

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

RECEIVED
OCT 22 2015
SC Court of Appeals

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

PETITION FOR REHEARING PURSUANT TO SCACR RULE 221

Nancy Bloodgood, Esq., SC Bar No. 6459

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Attorneys for the Appellant

I. ARGUMENT

On October 7, 2015, this Court filed a decision affirming (as modified) the Lower Court's judgement in favor of Respondent. See Wagner v. Mevers Kitchens and Baths, LLC, No. 2015-UP-473 (Ct. App. Oct. 7, 2015). The Wagner Opinion 1) failed to address Appellant's arguments regarding Sections 29-5-15 and 29-5-20 of the South Carolina Code; and 2) overlooked Appellant's argument that the Lower Court's holding regarding Section 40-59-410 was unsupported by the facts.

A. **The Wagner Panel Erred by Ignoring Appellant's Argument that S.C. Code §§ 29-5-15 and 29-5-20(B) Bar Recovery by Respondent.**

Chapter 5 of Title 29 of the South Carolina Code governs mechanics' liens. Pursuant to rules of statutory construction, its Sections must be read together and interpreted as a whole. Section 29-5-10 defines and explains a mechanics' lien action, Section 29-5-15 explains the procedural requirements of filing a mechanics' lien, and Section 29-5-20 *limits* recovery for laborers, mechanics, subcontractor, sub-subcontractors, suppliers, and other persons furnishing materials for the improvement of real estate under certain circumstances. The Wagner Panel erred by ignoring the limitations imposed by Section 29-5-20 and overlooking Appellant's argument that Section 29-5-20 bars Respondent's right to file a mechanic's lien.

Here, the undisputed evidence was that Respondent was a subcontractor for the construction of Appellant's home, not the general contractor. (R. at 59 l. 22--60, l. 1; R. at 72, ll. 17-25; R. at 104.) Respondent, as the subcontractor, dealt with the general contractor, not directly with the owner (Appellant). (R. at 66-67.) Appellant's only interaction with Respondent was that the general contractor sent Appellant was to

Respondent's business to choose her cabinets. (R. at 73.) The general contractor otherwise directed Appellant not to deal with his subcontractors and his employee signed on "approved" line for Respondent's cabinet quote. (R. at 63, ll. 11-13; R. at 73-78.) Respondent installed cabinets at Appellant's home, but said nothing to Appellant about paying for the cabinets. (R. at 66-68.) Respondent billed the general contractor and expected him to pay for the cabinets. (Id.)

As Respondent was clearly a subcontractor and/or supplier, the Lower Court should have applied S.C. Code §29-5-20 in analyzing whether Respondent's mechanic's lien was proper. Stoudenmire Heating & Air Conditioning Co. v. Craig Bldg. Ptnrshp., 308 S.C. 298, 417 S.E.2d 634 (Ct. App. 1992) (Section 29-5-20 applies where a subcontractor is involved). Section 29-5-20 allows suppliers, subcontractors, and sub-subcontractors to file mechanics' liens, but only in certain circumstances and only for a limited amount of money. Specifically, liens filed by sub-subcontractors and suppliers cannot exceed the amount of money due by the contractor to the subcontractor. In other words, if the contractor has paid the subcontractor in full, a sub-subcontractor (e.g., an independent contractor of a subcontractor) cannot file a mechanic's lien against the property at issue. Obviously, the sub-subcontractor could file an action in law or equity against the subcontractor if the subcontractor withheld payment from the sub-subcontractor, but cannot file a lien against the property per Section 29-5-20.

The statute further states "in no event shall the total aggregate amount of liens on the improvement exceed the amount due by the owner." §29-5-20(B). Here, Appellant was the owner of the property and it is undisputed that she had paid the general contractor for the amount he invoiced her for the cabinets and the general contractor had signed two

lien waivers. (R. p. 107; R. p. 110.) Respondent admitted he has no evidence that any money is owed to the general contractor for the cabinets. (R. p. 71, lines 1-11.) Further, there was evidence in the Record that the general contractor actually owes Appellant money because her home was not up to code as he agreed to do by contract (R. pp. 140-151; p. 79, line 13 – p. 85, line 19) and Appellant had to finish the construction work the general contractor failed to finish. (R. pp. 147-151).

As no money was owed to the general contractor by the Appellant, Respondent's subcontractor cannot file a mechanic's lien against Appellant's property. See, e.g., Stoudenmire Heating & Air Conditioning Co. v. Craig Bldg. Ptnrshp., 308 S.C. 298, 417 S.E.2d 634 (Ct. App. 1992) (liability limited to the balance due to the contractor when notice received from the subcontractor); Stovall Bldg. Supplies v. Mottet, 305 S.C. 28, 406 S.E.2d 176 (Ct. App. 1990). Section 29-5-20 bars the use of a mechanic's lien in this fact scenario; Respondent can seek payment from the general contractor, not from Appellant.

The Wagner Panel ignored Appellant's argument and did not address the applicability of Section 29-5-20 to these facts. Further, the Panel also overlooked the applicability of Section 29-5-15(A), which states that:

To file a mechanic's lien, a contractor must provide the clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed. (emphasis added)

Per S.C. Code §29-5-15(A), Respondent's mechanic's lien is invalid on its face as there is no contractor's license listed on it. Respondent's contractor's license number is not recorded on the lien. As no contractor's license is listed on the lien at issue, the lien is invalid. The Wagner Panel failed to rule on the applicability of this Section to the facts

of this appeal and failed to consider Appellant's argument that the Lower Court erred in failing to apply this Section.

B. The Wagner Panel overlooked Appellant's argument that the Lower Court's holding regarding Section 40-59-410 was unsupported by the facts and there was no evidence in the Record that Respondent was licensed properly, which bars Respondent's recovery in law and equity.¹

Per S.C. Code §40-11-370(C), an entity which does not have a valid license cannot bring an action in law or equity to enforce a contract. Respondent does not have a valid license for residential home building or residential specialty contracting. (R. pp. 94-95.) S.C. Code Section 40-59-410 specifies the requirements necessary for firms to engage in residential home building and residential specialty contracting and specifically states that firms cannot hold a license or registration for building or contracting. However, employees of a firm can perform building and contracting services if the firm has a residential business certificate of authorization or if a 51% owner of the firm is the sole resident licensee of the firm. Here, there was no evidence in the Record that Respondent had a certificate of authorization or that its presumed "resident licensee" (Roy Mevers) owned 51% of the firm. Thus, Respondent's employees (including Billy Mevers) were not authorized to perform residential building or residential specialty contracting through Section 41-59-410(A).

Subsection (B) provides an alternate method of authorization for employees by stating that work by individuals can be authorized "through a firm" if one of the firm's owners or officers is individually licensed and designated as the firm's resident licensee and the firm has obtained a \$15,000 surety bond and has been issued a residential

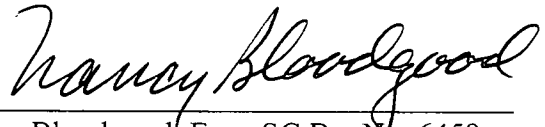
¹ This argument assumes for purposes of this Petition only that the parties entered into an unambiguous contract, but, even so, the contract is unenforceable pursuant to S.C. Code §40-11-370(C).

business certificate of authorization. The Wagner Panel cites to S.C. Code Section 40-59-410(B) in support of its affirmation of the Lower Court's judgment against Appellant. However, the Panel does not cite the entire text of subsection (B) and ignores the part of the statute that requires that the firm obtain a surety bond and a certificate of authorization. Respondent does not meet these requirements and, thus, Roy Mevers and Respondent were not authorized to engage in residential building or specialty contracting. There is no evidence in the Record that Respondent met the requirements of Section 40-59-410(A) or (B).

Per S.C. Code §40-11-370(A), "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." Further, pursuant to subsection (B) of this statute, 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." (Id.) Respondent, through Billy Mevers, engaged in construction. Roy Mevers did not engage in any construction at Appellant's home. As Respondent is not a licensed contractor, it cannot enforce the document it alleges is a contract, nor can it enforce a mechanic's lien. S.C. Code §40-11-370(C) bars Respondent's ability to recover under law or equity and the Wagner Panel erred in finding that Respondent could enforce its alleged contract and mechanic's lien pursuant to 40-59-410(B). Subsection (B) includes additional requirements that were overlooked by the Panel.

II. CONCLUSION

For the reasons stated herein, Appellant asks the Court to grant her Petition for a Rehearing.



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Date: 10-21-15

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**PROOF OF SERVICE FOR RESPONDENT'S PETITION FOR REHEARING
PURSUANT TO SCACR RULE 221**

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Attorneys for the Appellant

I, Nancy Bloodgood, Esquire, certify that on October 21, 2015, I served a copy of the **Respondent's Petition for Rehearing pursuant to SCACR Rule 221** to the following:

W. Tracy Brown, Esquire
The Brown Law Firm
110 N. Main Street
Summerville, SC 29483
Attorneys for Respondent

VIA FIRST CLASS MAIL

by placing a copy of said documents in the United States mail with sufficient postage thereon; and to the following:

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

VIA FEDERAL EXPRESS



Nancy Bloodgood, Esquire