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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge
The Honorable Alexander S. Macaulay, Circuit Court Judge and Trial Judge

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Unpublished Opinion No. 2015-UP-2059 (S.C. Ct. App. Filed April 15, 2015)

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

v.

Christopher A. Pierce .....Petitioner.

AND

Christopher A. Pierce,..... Third-Party Plaintiff/Petitioner,

v.

Jeff Gray, ... Third-Party Defendant/Respondent.

AND

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

v.

Christopher A. Pierce,.....Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. **THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S SETTING ASIDE THE DEFAULT OF JEFF GRAY *SUA SPONTE* AS IT WAS A HARMLESS ERROR, VALIDATED BY THE LACK OF ANY EVIDENCE AT TRIAL AGAINST JEFF GRAY.**

2. **THE COURT OF APPEALS CORRECTLY AFFIRMED THE TRIAL COURT'S REFUSAL TO GIVE A JURY CHARGE ON THE CONTRACTOR LICENSING REQUIREMENTS SET FORTH IN S.C. CODE § 40-59-30 AS THAT ISSUE WAS NOT PRESERVED FOR APPEAL.**

3. **THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S GRANTING OF SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY AS VALIDATED WHEN THE APPELLANT FAILED TO PRESENT, AND THE JURY DID NOT AWARD, ANY CONTESTED DAMAGES FOR OFFSET AT TRIAL.**

4. **BECAUSE THE COURT OF APPEALS RULING SHOULD STAND, THE AMOUNT OF ATTORNEY'S FEES AND COSTS SHOULD TOO.**

AS TO THE PETITION

Respondents Tri-County Development, Inc. ("Tri-County") and Melinda Holbrooks ("Holbrooks") respectfully assert that Appellant has not raised any issues in this matter regarding the Court of Appeals decision on the trial court's ruling that rise to the level of criteria as set forth in SCAR 242 in order for this Court to grant Appellant's petition.

There is no special or important reason for this Court to grant the petition. Supporting this position is the fact that the Court of Appeals determined that the opinion would not be published.

There is no novel issue of law and no dissent in the Court of Appeals' decision. Further, the primary reasons for the Court of Appeals affirming the trial court was Appellant's failure to properly preserve issues for appeal, and despite complaints of error

to the contrary, Appellant was able to present testimony to the jury. The jury simply did not side with Petitioner's version.

Finally, Appellant consistently fails to provide an explanation as to how the complaints he makes would have resulted in a different outcome. Therefore, for these reasons and the analysis that follows, the petition should be denied.

STATEMENT OF THE CASE

Respondents filed a Mechanic's Lien on the home they contracted to construct for Appellant Christopher A. Pierce ("Appellant"). The lien was filed September 26, 2005 after a dispute arose at the end of construction. Appellant then refused to pay Respondents until the house was complete and locked Respondents out of the house.

The lien lists both Tri-County and Holbrooks as petitioners. Tri-County and Holbrooks jointly filed a lawsuit on September 26, 2005, to enforce the mechanic's lien and Appellant subsequently filed a third-party Complaint against the owner of Tri-County, Jeff Gray ("Gray"). It is undisputed that neither Tri-County nor Gray were licensed builders at the time the lien and lawsuit were filed. However, it is also undisputed that Holbrooks, as signatory to the Contract, solely had the role as Contractor, not Tri-County. It is undisputed that Holbrooks, who signed the contract as "Contractor", was at all times a licensed residential builder, pulled the building permit, performed some of the work herself and oversaw the balance of construction at Appellant's house. Appellant cannot escape this fact: his house was constructed by the licensed residential builder that was a party to his Contract.

Gray was served with a third-party Complaint filed by Appellant, but his lawyer at the time failed to timely answer, and an Order for Judgment by Default was signed by

the Honorable Alexander Macaulay and filed on September 26, 2006. Gray moved to substitute counsel and present counsel made a motion to set aside the Order of Default. This motion was denied by the Honorable J. Cordell Maddox, Jr.

Later, Appellant's attorney was forced to withdraw from the case for reasons unrelated to the case and Appellant remained unrepresented from that point forward. Appellant never filed for a hearing on damages against Gray.

A hearing was held April 6, 2009, before the Honorable Alexander S. Macaulay on Tri-County's and Holbrooks' motion to compel discovery responses, among other motions from both parties. Tri-County and Holbrooks were asking the court for an order compelling Appellant to produce evidence to support his claims of damage for the offset and counterclaim he was alleging. Notwithstanding the lack of basis for same, these were the same damages that Appellant would have presented at a damages hearing for his default judgment against Jeff Gray. Appellant had argued at that hearing that he did not have to produce damage evidence because he had won by default. Judge Macaulay, in his Order filed May 5, 2009, as amended, granted the motion to compel and vacated the order of default against Jeff Gray, *sua sponte*, as a sanction against Appellant for discovery abuse. The Court noted that he had been the one who signed the Order of Default against Gray. The Court determined that since no damage hearing had ever been set, revoking the default solved the issue of whether Appellant had to produce his "damages". Appellant filed an appeal to the Court of Appeals on this ruling and it was rejected as interlocutory in an Order dated July 8, 2009. The result, Appellant had to

prove his claim against Gray at trial and establish damages. He never did this.[1]

On November 1, 2010, the Honorable R. Lawton McIntosh heard Appellant's motions to dissolve the mechanic's lien and for summary judgment, along with Tri-County's and Holbrooks' motions for summary judgment. Tri-County and Holbrooks moved for summary judgment because it was undisputed that Appellant had breached the contract and had produced no evidence that his damages exceeded the contract balance. So, Tri-County and Holbrooks argued that Appellant's counterclaim for breach of contract be dismissed but his defense of offset remain in place. Judge McIntosh denied Appellant's motion to dissolve the mechanic's lien and he also denied the Appellant's summary judgment motions. Judge McIntosh did, however, find in the Respondents' favor for breach of contract as to liability only, while acknowledging the Appellant had a right to present evidence of offset damages at trial.

At the summary judgment hearing, Appellant was afforded two opportunities to present evidence that there was a material issue of fact that his alleged damages extended the agreed upon contract balance and therefore would establish a claim for damages as a counterclaim not just a defense of offset. At the hearing, Appellant could not point to evidence establishing his claim exceeded the contract balance. The Court gave Appellant additional time to present evidence. In its Order, the Court acknowledged Appellant has the right and opportunity to present evidence of damages for set off.

[1] During the trial and after the Appellant rested his case, Respondents made motion for a direct verdict for the claim against Gray individually, as no evidence was offered against Gray individually. The Court granted that motion **(R. p. 325)**.

The case was tried before a jury November 28-29, 2011 and at trial, Judge Macaulay permitted the case to go forward on the question of damages, allowing Appellant to present evidence of offset. Appellant had the opportunity to prove offset damages, but did not. Respondents stipulated to certain offsets to their claim. The jury returned a verdict of $23,591.07 in favor of the Respondents; the amount Respondents stipulated was owed. Upon motion of counsel, the Court awarded to Respondents attorney's fees pursuant to S.C. Code 29-5-10 and prejudgment interest. Appellant then retained attorney T. Jeff Goodwyn, Jr. of Goodwyn Law Firm, LLC and this appeal followed.

STATEMENT OF FACTS

Respondent Tri-County Development, Inc. ("Tri-County") is a corporation owned and operated by Respondent Jeff Gray ("Gray"). Until contracting to build Appellant's home, Tri-County or Gray acted exclusively as a property developer. Tri-County is not a licensed homebuilder and Gray, its principal, holds no such license. Tri-County's business model involved purchasing property and then contracting with Melinda Holbrooks ("Holbrooks"), a licensed South Carolina home builder, to construct "spec" homes on the property and then sell them. **(R. p. 250, line 14-p. 251, line 12)**. Holbrooks owns and operated her own construction company called Holbrooks Construction with her then husband Nathan Holbrooks, also a licensed residential builder. In their business dealings to that point, Gray with Tri-County would "put up the money and (then Holbrooks) would do all the work." **(R. p. 252, lines 3-12)**.

In mid-2004, Appellant owned a vacant lot and was in the market to have a home constructed on the lot. He admired the homes he would see in Tri-County developments

and decided to contact Tri-County about building a home on his lot. At Appellant's request, Appellant's father, a retired lawyer, met with Gray to negotiate the construction of a home on Appellant's lot.

Building a home for someone other than for speculation was something that Gray and Tri-County had never done before. **(R. p. 269, lines 2-11)**.

Appellant's father, and retired lawyer, drafted the contract wherein Tri-County and Holbrooks would construct a home on Appellant's lot on July 24, 2004 (the "contract"). **(R. p. 252, lines 21-23)**. Gray signed for Tri-County as "Developer" and Holbrooks signed the contact as "Contractor" under such designated lines drafted by Appellant's father.

Interestingly, Appellant states it is difficult to determine who the parties were to the Contract. This statement is foolhardy in that the Contract was completely clear in this respect. Appellant correctly points out that Tri-County and Holbrook had always operated where Holbrook built a house on property owned by Tri-County. Since Pierce owned the lot, the Contract was set up in a similar way. It is acknowledged that the front page of the Contract does list Tri-County as "Contractor". But the Contract was drafted by Appellant and his father, a retired attorney; not Respondents. But more importantly is the signature page that contains the parties' signatures that are to be bound by the agreement; it lists Tri-County as the Developer and Ms. Holbrooks as the Contractor. It is clear Tri-County and Holbrooks were fitting this situation within the framework they were accustomed to operating. Tri-County provided the funding end and Holbrooks oversaw and was responsible for construction. It cannot be claimed by Appellant that he was deceived in any way about who was the licensed builder

responsible for the construction of his house. Importantly, he never argued he was unaware who the Contractor was.

While Respondents may not have understood what they were doing was a joint venture, that is exactly what it was. They combined forces to accomplish the singular task of building Appellant's house in the same fashion they built houses for speculation together.

Tri-County was the Developer and was the funding source, as always, behind the deal. The fact Ms. Holbrooks was paid in full for her part reveals Tri-County honorably acknowledged its role as financier and did not throw Ms. Holbrooks under the bus when she did what she contractually obligated herself to do. It does not diminish or excuse Appellant's failure to pay what was due.

Holbrooks was at the time, and continues to be, a licensed residential builder. **(R. p. 466; R. p. 468)**. Holbrooks pulled the building permit for Appellant's house, personally performed work on the house and oversaw construction. **(R. p. 465)**. The house passed final inspection on September 13, 2005. **(R. p. 467)**.

When the home was very close to completion, Appellant took issue with some of the work and refused to pay the final two installments totaling $34,000.00 until the house was complete. This was contrary to the terms of the contract. Shortly thereafter, Appellant locked Tri-County and Holbrooks out of the Property. The last two installment payments Appellant refused to pay are the basis for the mechanic's lien and lawsuit. Appellant took issue with proof of allowances in the contract and claimed he suffered damages. Appellant had the opportunity to present evidence of damages against Respondents at trial, but the jury decided against him.

ARGUMENT

1. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S SETTING ASIDE THE DEFAULT OF JEFF GRAY *SUA SPONTE* AS IT WAS A HARMLESS ERROR, VALIDATED BY THE LACK OF ANY EVIDENCE AT TRIAL AGAINST JEFF GRAY.

Judge Macaulay's ruling setting aside the entry of default that he himself had previously entered was not an abuse of discretion and, if anything, was a harmless error pursuant to Rule 61, SCRCP. Appellant could not articulate how he was damaged by Gray separate from what he claimed against Tri-County. Most importantly, Appellant presented no evidence of a claim of damage against Gray at trial, despite the opportunity. This is the best evidence that it was a harmless error because the result would not be different. The only affect Judge Macaulay's ruling had was that it required Appellant to actually prove his claims for damages against Gray. At trial, despite the opportunity, Appellant offered no evidence as to how he might have a claim against Gray individually or any damages caused by Gray. The Court granted Plaintiff's motion for a Directed Verdict at the close of Appellant's case when no evidence was offered that implicated Gray individually and when no evidence of damages were ever presented resulting from Gray's alleged liability. **(R. p. 325, lines 9-25)**. The fact Appellant offered no evidence against Mr. Gray shows that Judge Macaulay did not abuse his discretion in revoking the entry of default. Even assuming Judge Macaulay did abuse his discretion, it was a harmless error as the Court of Appeals duly noted in its ruling, "During the years this case was pending, Pierce never presented or attempted to present evidence of any damages proximately resulting from any fraudulent misrepresentations allegedly made by Tri-County's principal." The Court recognized that even if default had still been in

place, there would not be a different result because Defendant failed to prove damages.

2. THE COURT OF APPEALS CORRECTLY AFFIRMED THE TRIAL COURT'S REFUSAL TO GIVE A JURY CHARGE ON THE CONTRACTOR LICENSING REQUIREMENTS SET FORTH IN S.C. CODE § 40-59-30 AS THAT ISSUE WAS NOT PRESERVED FOR APPEAL.

The Court of Appeals correctly ruled that this argument was not properly preserved for appeal. Appellant made no objection as to the jury charges before or after the charges were given and so it was not properly preserved. **(R. p. 331**; Rule 51SCRCP, see also Dixon v. Ford, 362 S.C. 614, 608 S.E.2d 879 (Ct. App. 2005)).

Specifically, the Court considered jury charges by Plaintiff and Appellant. **(R. p. 328, line 16-p. 332, line 7)**. After the Trial Court charged the jury, he asked if there were any exceptions or requests and Appellant responded, "No". **(R. p. 350, lines 19-23)**. The Court asked again before the jury returned its verdict. **(R. p. 361, lines 12-19)**. Again, Appellant raised no objection to the charges. Appellant also made no post-trial motions after the verdict was published. **(R. p. 362, lines 10-25; R. p. 365, lines 8-15)**. The Court of Appeals correctly determined the issue was not preserved for appeal.

The Court of Appeals also held Appellant did not renew his motion for a Directed Verdict at the close of testimony as to his licensing claim and therefore that issue was also not preserved for appeal. Appellant did raise Tri-County's lack of license at the close of Plaintiff's case, but it was denied. He failed to renew his Directed Verdict Motion at the close of his case **(R. p. 325)** and further made no JNOV argument after the jury's verdict **(R. p. 365)**. For this reason, the Court of Appeals correctly held this

argument was not properly preserved for appeal[2] citing Hendrix v E. Distribution, Inc., 446 S.E.2d 440, 442 (Ct. App. 1994) 320 S.C. 34, 37, 320 S.C. 28, 464, S.E.2d 112 (1995), vacated in part on other grounds.

As to the underlying argument, Appellant's argument still fails. As was presented at trial, Tri-County and Holbrooks, prior to meeting Appellant, had always only built homes for speculation with Tri-County being the developer providing the money and Holbrooks pulling the building permit, performing the work and overseeing the work; a perfectly legal arrangement. **(R. p. 250, line 14-p. 251, line 12).** The evidence shows Tri-County and Holbrooks operated exactly the same with Appellant except instead with respect to having to seek a buyer after the work was completed, Appellant already owned the Property.

The licensing laws are in place to ensure only licensed builders pull permits, oversee construction and if there is a problem, the LLR has the ability to sanction a license holder. (S.C. Code § 40-59-10, et seq.). The licensing laws require applicants to have experience, pass an exam and provide a bond. (S.C. Code § 40-59-220 and § 40-59-280). Also, a homeowner, if the LLR finds just cause, may recover from a licensed builder's required bond. (S.C. Code § 40-59-220(c)). It is undisputed that Holbrooks met all these requirements. Appellant's home was constructed by a licensed residential builder who passed and met all the requirements to get that licensing, she pulled the permit, she oversaw construction and importantly she signed the construction

[2] Appellant's father, a retired lawyer, was present with Appellant during the entire trial and sat at counsel's table. The trial court even invited the elder Mr. Pierce to assist Appellant during Defendant's case in chief. Appellant's decision to proceed *pro se* is not an excuse as to his failing to follow the same rules other litigants must follow.

contract as Contractor and was listed as a party to the litigation. Appellant never contested that his home was not built by a licensed builder or that he suffered any damages as a result of Holbrooks' role as the Contractor.

The only twist here is that both Tri-County and Holbrook signed the contract together making them what looks like a defacto joint venture. While they may not have considered themselves a joint venture at the time, that is what they were doing by both contractually obligated to perform for a singular purpose: the construction of Appellant's house. There is no section of the residential builder statute that prohibits such joint ventures. The trial court correctly noted that the statute raised by Appellant, S.C. Code § 40-11-330, is in the General Contractor's statutes, not the residential builder's statutes. **(R. p. 331, lines 9-10)**. The Court noted there are marked differences in how the legislature chose to regulate commercial general contractors and residential builders. **(R. p. 331, lines 10-14)**.

Holbrooks signed the contract as Contractor and was listed on the Mechanic's Lien and lawsuit with Tri-County. There was no attempt to change or hide the relationship. Holbrooks was on the pleadings and Appellant had the opportunity to allege construction defects and did not. The fact Appellant failed to put up <u>any</u> evidence of construction defects and only argued about the accounting shows that he did not have an issue with Holbrooks' work as the Contractor. Appellant only raises the issue of Tri-County's lack of license but ignores the critical fact that Holbrooks was licensed, pulled the permit and oversaw the work. Appellant failed to show any harm from this arrangement, real or perceived. In fact, the evidence established that the intent of the statute was properly satisfied.

Appellant claims Judge Macaulay's ruling denying Appellant's Directed Verdict argument on the issue of licensing was in direct contradiction of Judge McIntosh's prior ruling regarding licensing. Further, Appellant says Judge McIntosh's ruling was the "law of the case" because it was not appealed. This ruling by Judge McIntosh was not immediately appealable and therefore, could not be the "law of the case" as Appellant suggests. Most importantly, Judge Macaulay's grant of Directed Verdict was at the close of all evidence and he appropriately arrived at this conclusion after Appellant had the opportunity to be heard.

But, what cannot be overlooked here is the nature of Appellant's argument. Appellant correctly sates exactly what happened with Appellant's house with regards to the licensed builder Melinda Holbrooks, "[s]he was treated in this job the same way she had been treated in all of the other prior jobs she performed for Tri-County where Tri-County was the actual land owner and contracted with her to build the home." **(Appellant's Initial Brief, p. 14; R. p. 250, line 18-p. 251, line 12; R. p. 252, lines 3-12)**. By taking this position, Appellant admits that Holbrooks' and Tri-County's arrangement for "spec" homes is perfectly legal and he is right it is perfectly within the statute to operate this way. Appellant admits in his Brief and it is true, Holbrooks and Tri-County operated the same way they always did regarding Appellant's house with Tri-County putting up the money and Holbrooks building the house. There was no evidence of Appellant getting a construction loan. Appellant paid cash for the house. In fact, the contract required Appellant to pay $1,000.00 down and Tri-County and Holbrooks to get paid only as the work was completed. This is where Tri-County performed its role as the financier. The sole dispute at trial was the accounting and had

nothing to do with the actual construction of the house. **(R. p. 455)**. Appellant completely fails to address how this is a violation of the statute or legislative intent.

For the foregoing reasons, the Court of Appeals correctly upheld the trial court when it refused to charge the jury with S.C. Code § 40-59-30 as it was not relevant. Appellant's house was built by a licensed residential builder that was a party to Appellant's contract. Appellant's argument seeks to elevate form over substance. The intent of the legislation governing residential home construction was satisfied. Appellant's argument ignores this fact and tries to use a technical argument that ignores the compliance with the intent of the statute.

For this reason, Appellant's Argument 2 should be denied.

3. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S GRANTING OF SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY AS VALIDATED WHEN THE APPELLANT FAILED TO PRESENT, AND THE JURY DID NOT AWARD, ANY CONTESTED DAMAGES FOR OFFSET AT TRIAL.

The argument as presented here was not presented that way to the Court of Appeals. Appellant Pierce never argued that the contract was ambiguous at trial or in his initial appeal and then it is not a proper argument to this Court. Further, the crucial piece missing from Appellant's contention here is that summary judgment was granted based on Appellant's failure to present any evidence of damages in excess of the undisputed contract balance less all allowances for purposes of the hearing. The point being that Appellant may very well have a claim for offset, but the evidence provided only showed a defense of offset and not a counterclaim for damages exceeding the undisputed contract balance. Appellant had his opportunity to prove his damages but did not convince the jury.

Counsel very clearly spelled out the basis of the motion for summary judgment. Appellant agreed he did not pay the last two payments of $34,000. For the purposes of the hearing, counsel assumed Plaintiff proved nothing for the $18,000 in allowances included in the final two contract payments. Appellant then had to come forward with evidence to show damages in excess of $18,000, but did not. **(R. p. 424, lines 5-10; R. p. 425, lines 9-21)**.

The Circuit Court gave Appellant an opportunity to submit a memo in response. **(R. p. 426)**. Later, in its Order dated August 16, 2011, the Circuit Court determined, despite the opportunity, Appellant "has not provided any evidence to prove that the cost to complete the Project exceeded the remaining undisputed contract balance." **(R. p. 29)**. The Court went on to find,

> Pierce claims his damages are in excess of the contract balance of $34,000.00. However, Pierce has failed to produce documentation that would be admissible in court to support his damages in excess of even the undisputed balance of $15,000.00. Defendant Pierce has had more than adequate time to do so and numerous court orders requiring Pierce to provide proof of his alleged damages.
>
> While Defendant Pierce has produced some documents, Plaintiff asserts the Defendant cannot produce admissible evidence establishing a material issue of fact that Defendant's damages exceed the contract balance, entitling him to a counterclaim. Based upon the record, Plaintiffs memorandum, response filed by Defendant and the argument of counsel at the hearings the Court agrees. Since the cost to complete as shown by Pierce clearly does not exceed the contract balance Pierce's counterclaims must be dismissed.
>
> Pierce has been given four years to produce admissible evidence that would support his damages. As our Courts have repeatedly held, "[a] party opposing a properly supported motion for summary judgment ... may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." *Bravis v. Dunbar*, 316 S.C. 263, 265, 449, S.E.2d 495, 496 (Ct. App. 1994).

Appellant's failure to produce admissible evidence of damages exceeding the undisputed contract balance rendered the counterclaim unsupported. Regardless of who breached first, Appellant had to show some evidence of damages in excess of the undisputed contract balance (Respondents' damage). Appellant at trial was still given the opportunity to put up evidence of damages but he was not given credit by the jury. Appellant had the ability and opportunity to present damages but the jury awarded the amount Plaintiff sought! This fact turns Appellant's argument into a sufficiency of the evidence position, not a legal claim of error. The fact the jury did not reduce the contract balance by more than what Respondents stipulated at trial clearly shows Appellant's claim of offset was no more than what Respondents agreed to prior to trial and validated the Court's ruling of summary judgment. The record reflects that at trial Appellant presented no evidence of offset in excess of the offset Respondents stipulated to at trial and the jury agreed. **(R. p. 320, line 15–p. 321, line 23)**. For these reasons, the Court of Appeals correctly affirmed the Circuit Court's holding. Even if it was wrong, it was a harmless error because Appellant had the opportunity at trial to produce damages for offset and did not[3]. Therefore, Appellant suffered no error for this Court to correct.

For the foregoing reasons, Appellant's Argument 3 should be denied.

4. BECAUSE THE COURT OF APPEALS RULING SHOULD STAND, THE

[3] Moreover, Petitioner now changes its argument and for the first time claims the Contract is ambiguous. This was not argued at trial or on appeal. Further, the financial arrangement between Holbrooks and Tri-County is irrelevant given it was undisputed Appellant did not make the last two payments on the Contract and could not prove damages in excess of the contract balance. Appellant cries foul but cannot avoid the fact the jury did not accept his version of the facts and did not award him damages despite the opportunity to convince them. Most importantly, Appellant cannot articulate how any of these arguments would change what the jury did.

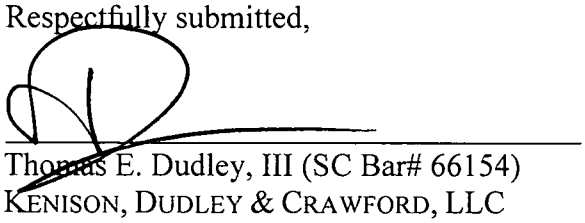
4. BECAUSE THE COURT OF APPEALS RULING SHOULD STAND, THE AMOUNT OF ATTORNEY'S FEES AND COSTS SHOULD TOO.

For the reasons stated above, the Court of Appeals ruling to affirm should be left alone, which would also make this argument moot.

CONCLUSION

For the foregoing reasons, the Respondents ask the Court to deny the petition for a writ of certiorari.

Respectfully submitted,



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August 7, 2015
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PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Respondents' Return to Petition for a Writ of Certiorari in the above-referenced case has been served on all parties of record by mailing a copy of same in the United States mail, postage prepaid this 7th day of August, 2015, addressed as follows:

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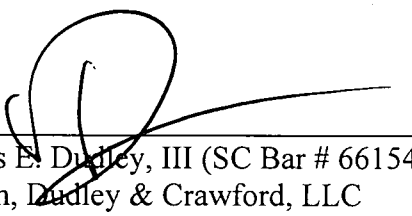

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