

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Leticia H. Verdin, Circuit Court Judge

Case No.: 2016-001158

Wendell Cooper

Appellant

v.

East Coast Granite & Tile Inc.

Respondent

INITIAL BRIEF OF RESPONDENT

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SC Court of Appeals

ATTORNEY FOR RESPONDENT
EAST COAST GRANITE & TILE, INC.

TABLE OF CONTENTS

Table of Authorities III

Statement of Issues on Appeal 1

Statement of the Case 2

Facts 3

Arguments 4

I. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW BY NOT ALLOWING THE APPELLANT THE RIGHT TO REJECT THE DELIVERY OF GOODS THAT DID NOT CONFORM TO THE CONTRACT UNDER S.C. UCC 36-2-711 4

II. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT APPELLANT WAS NOT ENTITLED TO BE RESTORED TO THE PRE-CONTRACT POSITION WHEN THE MAGISTRATE COURT RULED IN PLAINTIFF’S FAVOR UNDER S.C. UCC 36-2-106 (4) 4

III. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT WHEN APPELLANT REJECTED THE DELIVERY OF GOODS FOR NON-CONFORMITY, WHICH THE BURDEN WAS ON THE SELLER TO PROVE THAT THE CONFORMITY WAS CORRECTED ACCORDING TO S.C. UCC 36-2-512 (1)(2) 5

IV. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT THE ABSENCE OF A SPECIFIC TIME PROVISION IN THE CONTRACT IS GOVERNED BY REASONABLE TIME TO CURE THE MATTER BEFORE NOTICE OF TERMINATION OF THE CONTRACT IN ACCORDANCE WITH S.C. UCC 36-2-309(2) 5

V. THE TRIAL COURT DID NOT ERR AS MATTER OF LAW IN RULING THAT THERE WAS A BINDING CONTRACT BETWEEN THE APPELLANT AND RESPONDENT WHEN THE CONTRACT WAS REJECTED FOR NON CONFORMITY 6

VI. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT APPELLANT WAS NOT ENTITLED TO RECOUP ALL MONIES PAID IN ADVANCE IN ACCORDANCE WITH S.C. 36-2-711 6

VII. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT IN NOT RECOGNIZING THAT THE RECORD DID NOT CONTAIN ANY WRITTEN NOTICE BY THE SELLER TO CURE THE NON-CONFORMITY IDENTIFIED BY THE APPELLANT IN ACCORDANCE WITH S.C. 36-2-501(1).....7

Conclusion7

TABLE OF AUTHORITIES

Cases

Freeman v. Carver, Op. No. 2016-UP-235 (S.C. Ct. App. filed June 1, 2016).....4,5,6,7
HSBC Mortgage Serv. Inc. v. Lucas, Op. No. 2016-UP-262 (S.C. Ct. App. filed June 8, 2016)4,5,6,7
Townes at Pelham Owner’s Assoc., Inc. v. Boyd, Op. No. 2016-UP-266 (S.C. Ct. App. filed June 8, 2016).....4,5,6,7

Statutes

S.C. UCC 36-2-7111,4,6
S.C. UCC 36-2-106 (4)1,4
S.C. UCC 36-2-512 (1)(2)1,5
S.C. UCC 36-2-309(2)1,5
S.C. UCC 36-2-501(1)1,7

STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW BY NOT ALLOWING THE APPELLANT THE RIGHT TO REJECT THE DELIVERY OF GOODS THAT DID NOT CONFORM TO THE CONTRACT UNDER S.C. UCC 36-2-711
- II. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT APPELLANT WAS NOT ENTITLED TO BE RESTORED TO THE PRE-CONTRACT POSITION WHEN THE MAGISTRATE COURT RULED IN PLAINTIFF'S FAVOR UNDER S.C. UCC 36-2-106 (4)
- III. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT WHEN APPELLANT REJECTED THE DELIVERY OF GOODS FOR NON-CONFORMITY, WHICH THE BURDEN WAS ON THE SELLER TO PROVE THAT THE CONFORMITY WAS CORRECTED ACCORDING TO S.C. UCC 36-2-512 (1)(2)
- IV. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT THE ABSENCE OF A SPECIFIC TIME PROVISION IN THE CONTRACT IS GOVERNED BY REASONABLE TIME TO CURE THE MATTER BEFORE NOTICE OF TERMINATION OF THE CONTRACT IN ACCORDANCE WITH S.C. UCC 36-2-309(2)
- V. THE TRIAL COURT DID NOT ERR AS MATTER OF LAW IN RULING THAT THERE WAS A BINDING CONTRACT BETWEEN THE APPELLANT AND RESPONDENT WHEN THE CONTRACT WAS REJECTED FOR NON CONFORMITY
- VI. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT APPELLANT WAS NOT ENTITLED TO RECOUP ALL MONIES PAID IN ADVANCE IN ACCORDANCE WITH S.C. 36-2-711
- VII. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT IN NOT RECOGNIZING THAT THE RECORD DID NOT CONTAIN ANY WRITTEN NOTICE BY THE SELLER TO CURE THE NON-CONFORMITY IDENTIFIED BY THE APPELLANT IN ACCORDANCE WITH S.C. UCC 36-2-501(1)

STATEMENT OF THE CASE

This dispute is about whether Respondent delivered correct granite countertops to Appellant. Respondent is in the business of selling and fabricating custom granite countertops. Appellant contracted with Respondent for fabrication and installation of granite countertops at his residence located in Simpsonville, South Carolina. On October 31, 2014, Appellant selected the granite slab and Respondent's warehouse manager marked the slab and placed the slab on hold, awaiting further scheduling instructions from Appellant. In May 2015, Appellant informed Respondent that his residence was ready for granite installation. In early June, Respondent's installation crew delivered Appellant's fabricated countertops to Appellant's residence and attempted to install them. However, Appellant declined installation claiming that delivered granite countertops did not match the stone he had selected back on October 31, 2014.

On June 23, 2015, Appellant filed this action against Respondent with the County of Greenville Magistrate Court, alleging that Respondent "[...] attempted to install the incorrect granite. [Appellant] selected a different granite than the one they had tried to install." See Complaint.

On September 29, 2015, after hearing testimony from both parties, their witnesses, and examining the disputed granite countertops brought to the courtroom as an exhibit, Judge Dean Ford ruled that "[...] East Coast Granite did fabricate and attempt to install the granite that Appellant picked out, fulfilling [its] part of the contract and that the purchased granite should be delivered to the Appellant in thirty days." See Judge Dean Ford's Order.

On October 29, 2015, Appellant filed an appeal, appealing Judge Dean Ford's ruling to the Greenville County Circuit Court.

On April 27, 2016, Judge Leticia H. Verdin heard this case and ruled to affirm Judge Dean Ford's ruling. See Judgment in Civil Case, Form 4

On May 27, 2016, Appellant filed present appeal with this court, appealing Judge Leticia's order affirming Judge Dean Ford's ruling.

FACTS

On October 31, 2014 parties executed a contract for fabrication and installation of granite countertops at Appellant's residence. See Contract. On this same day, Appellant made his granite slab selection, namely Giallo Ornamental. Per Respondent's standard procedures, the selected slab was marked and placed on hold for Appellant.

On May 6, 2015 Appellant contacted Respondent and informed him that Appellant's residence was ready for granite installation. After several unsuccessful attempts to schedule installation, on May 14, Respondent's installation team arrived at Appellant's residence to install Appellant's custom-cut countertops.

However, Appellant refused installation, alleging that the color of the countertops was not correct. Being unable to install said countertops, Respondent's installation team removed them, deferring to Appellant and Respondent resolution of this conflict.

On May 18, Appellant and Respondent's store manager met to discuss the issue of granite color. The store manager insisted that the precise granite slab that Appellant selected back in October was fabricated. Appellant disagreed.

On June 23, 2015, Appellant filed this action alleging that Respondent attempted to install incorrect granite countertops.

ARGUMENTS

I. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW BY NOT ALLOWING THE APPELLANT THE RIGHT TO REJECT THE DELIVERY OF GOODS THAT DID NOT CONFORM TO THE CONTRACT UNDER S.C. UCC 36-2-711

It is clear from the record that the trial court did not err “as a matter of law by not allowing the Appellant the right to reject the delivery of goods that did not conform to the contract under S.C. UCC 36-2-711” because the record lacks such ruling from the trial court. Therefore, no error could exist.

Further, Appellant has abandoned this argument due to his failure to support it with proper authority. *See Freeman v. Carver*, Op. No. 2016-UP-235 (S.C. Ct. App. filed June 1, 2016)(“An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.”); *HSBC Mortgage Serv. Inc. v. Lucas*, Op. No. 2016-UP-262 (S.C. Ct. App. filed June 8, 2016)(argument must be supported by authority); *Townes at Pelham Owner’s Assoc., Inc. v. Boyd*, Op. No. 2016-UP-266 (S.C. Ct. App. filed June 8, 2016)(issue raised but not argued is abandoned).

II. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT APPELLANT WAS NOT ENTITLED TO BE RESTORED TO THE PRE-CONTRACT POSITION WHEN THE MAGISTRATE COURT RULED IN PLAINTIFF’S FAVOR UNDER S.C. UCC 36-2-106 (4)

It is clear from the record that the trial court did not err “as a matter of law in ruling that Appellant was not entitled to be restored to the pre-contract position when the magistrate court ruled in Plaintiff’s favor under S.C. UCC 36-2-106 (4)” because the magistrate judge did not rule in Plaintiff’s favor. See Judge Dean Ford’s Order. To the contrary, the Magistrate Judge ruled in favor of the Respondent, finding that “[...] East Coast Granite did fabricate and attempt to install the granite that Appellant picked out, fulfilling [its] part of the contract [...]” See Judge Dean Ford’s Order.

Further, Appellant has abandoned this argument due to his failure to support it with proper authority. *See Freeman v. Carver*, Op. No. 2016-UP-235 (S.C. Ct. App. filed June 1, 2016)(“An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.”); *HSBC Mortgage Serv. Inc. v. Lucas*, Op. No. 2016-UP-

262 (S.C. Ct. App. filed June 8, 2016)(argument must be supported by authority); *Townes at Pelham Owner's Assoc., Inc. v. Boyd*, Op. No. 2016-UP-266 (S.C. Ct. App. filed June 8, 2016)(issue raised but not argued is abandoned).

III. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT WHEN APPELLANT REJECTED THE DELIVERY OF GOODS FOR NON-CONFORMITY, WHICH THE BURDEN WAS ON THE SELLER TO PROVE THAT THE CONFORMITY WAS CORRECTED ACCORDING TO S.C. UCC 36-2-512 (1)(2)

It is clear from the record that the trial court did not err “as a matter of law in ruling that when appellant rejected the delivery of goods for non-conformity, which the burden was on the seller to prove that the conformity was corrected according to S.C. UCC 36-2-512 (1)(2)” because the record simply lacks such ruling from the trial court. Therefore, no error could exist.

Further, Appellant has abandoned this argument due to his failure to support it with proper authority. *See Freeman v. Carver*, Op. No. 2016-UP-235 (S.C. Ct. App. filed June 1, 2016)(“An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.”); *HSBC Mortgage Serv. Inc. v. Lucas*, Op. No. 2016-UP-262 (S.C. Ct. App. filed June 8, 2016)(argument must be supported by authority); *Townes at Pelham Owner's Assoc., Inc. v. Boyd*, Op. No. 2016-UP-266 (S.C. Ct. App. filed June 8, 2016)(issue raised but not argued is abandoned).

IV. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT THE ABSENCE OF A SPECIFIC TIME PROVISION IN THE CONTRACT IS GOVERNED BY REASONABLE TIME TO CURE THE MATTER BEFORE NOTICE OF TERMINATION OF THE CONTRACT IN ACCORDANCE WITH S.C. UCC 36-2-309(2)

It is clear from the record that the trial court did not err “as a matter of law in ruling that the absence of a specific time provision in the contract is governed by reasonable time to cure the matter before notice of termination of the contract in accordance with S.C. UCC 36-2-309(2)” because the record simply lacks such ruling from the trial court. Therefore, no error could exist.

Further, Appellant has abandoned this argument due to his failure to support it with

proper authority. *See Freeman v. Carver*, Op. No. 2016-UP-235 (S.C. Ct. App. filed June 1, 2016)(“An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.”); *HSBC Mortgage Serv. Inc. v. Lucas*, Op. No. 2016-UP-262 (S.C. Ct. App. filed June 8, 2016)(argument must be supported by authority); *Townes at Pelham Owner’s Assoc., Inc. v. Boyd*, Op. No. 2016-UP-266 (S.C. Ct. App. filed June 8, 2016)(issue raised but not argued is abandoned).

V. THE TRIAL COURT DID NOT ERR AS MATTER OF LAW IN RULING THAT THERE WAS A BINDING CONTRACT BETWEEN THE APPELLANT AND RESPONDENT WHEN THE CONTRACT WAS REJECTED FOR NON CONFORMITY

Based on its findings that “[...] East Coast Granite did fabricate and attempt to install the granite that *Appellant picked out*, fulfilling [its] part of the contract [...]” the trial court found the granite conforming; therefore, correctly ruling that a binding contract existed between the parties.

Further, Appellant has abandoned this argument due to his failure to support it with proper authority. *See Freeman v. Carver*, Op. No. 2016-UP-235 (S.C. Ct. App. filed June 1, 2016)(“An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.”); *HSBC Mortgage Serv. Inc. v. Lucas*, Op. No. 2016-UP-262 (S.C. Ct. App. filed June 8, 2016)(argument must be supported by authority); *Townes at Pelham Owner’s Assoc., Inc. v. Boyd*, Op. No. 2016-UP-266 (S.C. Ct. App. filed June 8, 2016)(issue raised but not argued is abandoned).

VI. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT APPELLANT WAS NOT ENTITLED TO RECOUP ALL MONIES PAID IN ADVANCE IN ACCORDANCE WITH S.C. 36-2-711

It is clear from the record that the trial court did not err “as a matter of law in ruling that appellant was not entitled to recoup all monies paid in advance in accordance with S.C. 36-2-711” because the record simply lacks such ruling from the trial court. Therefore, no error could exist.

Further, Appellant has abandoned this argument due to his failure to support it with proper authority. *See Freeman v. Carver*, Op. No. 2016-UP-235 (S.C. Ct. App. filed June 1,

2016)(“An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.”); *HSBC Mortgage Serv. Inc. v. Lucas*, Op. No. 2016-UP-262 (S.C. Ct. App. filed June 8, 2016)(argument must be supported by authority); *Townes at Pelham Owner’s Assoc., Inc. v. Boyd*, Op. No. 2016-UP-266 (S.C. Ct. App. filed June 8, 2016)(issue raised but not argued is abandoned).

VII. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN RULING THAT IN NOT RECOGNIZING THAT THE RECORD DID NOT CONTAIN ANY WRITTEN NOTICE BY THE SELLER TO CURE THE NON-CONFORMITY IDENTIFIED BY THE APPELLANT IN ACCORDANCE WITH S.C. 36-2-501(1)

It is clear from the record that the trial court did not err “as a matter of law in ruling that in not recognizing that the record did not contain any written notice by the seller to cure the non-conformity identified by the appellant in accordance with S.C. 36-2-501(1)” because the record simply lacks such ruling from the trial court. Therefore, no error could exist.

Further, Appellant has abandoned this argument due to his failure to support it with proper authority. *See Freeman v. Carver*, Op. No. 2016-UP-235 (S.C. Ct. App. filed June 1, 2016)(“An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.”); *HSBC Mortgage Serv. Inc. v. Lucas*, Op. No. 2016-UP-262 (S.C. Ct. App. filed June 8, 2016)(argument must be supported by authority); *Townes at Pelham Owner’s Assoc., Inc. v. Boyd*, Op. No. 2016-UP-266 (S.C. Ct. App. filed June 8, 2016)(issue raised but not argued is abandoned).

CONCLUSION

It is respectfully submitted that this Court should affirm the decision of the Trial Judge, affirming the decision of Magistrate Judge who accurately processed the evidence and came his conclusions.

(Signature page to follow)

Dated: June 9, 2017

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Leticia H. Verdin, Circuit Court Judge

Case No.: 2016-001158

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Wendell Cooper

Appellant

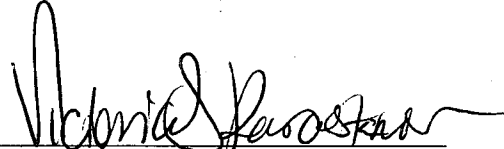
v.

East Coast Granite & Tile Inc.

Respondent

PROOF OF SERVICE

I certify that I have served the Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal on Wendell Cooper, Appellant, by depositing a copy of in the United States Mail, postage prepaid, on June 9, 2017, addressed to 117 Palm Springs Way, Simpsonville, SC 29681.


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June 9, 2017

Ms. Jenny Abbot Kitchings
Clerk of Court for the SC Court of Appeals
1220 Senate Street
Columbia, SC 29201


Re: Wendell Cooper v East Coast Granite & Tile, Inc.
Appellate Case No.: 2016-001158

Dear Ms. Kitchings,

Enclosed please find Respondent's Initial Brief, the Designation of Matter to be Included in the Record on Appeal and Proof of Service for filing regarding the above captioned matter. Please return a certified true copy of same to my office in the self addressed stamped envelope.

Please call if you have any questions.

Sincerely,



Victoria S. Karastanov

VSK/mft

Enclosure

cc: Wendell Cooper

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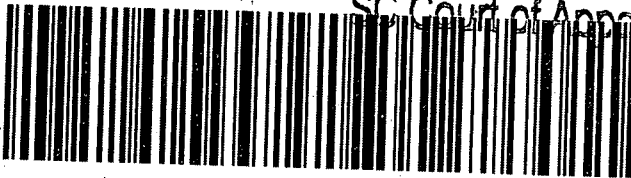
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