

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

REPLY BRIEF OF APPELLANT

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JAN 27 2014

SC Court of Appeals

Nancy Bloodgood, Esq., SC Bar No. 6459

Lucy C. Sanders, Esq., SC Bar No. 78169

FOSTER LAW FIRM, L.L.C.

895 Island Park Drive, Suite 202

Charleston, SC 29492

Telephone: (843) 972-0313

Facsimile: (888) 519-0934

Email: nbloodgood@fosterfoster.com

lsanders@fosterfoster.com

Attorneys for the Appellant

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ARGUMENTS

- I. Respondent makes insufficient reference to the Record to support its Statement of Facts, especially facts regarding the business relationship of Billy Mevers and Roy Mevers and their businesses.

Respondent cites to no facts to support its Statement of Facts as required by Rule 208 (b) (2) and (4). (Resp. Br. p. 1-1 [sic]) Respondent alleges it was licensed to perform contracting work at Appellant's home in August of 2006 through Roy Mevers who is Billy Mevers' brother because Roy Mevers has a 50% ownership interest in Respondent's business. (Resp. Br. p. 3; Tran. p. 4, l. 3-9.) Billy Mevers, not his brother Roy Mevers or Roy Mever's construction company, installed Appellant's kitchen cabinets at her home. (Tr. Tran. p. 6, l.22-24; p. 7, l. 20-25.) Billy Mevers produced at trial, a copy of a Home Builder's license for "Mevers Co, Inc." effective July 2012 through June 2014. (Pl.'s Tran. Ex. 1)

S.C. Code §40-59-410 (A) requires a residential business certificate of authorization to engage in residential home building. "The practice or offer to practice ... residential specialty contracting through a firm is authorized only through entities holding a residential business certificate of authorization issued by the commission." *Id.* Respondent Mevers Kitchens and Baths, LLC is a business that has never been registered with the Residential Builders' Commission as required by S.C. Code §40-59-20 (Def.'s Tran. Ex. 2) Further, Billy Mevers and Respondent Mevers Kitchens and Baths, LLC have never been licensed with the S.C. Contractors' Licensing Board per S.C. Code §40-11-240. (Def.'s Tran. Ex. 3) The Lower Court had no evidence that Respondent had a residential business certificate of authorization.

S.C. Code §40-59-410 (A) requires an individual practicing residential specialty

contracting (such as installing kitchen cabinets) to have a residential business certificate of authorization unless “an individual has at least fifty-one percent of the ownership interest and is the sole resident licensee for the firm...” *Id.* In this case the “firm” is Respondent. Billy Mevers and Respondent are the person or entity that performed the cabinetry work at issue. Respondent would not have needed a residential business certificate of authorization if his brother Roy Mevers owned at least fifty-one percent of the business, but Roy Mevers testified he only owns fifty percent of Respondent business. (Tr. Tran. p. 4, l. 3-9.)

As the only evidence in the record is that that Respondent and Billy Mevers never had a residential home builder’s license, and a residential business certificate of authorization was required by State law, the Lower Court erred in finding that Billy Mevers is licensed through his brother Roy Mevers. (Trial Order) The undisputed evidence is that Respondent was not authorized under S.C. Code §40-59-410 (A) to perform the residential specialty contracting work at Appellant’s home. Additionally, as Billy Mevers and Respondent and had no license number, no mechanic’s lien can be brought pursuant to S.C. Code §29-5-15 (A). Further, Billy Mevers and Respondent cannot bring a breach of contract claim as Billy Mevers engaged in construction under Respondent’s name, not under his brother Roy’s company. S.C. Code §40-11-370 (A) and (C). In short, the Lower Court erred as a matter of law in finding that Billy Mevers is licensed through his brother Roy Mevers and that Respondent was entitled to enforce a contract or file a mechanics lien. (Trial Order)

II. Even if Respondent could bring a breach of contract claim, the Lower Court made insufficient findings of fact to support the existence of a contract.

The cabinetry “quote” is ambiguous on its face as to who will pay for the kitchen

cabinets because both the general contractor and Appellant signed it. (Def.'s Tr. Ex. 1) Appellant admitted she signed the quote but testified at trial she was just agreeing to the cabinets in the quote; she was not signing a contract and so indicated by signing under the signature line on the quote, not on the line. (Tr. Tran, p. 44, l. 12 – p. 45, l. 20; p. 56, l. 14- p. 57, l. 6.) Respondent admitted that the contract does not state on its face who is responsible for paying for the cabinets. (Tr. Tran. p. 17, l. 11 – p. 18, l. 8.)

III. The Statute of Frauds provides no protection if the terms of an agreement are ambiguous.

Contrary to Respondent's assertion, the Statute of Frauds provides no protection if the terms of an agreement are ambiguous. *Walker v. Preacher*, 188 S.C. 431, 434-435, 199 S.E.2d 675, 676-677 (1938)

Under the statute of frauds, as in force in most of the states, it appears to be well settled that, if sufficiently definite and certain, and signed by the party to be charged, or by his agent or attorney on his behalf, a pleading admitting a parol agreement within the statute may constitute a sufficient writing within the meaning of the statute so as to enable the Court to enforce a contract. In order to constitute a sufficient memorandum, the subject-matter--the contract in this case--must be so certainly described as that no oral testimony is needed to supply any necessary terms or conditions.

Here, the cabinetry quote at issue not only did not state who was responsible for payment contrary to Respondent's argument, it did not state when the cabinets would be delivered. The quote states, "please allow 4 weeks for delivery of cabinetry." It is unclear whether that statement refers to the delivery of cabinets to Respondent or to the general contractor Stipp or to Appellant. In fact, the cabinet quote was signed in early March and the cabinets were not delivered to Appellant until late August, so the meaning of this statement is unclear. (Def.'s Tr. Ex. 1; Tr. Tran. p. 45, l. 8-13.) Respondent

testified he “guessed” that the four week delivery date meant for the date it was signed but the quote did not state that. (Tr. Tran. p. 18, l. 2- p. 19, l. 22.) Also, the price of the cabinets was unclear as the price on the quote is not the same amount Appellant was invoiced or the amount she paid her general contractor. (Tr. Tran. p. 36, l. 17 – p. 38, l.6; p. 39, l. 22 – p. 44, l. 8; Def.’s Tr. Ex. 7.)

IV. The Lower Court made no findings of fact to support its legal conclusion that S.C. Code §29-5-10 should apply because Respondent dealt directly with Appellant.

Respondent cites *Ringer v. Graham*, 293 S.C. 238, 359 S.E.2d 523 (Ct. App. 1987) for the proposition that Respondent was dealing with Appellant directly and, therefore, S.C. Code §29-5-10 should apply as that statute applies to a supplier who deals directly with an owner. S.C. Code §29-5-20 is intended to protect suppliers who deal with general contractors and limits a supplier’s recovery to the amount due to the contractor. The Lower Court erred in finding that because Appellant accepted and signed a cabinetry quote that Respondent was dealing directly with her. In fact, the evidence at trial was overwhelmingly to the contrary.

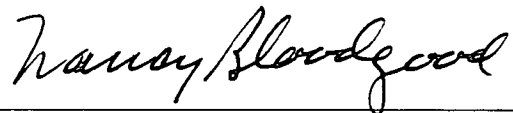
The general contractor also signed to approve the quote; he chose Respondent’s business and directed Appellant to go there to choose cabinets; the general contractor required Appellant not to contact any subcontractors (such as Respondent) if she had problems; he negotiated the price of the cabinets with Respondent; and, most tellingly, Respondent sent the general contractor the bill and expected payment from him, not the Appellant. (Tr. Tran. p. 21, l. 13 – p. 22, l. 13; p. 38, l. 21- p. 40, l. 14; p. 19, l. 2-8; 15- p. 20, l. 4; Def.’s Tr. Ex.1, 6, 7.) Appellant testified she never even met Billy Mevers until he was installing her cabinets in her kitchen which was five (5) months after she

approved the quote. (Tr. Tran. p. 45, l. 5-25.) It was only when the contractor failed to pay for the cabinets that Respondent looked to Appellant for payment.

In *Ringer*, the Court limited the recovery of a subcontractor who had no contact with the landowner. “[T]here is no evidence in the record that the [landowners] agreed to be contractually liable for payments to the [subcontractor].” *Id.* at 245, 359 S.E.2d at 527. Here, S.C. Code §29-5-20 applies as there is no evidence in the record and no findings of fact in the Order that Appellant agreed to be contractually liable for paying Respondent for the cabinets. To the contrary, Appellant contracted to pay her general contractor and did pay her general contractor for the cabinets.

CONCLUSION

Appellant respectfully requests this Court reverse the Lower Court’s Order and remand for an assessment of attorney fees against Respondent per S.C. Code §29-5-20(C) as she is the prevailing party in this case and she is entitled to attorney fees from Respondent in an amount to be determined after Appellant submits a petition for attorney fees.



Nancy Bloodgood, Esq., SC Bar No. 6459
Lucy C. Sanders, Esq., SC Bar No. 78169

FOSTER LAW FIRM, L.L.C.

895 Island Park Drive, Suite 202

Charleston, SC 29492

Telephone: (843) 972-0313

Facsimile: (888) 519-0934

Email: nbloodgood@fosterfoster.com

lsanders@fosterfoster.com

Attorneys for the Appellant

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PROOF OF SERVICE FOR REPLY BRIEF OF APPELLANT

Nancy Bloodgood, Esq., SC Bar No. 6459
Lucy C. Sanders, Esq., SC Bar No. 78169
FOSTER LAW FIRM, L.L.C.
895 Island Park Drive, Suite 202
Charleston, SC 29492
Telephone: (843) 972-0313
Facsimile: (888) 519-0934
Email: nbloodgood@fosterfoster.com
lsanders@fosterfoster.com
Attorneys for the Appellant


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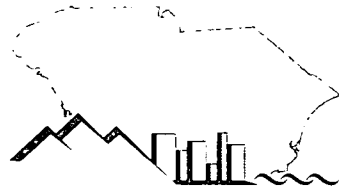
I, Nancy Bloodgood, Esquire, certify that on January 21, 2014, I served a copy of the Reply Brief of Appellant via First Class Mail by placing a copy of the said documents in the United States mail with sufficient postage thereon on the following:

T. Tracy Brown, Esquire
The Brown Law Firm
1524 Ashley River Road
Charleston, SC 29407
Attorneys for Respondent

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



Nancy Bloodgood, Esquire



FOSTER LAW FIRM, L.L.C.

Attorneys and Counselors at Law

NANCY BLOODGOOD
nbloodgood@fosterfoster.com
REPLY TO CHARLESTON

PAUL J. FOSTER, JR., 1928-1999

January 21, 2014

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Meyers Kitchens and Baths, LLC v Maryann Wagner and Stipp Contracting, LLC*
Appellate Case No.: 2013-002283
Case No.: 2007-CP-10-0750
Our File No.: 10138

Dear Ms. Kitchings,

Enclosed please find the original and one copy of the Reply Brief of Appellant in connection with the above-referenced matter. Please file the original and return a clocked-in copy of the same to me in the enclosed self-addressed stamped envelope.

By copy of this letter to opposing counsel, I am likewise providing him with a copy of the same.

Thank you for your assistance in this matter.

With kindest regards, I am

Sincerely,

Nancy Bloodgood

NB/alk
Enclosures

cc: Maryann Wagner
T. Tracy Brown, Esquire, The Brown Law Firm

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SC Court of Appeals

www.fosterfoster.com

GREENVILLE: 601 E. McBee Avenue, Suite 104 · Greenville, SC 29601 · 864-242-6200 · Fax: 864-233-0290

CHARLESTON: 895 Island Park Drive, Suite 202 · Charleston, SC 29492 · 843-972-0313 · Fax: 888-519-0934

Toll Free: 866-279-9772

Foster Law Firm, LLC
895 Island Park Drive, Suite 202
Charleston, SC 29492

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The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
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