

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

FINAL BRIEF OF RESPONDENT

RECEIVED
JAN 23 2018
SC Court of Appeals

VICTORIA LAW FIRM, LLC
Victoria S. Karastanov
vk@victorialawsc.com
SC Bar # 101542
2890 Reidville Rd
Spartanburg, SC 29301
(864) 707-2551
(864) 707-2552 (facsimile)

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

Facts3

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 36-2-7114

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 CONFORMITY6

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. 36-2-7116

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." (R. p. 3, lines 17-20; 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." (Supplement Record p. 3, lines 12-15; 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. (R. p. 2; 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. (Appellant' Exhibit 1). 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's 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. (Supplement Record pp. 2-3; 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 [...]” (Id. p. 3, lines 12-15)

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).

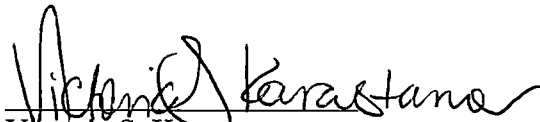
CONCLUSION

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: January 19, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Victoria S. Karastanov". The signature is written in a cursive style with a large initial "V".

Victoria S. Karastanov
VICTORIA LAW FIRM, LLC
vk@victorialawsc.com
SC Bar # 101542
2890 Reidville Rd
Spartanburg, SC 29301
(864) 707-2551
(864) 707-2552 (facsimile)

ATTORNEY FOR RESPONDENT
EAST COAST GRANITE & TILE, INC.