680  
**Type:** Order/Judgment Amended and Form 4

It is so Ordered!

s/Diane S. Goodstein