

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Court Judge

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DEC 20 2017

SC Court of Appeals

Case No.: 2016-CP-21-1230

Harvey R. Campbell, Jr., d/b/a Metal
Construction and Roofing, Appellant,

vs.

Lee Lyerly and Ellen Marie Stone Lyerly, Respondents.

Appellate Case No. 216-002315

RETURN TO MOTION

The Respondents, Lee Lyerly and Ellen Marie Stone Lyerly, respond to the Appellant's Petition for rehearing as more fully stated below. The Appellant contends the Court's reliance on *Duckworth v. Cameron*, 244 S.E.2d 217, 270 S.C. 647 (S.C. 1978) was misplaced since the "statute then existed was silent as to when it applied." *Duckworth* was merely one of the many cases relied upon which reflects the legislative intent of the statute even though its current form has been amended slightly since *Duckworth*. The Petitioner in an unsubstantiated leap opines that "the amendment changed the focus of suit prohibition to require a current license prior to filing, not at the time of the contract." In *Duckworth* the contractor was not licensed at the time the

contract was entered or during the time in which the majority of the work was performed.

In this case Respondents did not obtain a license until after work was complete.

To reiterate the history of the statute at issue all versions of the statute and precedent require the contractor to possess a license at the time the contract was entered in order to enforce the contract. The original version of the statute applied in *Duckworth* stated:

A residential builder who does not have a license or residential specialty contractor who is not registered as required may not bring any action either at law or in equity to enforce the provisions of any contract for residential building or residential specialty contracting **which he entered into in violation of this chapter.** (Emphasis added).

The 2002 amended provisions did not change the substance of the applicable subsection:

A person or firm who has not first procured a license may not bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting **which the person or firm entered into in violation of this chapter.** (Emphasis added).

The current language of Section 40-59-30(b) provides:

Notwithstanding Section 29-5-10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting **which the person or firm entered into in violation of this chapter.** (Emphasis added).

The plain and unambiguous language of all versions of the statute unequivocally require a license when the contract was formed. The fact that Respondent obtained a license three months after the work was complete does not enable the Appellant to collect for its alleged substandard work - work which the Labor and Licensing Board cannot now sanction since the Appellant failed to have a license before or during the time work was performed.

WHEREFORE, having responded to the Petition for Rehearing, the Respondents respectfully request the Court to deny the Motion for Rehearing and affirm its prior decision.

Respectfully submitted,



GARY I. FINKLEA

Attorney for Respondents

Finklea Law Firm

Post Office Box 1317

Florence, SC 29503

Phone: (843) 317-4900

Fax: (843) 317-4910

E-mail: gfinklea@finklealaw.com

December 18, 2017

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CERTIFICATE OF SERVICE

I certify that I have served the Respondents' Return to Motion along with the Certificate of Service on the Appellant's Attorney by depositing copies of the same in the United State Mail, postage prepaid, on December 18, 2017, addressed to the following address:

Louis D. Nettles, Esquire
Folkens Law Firm
P.O. Drawer 6139
Florence, SC 29502-6139



GARY I. FINKLEA
Attorney for Respondents
Finklea Law Firm
Post Office Box 1317
Florence, SC 29503
Phone: (843) 317-4900
Fax: (843) 317-4910
E-mail: gfinklea@finklealaw.com



FINKLEA LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW

Gary I. Finklea
Charlie J. Blake, Jr.
J. Gregory Hendrick
Joshua A. Bailey
Patrick B. Ford
B. Hicks Harwell, Jr.
(1933-2012)

December 18, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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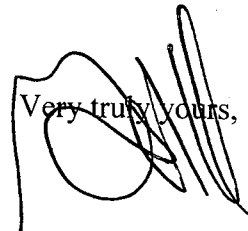
SC Court of Appeals

Re: Henry L. Lyerly, Jr. and Ellen
Marie Stone Lyerly adv. Harvey
Campbell, Jr. d/b/a Metal
Construction and Roofing
C/A#: 2016-CP-21-1230
Our File No.: 16008GFVB

Dear Ms. Kitchings:

Enclosed for filing in the above matter are an original and six (6) copies of the Respondents' Return to Motion and Certificate of Service. I would appreciate your office filing and returning the certified copies. I appreciate your assistance.

With kindest regards, I am

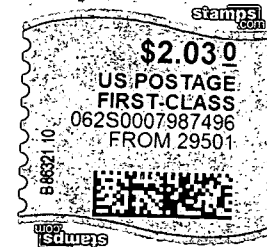
Very truly yours,



GARY I. FINKLEA

GIF:jea

Enclosures

cc: Mr. and Mrs. Henry L. Lyerly, Jr. (w/ enclosures)
Louis D. Nettles, Esquire, Folkens Law Firm (w/ enclosures)



 **FINKLEA LAW FIRM**
ATTORNEYS AND COUNSELORS AT LAW

814 West Evans Street, P.O. Box 1317 • Florence, S.C. 29503 • (843) 317-4900.

TO: The Honorable Jenny Abbott Kitching
Clerk, South Carolina Court of Appeals
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Columbia, South Carolina 29211

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