

ORIGINAL

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

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, L.L.C.....Respondent

V.

Maryann Wagner and Stipp Contractin, L.L.C.
Defendants,

Of whom,

Maryann Wagner isAppellant

FINAL BRIEF OF RESPONDENT



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MAR 21 2014

SC Court of Appeals

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STATEMENT OF THE CASE

This is a mechanic's lien case that was filed by Respondent Mevers Kitchens and Baths, L.L.C. on February 21, 2007 against a general contractor, Stipp Contracting, L.L.C. and Appellant homeowner. (R. p. 24-37) Stipp Contracting, L.L.C. declared bankruptcy while the case was pending so the case was stayed on August 24, 2009. (R. p. 1) On March 24, 2011, the bankruptcy stay was lifted. (R. p. 2) On June 22, 2011, the case was referred to the Master with the consent of the parties. (R. p. 3) Appellant thereafter filed a Motion to Dismiss for Lack of Prosecution and an Order was issued by the Master on April 10, 2012 granting Appellant's motion and awarding Appellant attorney fees. (R. p. 4-11)

Respondent obtained new counsel and filed a Motion to Reconsider which was subsequently granted. (R. p. 50) On March 8, 2013, the Master summarily dismissed Respondent's claim for quantum meruit against Appellant. (R. pp. 12-14) Respondent did not appeal the dismissal of that cause of action.

On May 15, 2013, a bench trial was held before the Master regarding Respondent's two remaining causes of action against Appellant; a breach of contract claim and a action to foreclose on a mechanic's lien. The Master issued his Order dated October 3, 2013 finding in favor of Respondent on both causes of action, and this appeal ensues. (R. pp. 15-21)

STATEMENT OF THE FACTS

Respondent Mevers Kitchens and Baths, L.L.C. is a business that sells and installs kitchen and bath cabinetry. The two officers of Mevers Kitchens and Baths, L.L.C. (hereinafter "Mevers") are William E. Mevers and his brother, Roy E. Mevers. The Respondent company is licensed through its member, Roy E. Mevers. (R. p. 53, line 7 - p. 54, line 19)

On or about March 7, 2006, Respondent provided Appellant Wagner with a quote for the provision and installation of cabinetry. (R. p. 57, line 22 - p. 58, line 3) Said quote was accepted by Appellant Wagner on March 9, 2006 as evidenced by her signature on the bottom of said quote at the place designated by "Approved By:" (R. p. 59, lines 3-9) Said contract specifically sets forth the cabinets to be installed and the costs therefor. (R. p. 58, line 4 - p. 59, line 5) It also list MaryAnn Wagner as the party for whom the quote was prepared and offered. *Id.* Five days after said contract was executed by Appellant Wagner, (R. p. 87, line 13 - p. 88, line 8) it was also signed by an employee for the Stipp Contracting, L.L.C. evidencing its approval as well.

. Mevers provided and installed the cabinets in Appellant Wagner's home as required under the terms of the parties' agreement. (R. p. 90, lines 14-18) Mevers has never been paid. (R. p. 60, line 22 - p. 61, line 11)

. Respondent brought its action against Maryann Wagner and Stipp Contracting seeking relief under cause of action for Breach of Contract, Foreclosure and Quantum Meruit. Defendant Stipp previously filed for Bankruptcy under Chapter 7 and is out of the case. Respondent's Quantum Meruit claim was previously disposed of via Motion for Summary Judgement.

ARGUMENT

I. THERE IS AMPLE EVIDENCE IN THE RECORD TO SUPPORT THE LOWER COURT'S CONCLUSIONS OF LAW

a. There were facts presented sufficient to show that a contract existed.

Appellant Wagner opines that there is no evidence on the record supporting the existence of a contract between her and the Respondent. She is in error as there is ample evidence supporting the existence of such a contract.

Respondent's managing member, Billy Mevers, testified that Mevers Kitchens and Baths entered into a contract with the Appellant. (R. p. 57, line 22 - p. 58, line 3) He further testified that the written contract between he and Appellant was addressed to Appellant, at her address, provided the cabinetry to be provided and the costs thereof and the installation cost. (R. p. 58, line 4 - p. 59, line 5) That contract was admitted into evidence. (R. pp. 92-93) He also testified that Appellant approved the contract as evidenced by her signature on the contract.(R. p. 59, lines 3-9). Moreover, Appellant admitted during her testimony to signing the contract and to its contents. (R. p. 87, line 13 - p. 88, line 8) Clearly, Respondent made an offer and Appellant Wagner accepted the offer as shown by her signature thereon.

The fact that there is no signature by Respondent Mevers is of no moment. The Statute of Frauds (SC Code Ann. § 32-3-10) provides that a contract in writing and signed by the "party to be charged." is valid and enforceable. Blacks' Law Dictionary defines "party to be charged" as "the party against whom the contract is sought to be enforced. The party to be charged in the action - that is, the Appellant." Even in the case in which an alleged contract must be in writing, it is sufficient if signed only by the party to be charged. Again, there was sufficient evidence provided to the trial court showing the existence of a contract between Appellant and Respondent.

- b. The uncontroverted evidence presented shows that Respondent was licensed to provide the goods and services contracted for.

Appellant Wagner next takes the position that there was no evidence provided that supports the fact that Roy Mevers are equal owners of Respondent Mevers Kitchens and Baths, L.L.C. Again, the records shows otherwise. In particular, Roy Mevers, who holds a residential builder's license, testified that he is a member of the LLC and owns 50% of the company. (R. p. 53, lines 7-21) That testimony was uncontroverted.

South Carolina Code § 40-59-410 provides in part that:

[t]he practice or offer to practice residential home building, residential specialty contracting, or home inspecting as defined in this chapter by and individual residential builder, residential specialty contractor, or home inspector licensed or registered under this chapter through a firm offering residential building, residential specialty contracting, or home inspecting services to the public is authorized if: (1) one or more of the corporate officers in the case of a corporation, or one or more of the principal owners in the case of a firm . . . are licensed under the provisions of this chapter.”

It is not disputed that Roy Mevers is a member and 50% owner of Mevers Kitchens and Baths, L.L.C. and he is a licensed residential builder. He further testified that he was so licensed at the times the contract was entered into and the mechanic’s lien was filed and that Mevers Kitchens and Baths, L.L.C. operates under his license. (R. p. 53, line 20 - p. 54, line 19) Therefore, Mevers Kitchens and Baths, L.L.C. is licensed properly and it can assert its claims for breach of contract and mechanic’s lien

- c. There were sufficient facts regarding mechanic’s lien issues upon which the trial court could have based its decision.

Appellant next takes the position that there was an insufficient showing that Appellant and Respondent contracted with each other. The existence of the contract is addressed hereinabove. It is not disputed that Mevers Kitchens and Baths, L.L.C. provided the goods and services contracted for. Billy Mevers testified that the company provided the goods and services contracted for but was never paid for those goods and services. (R. p. 60, line 22 - p. 61, line 11) Mevers Kitchens and Baths was and is licensed to provide those goods and services, did provide those goods and services and may assert a mechanic’s lien to secure payment therefor.

Appellant next opines that the controlling mechanic's lien statute is S.C. Code §29-5-20 applies and not is S.C. Code §29-5-10. That assertion is again grounded upon the fact that Appellant claims there was no contract between she and Respondent. Clearly there was.

Mechanic's liens in South Carolina are governed by two main statutes. South Carolina Code Ann. § 29-5-20 controls liens established by subcontractors who are seeking payment for services provided to home owners pursuant to a contract between the home owner and a general contractor. That statute provides that:

In no event shall the aggregate amount of the lien filed by a subcontractor or supplier exceed the amount due by the contractor to the subcontractor . . . in no event shall the aggregate amount of liens on the improvement exceed the amount due the owner.

S.C. Code Ann. § 29-5-20(B).

South Carolina Code Ann. § 29-5-10 controls liens established by subcontractors or contractors who contract directly with or provide material or labor approved by the home owner to that home owner. That Section contains no language such as that contained within Section 29-5-20(B) and the limitation contained therein does not apply. "If the contract is with or approved by the owner, the property is subject to the lien for the materials or labor without regard to payments made under the building contract." (J. Kershaw Spong, Mechanic's Lien Laws in South Carolina, South Carolina Lawyer, Vol. 6, Pg. 32)

This matter was discussed by the South Carolina Court of Appeals in Ringer v. Graham, 286 S.C. 14, 331 S.E.2d 373 (S.C.App. 1985) within which it stated that "Code Section 29-5-10 gives a mechanic's lien to persons who by agreement or with the consent of the owner perform labor upon

or furnish materials in the erection of aa structure. *Such a lien is unaffected by the amount of the contract between the owner and the contractor.*” Id. (Emphasis added).

Here, the testimony of both the Appellant and Respondent was that Appellant approved of the contract as evidenced by her signature thereon. In fact Appellant testified in no uncertain terms that she did approve the cabinetry contracted for (R . p. 89, lines 4-6) Similarly, Respondent testified that Appellant approved of the cabinetry as evidenced by her signature on the contract. (R. p.59, lines 3-9)

Again, it is abundantly clear that Appellant contracted with Respondent and approved of the goods and service provided. Therefore, S.C. Code §29-5-10 controls. Consequently, Respondent’s lien is unaffected by the amount of the contract between Appellant and Stipp. In any event, there was sufficient evidence submitted upon which the trial court could base its decision.

II. IT IS CLEAR FROM THE RECORD THAT APPELLANT AND RESPONDENT CONTRACTED FOR THE GOODS AND SERVICES PROVIDED

As stated hereinabove, it is clear that the Appellant and Respondent had a contract for the provision and installation of cabinetry within Appellant’s home. Respondent’s managing member, Billy Mevers, testified that Mevers Kitchens and Baths entered into a contract with the Appellant. (R. p. 57, line 22 - p. 58, line 3) He further testified that the written contract between he and Appellant was addressed to Appellant, at her address, provided the cabinetry to be provided and the costs thereof and the installation cost. (R. p. 58, line 4 - p. 59, line 5) That contract was admitted into evidence. (R. pp. 92-93) He also testified that Appellant approved the contract as evidenced by her signature on the contract. (R. p. 59, lines 3-9) Moreover, Appellant admitted during her testimony to signing the contract and to its contents. (R. p. 87, line 13 - p. 88, line 8) Clearly,

Respondent made an offer and Appellant Wagner accepted the offer as shown by her signature thereon.

Moreover, there were no ambiguities in the contract. It states with specificity which material were to be provided. While Appellant states in her brief that the contract failed to state the total price of the cabinets, a review of the contract shows that it specifically states that the total price was \$20,760.00 and that the total price “includes tax, delivery and installation” charges. (R. pp. 92-93) While Appellant states in her brief that the contract failed to state a delivery date, a reading of the contract reveals that it specifically provided “[p]lease allow 4 weeks for delivery of cabinetry.” *Id.* While Appellant states in her brief that the contract fails to state who is the purchaser and who is to pay, the contract is addressed to Appellant at her address *Id.* She discussed with Respondent the materials to be provided and made changes to the cabinets and, when provided with the contract, signed it. (R. p. 86, line 23 - p. 88, line 8) It states with specificity what the purchase and installation price was for those materials. It provides a delivery date. *Id.* In addition, the contract provides that “[t]his quote includes tax, delivery and installation.” Finally, provides for a 50% deposit at the time of order with the balance due upon installation. *Id.* The contract is clear as a bell, valid and enforceable.

It is abundantly clear that the parties had a meeting of the minds with regard to the goods and services to be provided by Mevers. In particular, Appellant testified about the written contract as follows:

Q. . . . it says on the right side of this document it says what it is that Mevers is going to provide to you; correct?

A. Yes.

Q. And on page two it says he's going to install it, correct?

A. Yes.

Q. Now, on page one of that we see some handwriting up there. There appears to have been a change in the finish or what-have-you of the cabinets; is that correct?

A. Yes.

Q. Was this a change that you desired and you had them make?

A. I don't recall how it came about.

Q. But the materials listed on this document are materials you received?

A. Yes.

Q. And on page two of that you signed that decrement?

A. Below the approved line, yes.

(R. p. 87, line 13 - p. 88, line 8) It is also clear from Appellant's testimony that she approved the goods and services that were provided. She further testified as follows:

Q. I believe you testified under direct examination that you were there primarily to approve the cabinetry; is that correct?

A. I was there to select the design and the type of cabinetry and hardware.

Q. Did you do that?

A. Yes.

Q. So when you were done with that did you approve that cabinetry and those designs?

A. Yes.

(R. p. 88, line 22 - p. 89, line 6) Finally, there is not doubt that those cabinets were installed in Appellant's home. Her testimony was:

Q. No two ways about it, you got the cabinets you selected; correct?

A. Yes.

Q. And there's no problem with the cabinets?

A. No.

(R. p. 90, lines 14-18.). Again, the contract between Appellant and Respondent was clear and unambiguous, in writing, offered by Respondent and accepted and approved by Appellant.

III. LICENSURE

Appellant Wagner next and again takes the position that Respondent is not licensed to perform the work that is the subject of the contract and, as a result, cannot maintain any action related to such.

South Carolina Code § 40-59-410 provides in part that:

[t]he practice or offer to practice residential home building, residential specialty contracting, or home inspecting as defined in this chapter by and individual residential builder, residential specialty contractor, or home inspector licensed or registered under this chapter through a firm offering residential building, residential specialty contracting, or home inspecting services to the public is authorized if: (1) one or more of the corporate officers in the case of a corporation, or one or more of the principal owners in the case of a firm . . . are licensed under the provisions of this chapter.”

It is not disputed that Roy Mevers is a member and 50% owner of Mevers Kitchens and Baths, L.L.C. and he is a licensed residential builder. (R. p. 53, lines 9-21) Mevers Kitchens and Baths, L.L.C. operates under its owner's and member's license. *Id.* Therefore, Mevers is licensed properly and its can assert its claims for breach of contract and mechanic's lien

IV. MECHANIC'S LIEN:

Appellant Wagner next opines that, if Respondent is entitled to recover under its mechanic's lien, it cannot recover more than she would owe under her contract with Stipp, the general contractor.

Mechanic's liens in South Carolina are governed by two main statutes. South Carolina Code Ann. § 29-5-20 controls liens established by subcontractors who are seeking payment for services provided to home owners pursuant to a contract between the home owner and a general contractor.

That statute provides that:

In no event shall the aggregate amount of the lien filed by a subcontractor or supplier exceed the amount due by the contractor to the subcontractor . . . in no event shall the aggregate amount of liens on the improvement exceed the amount due the owner.

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South Carolina Code Ann. § 29-5-10 controls liens established by subcontractors or contractors who contract directly with or provide material or labor approved by the home owner. That Section contains no language such as that contained within Section 29-5-20(B) and the limitation contained therein does not apply. "If the contract is with or approved by the owner, the property is subject to the lien for the materials or labor without regard to payments made under the building contract." (J. Kershaw Spong, Mechanic's Lien Laws in South Carolina, South Carolina Lawyer, Vol. 6, Pg. 32)

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or furnish materials in the erection of aa structure. *Such a lien is unaffected by the amount of the contract between the owner and the contractor.*” Id. (Emphasis added).

Here, Appellant not only approved the goods and services to be provided, she signed a written contract for the provision of those services. As a result, S.C. Code § 29-5-10 controls and the trial court ruled correctly on that issue.

V. APPELLANT’S LACHES CLAIM WAS NOT RAISED BELOW AND IS NOT PRESERVED FOR APPEAL.

Appellant next appears to be rasing a claim for relief under the doctrine of laches. That claim was neither raised below nor ruled on by the trial court. Therefore, it is not preserved for appeal.

VI. Respondent was awarded properly attorney’s fees and costs associated with the action below. Respondent is informed and believes that it is entitled to attorney’s fees and costs associated with its defense in this appeal and prays for an decision granting same after Respondent submits a petition for such.

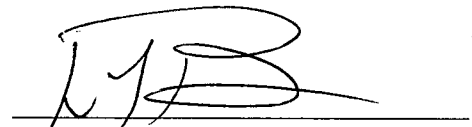
CONCLUSION

It is apparent from Appellant’s submissions that her appellate claims are grounded primarily on two assertions. First, the assertion that the parties did not contract. The testimony and evidence submitted below clearly show that the parties did contract for the goods and services at issue therein and the trial court correctly ruled on that issue. It is also clear that, even if the court was to decide that the parties did not contract, Respondent may still assert its mechanic’s lien under S.C. Code § 29-5-10 because Appellant dealt directly with Respondent and approved of the goods and services

it provided. In addition, it is also clear that Respondent was properly licensed to provide those goods and services so Appellants claims to the contrary must fail.

Respondent respectfully requests this Court affirm the decision of the Master-In-Equity for Charleston County.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'W. Tracy Brown', is written over a horizontal line.

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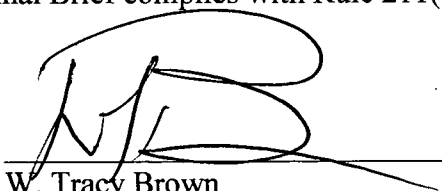
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Of whom,

Maryann Wagner isAppellant

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Final Brief complies with Rule 211(b) SCACR.



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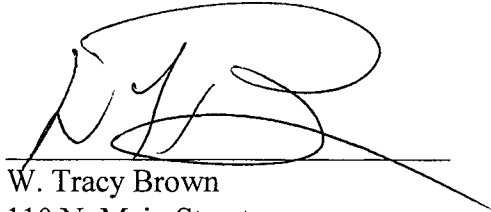
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PROOF OF SERVICE FOR RESPONDENT'S FINAL BRIEF



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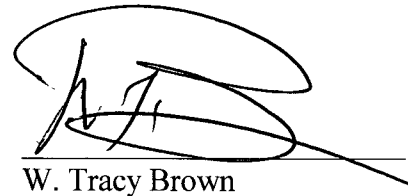
MAR 21 2014

SC Court of Appeals

I, W. Tracy Brown, Esquire, certify that on March ²⁰~~21~~, 2014, I served a copy of the Respondent's Final Brief via First Class Mail by placing a copy of the said documents in the United States mail with sufficient postage thereon on the following:

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