

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Appellate Case No. 2011-202946

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APR 30 2015

SC Court of Appeals

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APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Alexander S. Macaulay, Circuit Court Judge

Appellate Case No. 2011-202946

Tri-County Development, Inc. and
Melinda Holbrooks,..... Respondents.

v.

Christopher A. Pierce,..... Appellant.

AND

Christopher A. Pierce, Third Party Plaintiff,

v.

Jeff Gray..... Third Party Defendant.

AND

Tri-County Development, Inc. and Melinda Holbrooks,..... Respondents,

v.

Christopher A. Pierce,..... Appellant

APPELLANT'S PETITION FOR REHEARING

T. Jeff Goodwyn, Jr., Esquire
Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street
(803)251-4517
Columbia, SC 29205
Attorney for Appellant

Thomas E. Dudley, III, Esquire
Kenison, Dudley & Crawford LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899
Attorney for Respondents

Pursuant to Rules 221 and 240, SCACR, the Appellant, Christopher A. Pierce, hereby petitions for a rehearing of his appeal, which was decided, via unpublished opinion no. 2015-UP-205, filed April 15, 2015. The Appellant hereby respectfully submits that the following points were overlooked or misapprehended by the Court, and respectfully requests a rehearing:

1. The vacating of the default judgment was not harmless error. The Appellant, proceeding pro se in this matter at trial, obtained a default judgment against Respondent Jeff Gray on his third party complaint for fraud. Appellant had entered into a contract for the construction of Appellant's home with Tri County Development; it was undisputed that Respondent Gray, its principal, did not hold a contractor's license for residential construction. It was further undisputed that disputes between the parties arose over the course of construction and Respondents Tri County and Melinda Holbrooks filed a complaint requesting foreclosure of the property. At the time when the default judgment on the third party complaint was entered on September 26, 2006, the lower court ordered that a damages hearing be set but apparently it never was. The Respondent Jeff Gray thereafter moved to set aside the entry of default and an order denying same was entered on August 4, 2008. Again, a damages hearing was never set. Accordingly, Appellant never had a chance to present his damages at a damages hearing. While some delay may be attributed to the Appellant, the Clerk of Court is also charged with managing the court docket as it relates to the scheduling of hearings, etc. While a pro se party cannot be afforded special protection throughout litigation, the setting of a damages hearing is directly within the purview of the courts pursuant to Rule 55(b)(2),

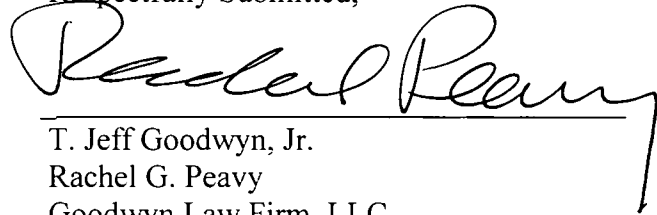
SCRCPC (“If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages . . . the court may conduct such hearing or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties if a proper demand therefore has been made . . .”). If Pierce were allowed to present evidence at the trial that Jeff Gray as a matter of law had fraudulently induced him into entered into the construction contract, the jury may very well have viewed the parties (and their respective claims) in a different light.

2. Appellant did raise and preserve the statutory licensing requirement issue throughout the trial, in his directed verdict motion and also in his jury charge request, wherein the trial judge denied his requests. (R. 299, R. 330-331, R. 232-235). In short, while Appellant, proceeding pro se, may not have technically stated that he “renewed” his motion for directed verdict, or that he objected for the record to the refusal by the Court to charge the licensing issue; however, Appellant repeatedly sought for the licensing issue to be presented to the jury and therefore Appellant respectfully submits that this argument is preserved for review and that it was error for the trial court not to charge the jury on the licensing statutes.
3. Sufficient issues of fact existed as to the Respondent’s breach of contract claim such that it was properly for the jury and the granting of summary judgment was clear error. Specifically, Respondent Melinda Holbrooks, a party plaintiff to both the mechanic’s lien and foreclosure complaint, testified that she was paid in full for the work performed on the Appellant’s house. Additionally, there was conflicting testimony concerning the scope of work; payment terms; and whether there was a

work stoppage agreed to by the parties. In short, summary judgment was not proper as to the liability portion of the Respondent's breach of contract. If the jury had been able to consider the fact that Respondent Melinda Holbrooks had been paid in full, a different verdict may have been rendered.¹

4. In the event the underlying judgment against Appellant is vacated, the award of attorney's fees and costs, plus the award of pre-judgment interest, must be vacated as well.

Respectfully Submitted,



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April 30, 2015

¹ Appellant notes that if the jury had been charged on the licensing statutes and that Jeff Gray had committed fraud as a matter of law, the verdict rendered may have been different as well.

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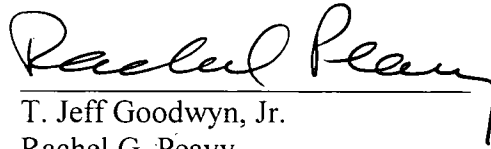
v.

Christopher A. Pierce,..... Appellant

PROOF OF SERVICE

I certify that I have served the **Appellant's Petition for Rehearing** on Thomas E. Dudley, III, Esquire, Attorney for the Respondents at the address below by depositing a copy of same in the United States Mail, postage prepaid, on April 30, 2015.

Thomas E. Dudley, III, Esquire
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601

A handwritten signature in black ink that reads "Rachel Peavy". The signature is written in a cursive style and is positioned above a horizontal line.

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*Also Licensed in Georgia

April 30, 2015

VIA HAND DELIVERY

Jenny Abbott Kitchings, Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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SC Court of Appeals

RE: *Tri-County Development, Inc., et. al. v. Christopher A. Pierce and Christopher A. Pierce v. Jeff Gray and Tri-County Development, Inc., et. al. v. Christopher A. Pierce*
Appellate Case No.: 2011-202946
Our File No.: 3500-0014

Dear Ms. Kitchings:

Enclosed for filing please find an original and six (6) copies of Appellant's Petition for Rehearing, the Proof of Service and filing fee check in the amount of \$25.00 in regard to the above referenced matter. I would appreciate it if you would file same in your office and return a clocked copy to the courier.

By copy of this letter, I am serving a copy of Appellant's Petition for Rehearing upon Thomas E. Dudley, III, Esquire, counsel for the Respondents.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Rachel G. Peavy

RGP/msb
Enclosures

cc: Thomas E. Dudley, III, Esquire (w/encl.)
Chris Pierce (w/encl.)