

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Circuit Judge

Case No. 2016-CP-21-1230

RECEIVED

FEB 20 2018

S.C. SUPREME COURT

Harvey R. Campbell, Jr.,..... Petitioner,

Vs.

Lee Lyerly and Ellen Marie Stone Lyerly Respondents

Appellate Case No. 2016-002315

APPENDIX TO PETITION FOR Certiorari

LOUIS D. NETTLES
Folkens Law Firm, PA
PO Box 6139
Florence, SC 29502
Attorney for Petitioner
843-665-0100

GARY I. FINKLEA
Finklea Law Firm PA
PO Box 1317
Florence SC 29503
Attorney for Respondents
843-317-4900

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Circuit Judge

RECEIVED

MAR 06 2017

SC Court of Appeals

Case No. 2016-CP-21-1230

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

Vs.

Lee Lyerly and Ellen Marie Stone Lyerly Respondents

RECORD ON APPEAL

LOUIS D. NETTLES
Folkens Law Firm, PA
PO Box 6139
Florence, South Carolina 29502
Attorney for Appellant
843-665-0100

GARY I. FINKLEA
Finklea Law Firm PA
PO Box 1317
Florence SC 29503
Attorney for Respondents

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-21-1230

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

Lee Lyerly and Ellen Marie Stone Lyerly

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Gary I. Finklea

Attorney for:

☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE**

BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: This Order grants Defendants' Motion to Dismiss the Plaintiff's Complaint. Counterclaims remain active.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below):	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below):
Harvey R. Campbell, Jr., d/b/a Metal Construction and Roofing	Lee Lyerly and Ellen Marie Stone Lyerly	\$ N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

CERTIFIED: A TRUE COPY
Cristie H. S. S. S.
CLERK OF COURT C.P.
FLORENCE CO.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

J. E. Smith
Circuit Court Judge

2157
Judge Code

10/6/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 12 day of Oct., 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Oct., 2016 to attorneys of record or to parties (when appearing pro se) as follows:

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

Gary L. Finkles, Esquire ✓
Finkles Law Firm
Post Office Box 1317
Florence, SC 29503

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearn
CLERK OF COURT

Court Reporter:

FILED
OCT 12 11:46
CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel-Shearn
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

) IN THE COURT OF COMMON PLEAS

12) TWELFTH JUDICIAL CIRCUIT

Plaintiff,

 V_{S_1}

Lee Lyerly and Ellen Marie Stone Lyerly,

Defendants.

ORDER
(Granting Defendants'
Motion to Dismiss)

HERETOFORE the Defendants contracted with the Plaintiff to perform roofing repairs and replacement at 5010 Old Georgetown Road, Coward, South Carolina. The Plaintiff demanded compensation in the amount of Twenty Six Thousand One Hundred Sixty and No/100 (\$26,160.00) Dollars. Six Thousand and No/100 (\$6,000.00) Dollars was paid. The Defendants have not paid the balance alleging the Plaintiff's work fell below industry standards and the cost to repair exceeds the balance due to the Plaintiff.

The Plaintiff filed this suit seeking damages for breach of contract or alternatively quantum meruit. The Defendants answered denying monies were due and further asserted South Carolina Code §40-59-130 precludes the Plaintiff from bringing an action to enforce or to seek compensation for the work performed on the grounds that he was not a licensed contractor at the time the contract was entered or any time during the course of the work.

Based upon the review of the pleadings, applicable law and considering the arguments of counsel, this Court grants the Defendants' Motion to Dismiss the Plaintiff's Complaint.

I

APPLICABLE LAW

South Carolina Code Ann. §40-59-30(b) provides as follows:

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.

DISCUSSION

Previous South Carolina case law held that a Residential Homebuilder could not sue to recover under a building contract if he did not have a license at the time contract was made. Duckworth v. Cameron, 244 S.E.2d 217, 270 S.C. 647 (1978). The Duckworth case was decided in 1978 and S.C. Code §40-59-130 at that time provided:

"(n)o residential home builder who does not have the license required herein may bring any action either at law or in equity to enforce the provisions of any contract for residential home building which he entered into in violation of this chapter."

In addition to Duckworth, Roberta, Inc. v. Trust, 274 S.C. 53 260 S.E.2d 818 (1979) was decided by the South Carolina Supreme Court one year later and concluded that an unlicensed residential homebuilder could not bring an action to recover amounts paid to third-parties for labor and materials furnished in the performance of the contract.

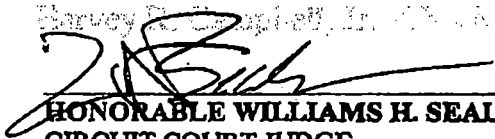
South Carolina Code §40-59-130 was revised in 2002 and again in 2009 to its current form. The Plaintiff argues that the amendment to the statute allows a contractor to pursue recovering for monies due under a building contract if the license is obtained after the work is performed.

CONCLUSION

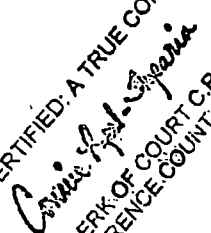
The Plaintiff did not have a license at the time the contract was entered nor any time during the course of performance and only obtained a license after he sought to collect under the contract. Since the Plaintiff is an unlicensed builder, he cannot "bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting." Based on the foregoing, the Defendants' Motion is Granted and the Plaintiff's Complaint is Dismissed.

AND IT IS SO ORDERED.

October 12, 2016
Marion, South Carolina


HONORABLE WILLIAMS H. SEALS
CIRCUIT COURT JUDGE

FILED
2016 OCT 12 AM 11:46
CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

CASE NO

20 16 CP 21 1230

Harvey R. Campbell Jr,
D/B/A Metal Construction and
Roofing

Plaintiff,

vs.

Lee Lyerly and Ellen Marie Stone
Lyerly

Defendants.

SUMMONS

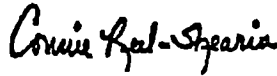
FILED
2016 MAY 17 PM 1:12
JENNIFER L. STEVENSON
CLERK OF COURT & G.S.
FLORENCE COUNTY, SC

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said complaint on the subscribers at their offices at 601 W. Evans St., Post Office Box 6139, Florence, South Carolina 29502-6139, within thirty (30) days after the service hereof, exclusive of the days of such service; and if you fail to answer the Complaint within the time aforesaid, Judgment by default will be rendered against you for the relief demanded in the Complaint


Louis D. Nettles
Folkens Law Firm P.A.
P.O. Box 6139
601 W Evans St.

CERTIFIED: A TRUE COPY


CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Florence SC 20502

843-665-0100

louis@folkenslaw.com

May 17, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

CASE NO

2016 May 17 1230

Harvey R. Campbell Jr,
D/B/A Metal Construction and
Roofing

Plaintiff,

vs.

Lee Lyerly and Ellen Marie Stone
Lyerly

Defendants.

COMPLAINT

FILED
2016 MAY 17 PM 1:12
DANIEL REEL, Sheriff
CCCP & GS
FLORENCE COUNTY, S.C.

The Plaintiff complaining of the Defendants would allege as follows:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a resident of Florence County and this actions arises out of a contract for work performed in Florence County.
2. Defendants are residents of Florence County.
3. The Plaintiff is licensed as a Residential Builder with Specialty License no. 2395. This license was first issued in 1998, but had expired at the time the work for the Defendant was begun. The license is now current.
4. On or about July 24, 2014 Defendants and Plaintiff entered in to a contract for roofing work on their property located at 5010 Old Georgetown Rd. Coward SC.

CERTIFIED: A TRUE COPY

Connie Ral-Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

5. That Plaintiff performed the work and additional requested work totaling Twenty-six Thousand One Hundred Sixty (\$26,160.00) Dollars and paid Six Thousand (\$6000.00) Dollars and there is due and owing to the Plaintiff the sum of Twenty Thousand One Hundred Sixty (\$20,160.00) Dollars.

6. Plaintiff has made due demand for payment and the Defendants had refused to pay the Plaintiff.

7. Plaintiff has been damaged in the sum of Twenty Thousand One Hundred Sixty (\$20,160.00) Dollars

FOR A SECOND CAUSE OF ACTION

8. The allegations of the First Cause of Action are incorporated herein.

9. That at the specific request of the Defendants the Plaintiff performed work for the Defendants at 5010 Old Georgetown Rd. Coward SC.

10. That the Defendant's property has increased in value as a result of Plaintiff's work in the amount of Twenty Thousand One Hundred Sixty (\$20,160.00) Dollars.

11. That in equity and good conscience the Defendant should be required to pay the Plaintiff for the value of his work.

WHEREFORE, the Plaintiff prays judgment against the Defendant's in the amount of Twenty Thousand One Hundred Sixty (\$20,160.00) Dollars plus costs, expenses and interest.



Louis D. Nettles
Folkens Law Firm P.A.
P.O. Box 6139
601 W Evans St.
Florence SC 29502
843-665-0100
louis@folkenslaw.com

May 17, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

BURCH ROOFING CO. INC.
D/B/A METAL MAN CONSTRUCTION AND
ROOFING

PETITIONER,

-VS-

LEE LYERLY AND ELLEN MARIE
STONE LYERLY,.

RESPONDENT.

NOTICE OF MECHANIC'S LIEN

TO: THE RESPONDENTS ABOVE NAMED AND ALL OTHERS CONCERNED:

YOU WILL PLEASE TAKE NOTICE that the Petitioner above named, by virtue of the attached Affidavit, does hereby claim a Mechanic's Lien on real estate hereinafter described, said lien being in the amount of Twenty Thousand Five Hundred Ten and 00/100ths (\$20,510.00) Dollars, plus interest, attorneys fees and costs, for the labor and materials furnished and used in the improvements situated on the below described real estate, such having been authorized by the owner or by virtue of and in agreement with or by consent of the owner of such improvements or by some person or agent having authority from or rightfully acting for owner in the procuring or furnishing of such labor and materials which were placed on the subject real property. The said materials and labor were used on improving the subject property; that the aforesaid Respondents, Henry L. Lyerly Jr. and Ellen Marie Stone Lyerly, have not paid the Petitioner in full for the labor and materials used for improvement and the sum of Twenty Thousand Five Hundred Ten and 00/100ths (\$20,510.00) Dollars is now due and owing to the Petitioner for said materials and labor. That no part of the balance due has been paid by discount or otherwise and the Petitioner has incurred attorney fees and costs for the institution

Transcript of Record
0011

5-1819

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Clerk of Court
Florence County S.C.
Clerk of Court
C.P. & G.S.
Florence County S.C.

of this action and is entitled to a reasonable attorney's fee incurred in this action and costs.

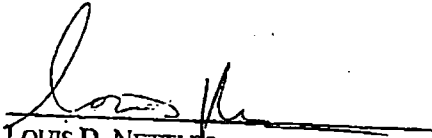
That the said materials were last furnished at the subject property within the last ninety (90) days; that the Petitioner is informed and believes that the furnishing of said materials and labor to the subject property was authorized and consented to by Henry L. Lyerly Jr. and Ellen Marie Stone Lyerly, the owners of the property. The property on which the materials were placed and used is located in the County of Florence and described as follows:

Parcel #1: All that parcel of land situate near the City of Coward, County of Florence, State of South Carolina, known and designated as containing 1.041 acres as shown on a map made for Bradley Edward McClam by Lower Florence County Engineering Company, dated September 24, 2008 and recorded in the Office of the Clerk of Court for Florence County in Plat Book 95 at Page 1. Said lot being bounded as follows, to wit: on the North by Lands of Jack Filyaw for distance of 214.76 feet; on the East by parcel of land containing 0.07 acres, known as Parcel A, for a distance of 213.06 feet; on the South by lands of Jack Filyaw for a distance of 211.12 feet; and on the West by S.C. Highway 72, known as Old Georgetown Road for a distance of 212.95 feet, reference being had to the above mentioned map for a more complete and accurate description.

Parcel #2: All that certain piece, parcel or lot of land lying, being and situate in the County of Florence, State of South Carolina, known and designated as Parcel "A", containing 0.07 acres as shown on a map made by Lower Florence County Engineering Company, date September 24, 2008 and recorded in the Office of the Clerk of Court for Florence county in Plat Book 95 at Page 1. Said Parcel "A" being bounded as follows, to wit: on the North by lands of Jack Filyaw, for a distance of 13.89; on the East by lands of Jack Filyaw for a distance of 213.06; on the South by Lands of Jack Filyaw for a distance of 13.89; and on the West by parcel containing 1.041 acres, for a distance of 213.06. Reference being had to the above mentioned map for a more complete and accurate description.

This being the same property conveyed to Ellen Marie Stone Lyerly by deed Robert E. Lee, Special Referee, dated February 4, 2014 and recorded February 4, 2014 in Book 508 at Page 643, in the Florence County Records, State of South Carolina.

TMS #: 00220-03-103


LOUIS D. NETTLES
601 W Evans St
Post Office Box 6139
Florence, South Carolina 29502-6139
(843) 665-0100
ATTORNEY FOR PETITIONER

February 18, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

BURCH ROOFING CO. INC.)
D/B/A METAL MAN CONSTRUCTION AND)
ROOFING)
PETITIONER,)

-VS-

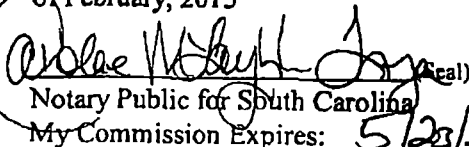
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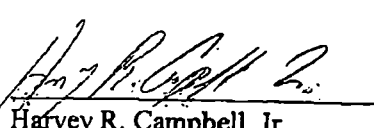
HENRY L. LYERLY JR. AND ELLEN MARIE)
STONE LYERLY,)
)
RESPONDENTS.)

PERSONALLY appeared before me, Harvey R. Campbell, Jr. who being first duly sworn, deposes and states that certain materials and labor were furnished for the improvement of property described in the attached Notice of Mechanic's Lien, such labor and materials having been furnished at the special instance and request of the owner of said property or by consent of the owner or some person or agent having authority from or rightfully acting for such owner or authorized by the owner and that said labor and materials were last furnished within ninety (90) days from the date of this Affidavit.

Deponent further states that there is past due and owing from the owners of said property to him, the sum of Twenty Thousand Five Hundred Ten and 00/100ths (\$20,510.00) Dollars, representing the sum which said labor and materials are reasonably worth with interest as evidenced by the attached certified Statement of Account, together with a reasonable attorney's fee, plus interest and costs of collection.

SWORN before me this 20th day
of February, 2015


Notary Public for South Carolina
My Commission Expires: 5/23/2015


Harvey R. Campbell, Jr.

CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Transcript of Record
0013

51821

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

BURCH ROOFING CO. INC.
D/B/A METAL MAN CONSTRUCTION AND
ROOFING

PETITIONER,

-VS-

HENRY L. LYERLY JR. AND ELLEN MARIE
STONE LYERLY,

RESPONDENTS.

STATEMENT OF ACCOUNT

Amount

\$20,510.00

PERSONALLY appeared before me, Harvey R. Campbell, Jr. who first being duly sworn and deposed, states that the foregoing is a true and correct statement of the account of Metal Man LLC as it relates to the property which is the subject of this Mechanic's Lien action, and that no part of same has been paid by discount or otherwise.

Burch Roofing Co. Inc. (License 10872)

By:

HARVEY R. CAMPBELL JR.

SWORN to before me this
20th day of February, 2015

Notary Public for South Carolina
My Commission Expires: 5/23/2016

Transcript of Record
0014

51822

CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

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

☐ Plaintiff,

vs.

Lee Lyerly and Ellen Marie Stone Lyerly,

☒ Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-21-1230

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

Bar #:

Louis D. Nettles, Esquire

Folkens Law Firm

P.O. Drawer 6139

Florence, SC 29502-6139

Phone: (843) 665-0100

Fax: (843) 665-0500

Email: louis@folkenstlaw.com

Defendant's Attorney:

Bar #: 66174

Gary I. Finklea, Esquire

Finklea Law Firm

Post Office Box 1317

Florence, SC 29503

Phone: (843) 317-4900

Fax: (843) 317-4910

Email: gfinklea@finklealaw.com

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written Motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendants

June 9, 2016

Date Submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or, reduced to writing
from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other Reason:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other:

JUDGE

CODE:

DATE:

CLERK'S VERIFICATION

Collected By: _____

Date Filed: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	C/A #: 2016-CP-21-1230
	)	
Harvey R. Campbell, Jr., d/b/a Metal	)	
Construction and Roofing,	)	
	)	
Plaintiff,	)	ANSWER, MOTION TO DISMISS
	)	AND COUNTERCLAIM
Vs.	)	
	)	
Lee Lyerly and Ellen Marie Stone Lyerly,	)	
	)	
Defendants.	)	

The Defendants, Lee Lyerly and Ellen Marie Stone Lyerly, responding to the Complaint of the Plaintiff would respectfully allege as follows:

FOR A FIRST DEFENSE
(By Way of Affirmative Defenses)

1. The Defendants affirmatively set forth the defenses of accord and satisfaction, payment, offer of payment, tender, contributory negligence, comparative negligence, laches, misrepresentation, contract, agreement, bad faith, fraud, mutual mistake, rescission, default, breach of contract, offset, setoff, injury by fellow servant, unconscionability, unclean hands, release, waiver, estoppel, warranty and any other matter constituting an avoidance or affirmative defense that may develop through the discovery process.

FOR A SECOND DEFENSE
(By Way of Answer)

2. Each and every allegation of the Plaintiff's Complaint not specifically admitted, modified, or explained is denied and strict proof is demanded thereof.
3. The Defendants admit the allegations contained in Paragraphs 1, 2, 4, 6 and 9.

4. In regard to the allegations contained in Paragraph 3, the Plaintiff represented he was in fact a licensed residential builder at the time the contract was entered. However, the Defendants eventually learned when they sought administrative enforcement against the Plaintiff that he did not in fact have a license. Further, South Carolina Labor, Licensing and Regulation investigated the matter and determined that the Plaintiff had engaged in an unlicensed practice of residential building; unlicensed practice of specialty contracting; practice of specialty contracting outside of the scope of his registration; that he failed to obtain a building permit for this construction; and failed to obtain a bond for the construction since the amount would have exceeded the amount of the Plaintiff's license if he had in fact carried one.
5. In regard to the allegations contained in Paragraph 5, the Defendants admit the contract price and amount paid but deny that the Plaintiff is entitled to the balance due based upon the faulty, negligent, and poor workmanship.
6. The Defendant denies the allegations contained in Paragraphs 7, 10, 11 and the allegations of the Wherefore Clause.
7. Upon information and belief, no response is required as to the allegations contained in Paragraph 8.

FOR A THIRD DEFENSE
(By Way of Motion to Dismiss)
(S.C. Code §40-59-130)

8. Each and every relevant allegation contained hereinabove is reiterated as fully as if set forth herein verbatim.

9. At the time in which the parties entered into this contract and at all times during the performance of the contract, the Plaintiff had failed to procure a building license as required to do so.
10. Consequently, under S.C. Code §40-59-130, the Plaintiff may not bring an action at law or in equity to enforce the provisions of a building contract entered in violation of this chapter.

FOR A FOURTH DEFENSE
(By Way of First Counterclaim)
(Breach of Contract)

11. Each and every relevant allegation contained hereinabove is reiterated as fully as if set forth herein verbatim.
12. Heretofore, the Defendants contracted with the Plaintiff to install a new metal roof system. The contract price was Twenty Three Thousand and No/100 (\$23,000.00) Dollars and the Defendants placed a deposit of Six Thousand and No/100 (\$6,000.00) Dollars toward the construction.
13. The construction was complete but it was defective, negligent, not in accordance with industry standard, in violation of building practices, in violation of building codes, in violation of the Residential Standards Guides, and simply poor and shotty workmanship.
14. As a result, the Defendants withheld the balance of the funds due under the contract and demanded the Plaintiff to cure the defects.
15. The Plaintiff has failed to cure in accordance with South Carolina Law and the Defendants' home is subject to further damage as a result of rain and other conditions.

16. The Defendants are ready, willing and able to pay the balance of the monies owed but the improvements are not built to industry standards or the Residential Building Code.
17. The Defendants have provided notice and opportunity to cure in accordance in South Carolina Law but the Plaintiff has failed to remedy the defects.
18. As a direct and proximate result of breach of contract by the Plaintiff, the Defendants have been significantly harmed and actually damaged.

FOR A FIFTH DEFENSE
(By Way of Second Counterclaim)
(Negligence)

19. Each and every relevant allegation contained hereinabove is reiterated as fully as if set forth herein verbatim.
20. The Plaintiff owed duties to the Defendants to build all improvements in accordance with industry standards; manufacturer's recommendations; train and supervise its employees and contractors; comply with building codes; remedy defects upon notice; obtain proper licensing; obtain the proper permits; obtain inspections from local building officials; and procuring a bond.
21. The Defendants are informed and believe the Plaintiff has breached the duties referenced above.
22. As a direct and proximate result of the negligence, wantonness, recklessness, carelessness, and unlawfulness on the part of the Plaintiff, the Defendants have been actually damaged.
23. The Defendants are informed and believe the Plaintiff's negligence was willful, intentional, with malice towards the Defendants, and with a reckless disregard for the

rights of the Defendants. The Defendants therefore request an award of punitive damages in an amount to be determined by the jury.

FOR A SIXTH DEFENSE
(By Way of Third Counterclaim)
(Unfair Trade Practices)
(§39-5-10, et seq.)

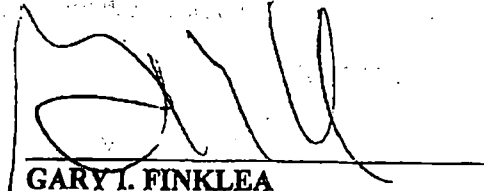
24. Each and every relevant allegation contained hereinabove is reiterated as fully as if set forth herein verbatim.
25. The Plaintiff's conduct amounted to unfair methods of competition and unfair deceptive acts or practices in the conduct of trade or commerce. The Defendants are informed and believe that the Plaintiff unfairly, deceptively, and negligently engaged in improper collection practices as it relates to the Defendants' dues.
26. Moreover, the unfair deceptive acts and practices on behalf of the Plaintiff has an impact upon the public interest and have the potential for repetition. The Defendants are informed and believe the Plaintiff will continue to unfairly, deceptively, and negligently engage in improper collection practices.
27. By virtue of the Plaintiff's unfair and deceptive acts and practices, the Defendants have been actually damaged.
28. The Plaintiff's use or employment of unfair or deceptive methods, acts, and practices was willful, wanton, and knowing; therefore, the Defendants are informed and believe they are entitled to an award of three (3) times the actual damages sustained, costs, reasonable attorney's fees, and for such other relief as this Court deems just and proper.

WHEREFORE, having fully responded to the Complaint of the Plaintiff, the Defendants respectfully pray that the Court dismiss the action of the Plaintiff, and award the Defendants

actual, punitive, treble, and other damages consistent with its prayers for relief and for such other and further relief as the Court deems just and proper.

Florence, South Carolina

June 9, 2016



GARY I. FINKLEA

Attorney for Defendants

Finklea Law Firm

814 West Evans Street

Post Office Box 1317

Florence, SC 29503-1317

Phone: (843) 317-4900

Fax: (843) 317-4910

gfinklea@finklealaw.com

Construction & Roofing
 402 Mt. Carmel rd. Timmonsville SC 29161
 (803)319-6500

Name: <u>Lee + Ellen Lyerly</u>		Phone: <u>843-240-8542</u>	Date: <u>7-24-14</u>
Street: _____		Job: <u>5010 - N. D. B. Renge</u>	
City, State, Zip: _____		Location: <u>Town Rd.</u>	
Architect: _____	Date of plans: _____	Contract: <u>Edward</u>	

House & Pool House

1. Protect ground as well as possible.
2. Clean up all job related debris and dispose of.
3. A 40yr. Paint warranty will be furnished by manufacturer.
4. Workmanship 100% guaranteed under normal weather conditions, (example) hurricanes & hail storms.

5. Furnish & Install a 28 GA 40yr. paint
 Channel Loc plus metal roof system w/ all new flashing
 - Trims.
 6. 3-pipe flanges
 7. Remove & replace Aluminum fascia on complete
 sure

We Propose hereby to furnish material and labor complete in accordance with above specifications for the sum
 of Twenty Three Thousand Dollars 23000.00
 Payment to be made as follows: balance upon completion of job

deposit \$6000.00

Authorized Signature: Barry Campbell

Note: This proposal may be withdrawn by us if not accepted within _____ days

Acceptance of proposal
 Date of Acceptance: 7/24/14

Hand
 7-14

Signature: Ellen Lyerly
Extra metal - Pool House - \$960.00

Extra metal - House \$900.00

Ext Vinyl \$1200.00

Wood work \$100.00

Transcript of Record
 002



Nikki R. Haley
Governor

Richele Taylor
Director

South Carolina
Department of Labor, Licensing and Regulation

Residential Builders Commission



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4696
FAX: (803) 896-4814

www.llronline.com/POL/ResidentialBuilders

HARVEY CAMPBELL JR
402 MOUNT CARMEL ROAD
TIMMONSVILLE SC 29161

This is to certify that the records of the Residential Builders Commission indicate the following information regarding:

Name: HARVEY CAMPBELL JR

Registration Type: Specialty

Registration Number: 2395

Date Issued: 07/17/1998

License/Registration Status: ACTIVE

Expiration Date: 06/30/2017

Licensure/Registration Based on: Reference letters

Authorized Trades: Carpentry, Roofing, Vinyl/Aluminum Siding

Disciplinary Action: Citation/Cease and Desist issued 6/30/2015 (see attached)

☒ A check mark indicates that licensure/registration has not been continuous.
Registration lapsed 6/30/2009 - 02/25/2015

If other information is needed, please contact this office at the number above.

*Please be advised that this form must be submitted in a sealed envelope, otherwise this form will not be accepted.

Janet Baumberger

Title Administrator

Date June 15, 2016

Unresolved disciplinary actions currently pending before the boards will not be included in the information presented. Reported discipline of licensees indicates the final disposition of contested cases, but may not reflect the current status of a license. Licensees are fully authorized to practice their professions unless their licenses have been restricted, suspended, revoked, deactivated or voluntarily surrendered. Licensees on probation may have been placed under certain professional restrictions which may limit the scope of their practice. Also, board actions reported here may not reflect any subsequent judicial actions to stay or modify the board's decision.

Transcript of Record

0023



S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
RESIDENTIAL BUILDERS COMMISSION

P.O. Box 11329
Columbia, SC 29211-1329

CITATION AND NOTIFICATION OF PENALTY
NOTICE TO CEASE VIOLATION OF LAW

HARVEY CAMPBELL JR.
METAL ROOFING SPECIALTIES

License Number: RBS.2395

Issuance Date: 6/30/2015
Complaint #: 2015-246

TIMMONSVILLE, SC 29161

This citation describes alleged violation of §40-59-5, et seq., South Carolina Code of Laws, 1976, as amended. The penalties listed are based on these violations. You must immediately cease and desist from further violation until such time, if ever, as proper authorization is issued by the S.C. Residential Builders Commission. Pursuant to §40-59-105(D), you must pay the proposed penalties within thirty (30) days of receipt of the citation if no appeal is filed. Failure to pay the citation within thirty (30) days from the date of its issuance shall result in administrative suspension of your license until such time that the citation is paid in full. Any citation and/or penalty assessed by a representative of the South Carolina Department of Labor, Licensing and Regulation may be appealed by requesting, in writing, an administrative review. Such requests must be addressed to: Residential Builders Commission Administrator, South Carolina Department of Labor, Licensing and Regulation, P.O. Box 11329, Columbia, SC 29211-1329, and must be mailed within 10 calendar days from receipt of this Citation and Notification of Penalty. This citation concerns application of the South Carolina Residential Builders Act and Regulations and does not necessarily resolve all aspects of any disciplinary action currently pending before the Board or which may be filed in the future. Failure to make a timely request for review will result in the citation becoming a final order of the Residential Builders Commission.

ITEM	SECTION(S) VIOLATED	DESCRIPTION	PENALTY
1	§40-59-220	Unlicensed practice. Practice of Residential building at:	
	§40-59-220	on:	
	§40-59-220	Unlicensed practice of Specialty contracting at: [REDACTED] Coward, SC	500.00
	§40-59-220	on: 07/24/2014.	
	§40-59-240(A)	Practice of Specialty contracting outside the scope of the registration (S.C. Regulation 106-3)	
	§40-59-240(A)	at:	
	§40-59-240(A)	on:	
	§40-59-240(C)	by engaging in:	
	§40-59-240(C)	Specialty Registrant failure to obtain a building permit for construction at:	
	§40-59-110	Builder failure to obtain a building permit for construction at:	
	§40-59-240(D)	Undertaking a Specialty contract which exceeds \$5000 without bond for construction	
	§40-59-240(D)	at:	
	§40-1-110(c)	Aiding or abetting violation of licensing requirements by:	
	§40-1-110(c)	at:	
	§40-1-110(c)	on:	

☒ I certify that I explained the requirements of law and that the respondent must immediately cease and desist from further violation until such time, if ever, as proper authorization is issued by the S.C. Residential Builders Commission. I also provided the necessary application forms to be completed and forwarded to the Commission by the respondent.

TOTAL PENALTY: \$500.00

Please make check or money order payable to S.C. Department of Labor, Licensing and Regulation, and indicate citation number on remittance.

Maurice Smith, Investigator III

Copy received:

Signature of Respondent

Date

Certified True Copy

Sarah N. Buchanan
FOIA & Governmental Affairs Coordinator
Communications & Governmental Affairs
SC Dept. of Labor, Licensing & Regulation

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date served this Citation and Notification of Penalty in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, certified, return receipt requested, and postage paid, or in the Interagency Mail Services, addressed to the party(ies) or their attorney(s) to the following address: 402 MOUNT CARMEL ROAD, TIMMONSVILLE, SC 29161.

This 30 day of JUNE, 2015.

By: Maurice Smith, Investigator III

Transcript of Record
0024

Appendix
02



S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
RESIDENTIAL BUILDERS COMMISSION

P.O. Box 11329
Columbia, SC 29211-1329

CITATION AND NOTIFICATION OF PENALTY
NOTICE TO CEASE VIOLATION OF LAW

HARVEY CAMPBELL JR
METAL ROOFING SPECIALTIES
402 MOUNT CARMEL ROAD
TIMMONSVILLE, SC 29161

License Number: RBS.2395

Issuance Date: 6/30/2015
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	§40-59-240(C)	Practice of Specialty contracting outside the scope of the registration (S.C. Regulation 106-3) at: on: by engaging in:	
	§40-59-110	Specialty Registrant failure to obtain a building permit for construction at:	
	§40-59-240(D)	Builder failure to obtain a building permit for construction at:	
	§40-1-110(c)	Undertaking a Specialty contract which exceeds \$5000 without bond for construction at: Aiding or abetting violation of licensing requirements by: at: on:	

☒ I certify that I explained the requirements of law and that the respondent must immediately cease and desist from further violation until such time, if ever, as proper authorization is issued by the S.C. Residential Builders Commission. I also provided the necessary application forms to be completed and forwarded to the Commission by the respondent.

Maurice Smith, Investigator III

TOTAL PENALTY: \$500.00

Please make check or money order payable to S.C. Department of Labor, Licensing and Regulation, and indicate citation number on remittance.

Copy received:

Signature of Respondent

Date

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date served this Citation and Notification of Penalty in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, certified, return receipt requested, and postage paid, or in the Interagency Mail Services, addressed to the party(ies) or their attorney(s) to the following address: 402 MOUNT CARMEL ROAD, TIMMONSVILLE, SC 29161.

This 30 day of JUNE, 2015.

By: Maurice Smith, Investigator III
Transcript of Record
0025

Append
C

South Carolina General Assembly
118th Session, 2009-2010

A40, R97, H3187

STATUS INFORMATION

General Bill

Sponsors: Reps. Chalk and Willis

Document Path: I:\council\bill\agm\19320ab09.docx

Introduced in the House on January 13, 2009

Introduced in the Senate on March 3, 2009

Last Amended on April 29, 2009

Passed by the General Assembly on May 20, 2009

Governor's Action: June 2, 2009, Signed

Summary: Landscape service

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/16/2008	House	Prefiled
12/16/2008	House	Referred to Committee on Labor, Commerce and Industry
1/13/2009	House	Introduced and read first time <u>HJ-83</u>
1/13/2009	House	Referred to Committee on Labor, Commerce and Industry <u>HJ-83</u>
2/18/2009	House	Committee report: Favorable Labor, Commerce and Industry <u>HJ-6</u>
2/24/2009	House	Member(s) request name added as sponsor: Willis
2/24/2009	House	Read second time <u>HJ-31</u>
2/24/2009	House	Roll call Yeas-103 Nays-2 <u>HJ-31</u>
2/26/2009	House	Read third time and sent to Senate <u>HJ-12</u>
3/3/2009	Senate	Introduced and read first time <u>SJ-12</u>
3/3/2009	Senate	Referred to Committee on Banking and Insurance <u>SJ-12</u>
4/28/2009	Senate	Committee report: Favorable with amendment Banking and Insurance <u>SJ-21</u>
4/29/2009		Scrivener's error corrected
4/29/2009	Senate	Committee Amendment Adopted <u>SJ-24</u>
4/29/2009	Senate	Amended <u>SJ-24</u>
4/29/2009	Senate	Read second time <u>SJ-24</u>
4/30/2009		Scrivener's error corrected
5/14/2009	Senate	Read third time and returned to House with amendments <u>SJ-23</u>
5/20/2009	House	Concurred in Senate amendment and enrolled <u>HJ-44</u>
5/20/2009	House	Roll call Yeas-111 Nays-0 <u>HJ-44</u>
5/27/2009		Ratified R 97
6/2/2009		Signed By Governor
6/11/2009		Effective date 06/02/09
6/12/2009		Act No. 40

VERSIONS OF THIS BILL

12/16/2008

2/18/2009

4/28/2009

4/29/2009

4/29/2009-A

4/30/2009

(A40, R97, H3187)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 29-5-26 SO AS TO PROVIDE A PERSON WHO PROVIDES CERTAIN LANDSCAPE SERVICES MAY HAVE A MECHANICS' LIEN ON THE REAL ESTATE WHERE THE LANDSCAPE SERVICES WERE PROVIDED, AND TO DEFINE LANDSCAPE SERVICES; BY ADDING SECTION 29-5-15 SO AS TO PROVIDE THE MANNER BY WHICH A CONTRACTOR MUST FILE A MECHANICS' LIEN AND A PENALTY FOR FILING A FRIVOLOUS MECHANICS' LIEN; TO AMEND SECTION 29-5-120, RELATING TO THE DISSOLUTION OF LIENS NOT TIMELY BROUGHT, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH A MECHANICS' LIEN MAY BE RELEASED BY A COURT; AND TO AMEND SECTION 40-59-30, AS AMENDED, RELATING TO LICENSE REQUIREMENTS, ENFORCEMENT OF CONTRACTS, AND RESTRAINING ORDERS, SO AS TO PROVIDE A PENALTY FOR FAILING TO REGISTER WITH THE COMMISSION BEFORE ENGAGING OR OFFERING TO ENGAGE IN THE BUSINESS OF RESIDENTIAL BUILDING, AMONG OTHER THINGS.

Be it enacted by the General Assembly of the State of South Carolina:

Mechanics' lien for landscape services; landscape services defined

SECTION 1. Chapter 5, Title 29 of the 1976 Code is amended by adding:

"Section 29-5-26. (A) A person who provides a landscape service on a parcel of real estate, which service exceeds five thousand dollars, by virtue of a written agreement with the owner of the real estate and to whom a debt is due for his performance of the landscaping service has a mechanics' lien on the real estate to secure payment of debt due to him as provided by Section 29-5-10 and Section 29-5-20. The lien attaches to the land and a building, structure, or other improvement on the land.

(B) As used in this chapter, a landscape service includes:

(1) land clearing, grading, filling, plant removal, natural obstruction removal, or other preparation of land;

(2) provision or installation, or both of them, of a landscaping item including plant material, mulch, paving, walkway, swimming pool, fountain, retaining wall, bulkhead, deck, patio, lightscaping system, irrigation system, drainage structure, drainage system, underground utility, or other feature incidental and necessary to a landscape plan or site design; or

(3) both.

(C) A landscaping service does not depend on whether the service is related to the construction, erection, alteration, or repair of a building or other structure."

Mechanics' lien filing requirements; penalty for frivolous lien

SECTION 2. Chapter 5, Title 29 of the 1976 Code is amended by adding:

"Section 29-5-15. (A) To file a mechanics' lien, a contractor must provide the county 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.

(B) A contractor who files a frivolous lien is subject to a fine up to five thousand dollars, the loss of his registration or contractor license, or both."

Release of mechanics' lien under certain conditions

SECTION 3. Section 29-5-120 of the 1976 Code is amended to read:

"Section 29-5-120. (A) Unless a suit for enforcing the lien is commenced and notice of pendency of the action is filed within six months after the person desiring to avail himself of it ceases to labor on or furnish labor or material for the building or structure, the lien must be dissolved.

(B) A mechanics' lien and associated bonds may be released by a court order, a written affidavit of the bond holder's attorney, or by a written affidavit from the defendant's attorney stating:

(1) six months has passed since the lien was attached and no suit or notice of pendency has been filed; or

(2) the failure of the filing party to take some other timely action required by this chapter. This affidavit must be in the form approved

by the appropriate local office where the mechanics' lien was filed and must reference the lien's recording information."

License requirement; enforcement of contracts; restraining orders

SECTION 4. Section 40-59-30 of the 1976 Code is amended to read:

"Section 40-59-30. (A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or registering with the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) 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.

(C) Pursuant to Article 5, Chapter 23, Title 1, the commission may petition an administrative law judge to issue a temporary restraining order enjoining a violation of this chapter, pending a full hearing to determine whether the injunction must be made permanent."

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

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Certification from the South Carolina Residential Builders Commission.....	23
Citation of the South Carolina Residential Builders Commission	24
Act 40, S.C. Legislature 2009.....	26

16008 GFDS

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-21-1230

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

Lee Lyerly and Ellen Marie Stone Lyerly

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Gary I. Finklea

Attorney for:
☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE)

BOX:

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: This Order grants Defendants' Motion to Dismiss the Plaintiff's Complaint. Counterclaims remain active.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Harvey R. Campbell, Jr., d/b/a Metal Construction and Roofing	Lee Lyerly and Ellen Marie Stone Lyerly	\$ N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

2157
Judge Code

10/6/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 12 day of Oct., 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Oct., 2016 to attorneys of record or to parties (when appearing pro se) as follows:

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

Gary I. Finklea, Esquire ✓
Finklea Law Firm
Post Office Box 1317
Florence, SC 29503

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shaw
CLERK OF COURT

Court Reporter:

FILED
OCT 12 11:11:46
CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel-Shaw
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

) IN THE COURT OF COMMON PLEAS

1) TWELFTH JUDICIAL CIRCUIT

)

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11

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Appendix
03:

APPLICABLE LAW

South Carolina Code Ann. §40-59-30(b) provides as follows:

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.

DISCUSSION

Previous South Carolina case law held that a Residential Homebuilder could not sue to recover under a building contract if he did not have a license at the time contract was made. Duckworth v. Cameron, 244 S.E.2d 217, 270 S.C. 647 (1978). The Duckworth case was decided in 1978 and S.C. Code §40-59-130 at that time provided:

"(n)o residential home builder who does not have the license required herein may bring any action either at law or in equity to enforce the provisions of any contract for residential home building which he entered into in violation of this chapter."

In addition to Duckworth, Roberta, Inc. v. Trust, 274 S.C. 53 260 S.E.2d 818 (1979) was decided by the South Carolina Supreme Court one year later and concluded that an unlicensed residential homebuilder could not bring an action to recover amounts paid to third-parties for labor and materials furnished in the performance of the contract.

South Carolina Code §40-59-130 was revised in 2002 and again in 2009 to its current form. The Plaintiff argues that the amendment to the statute allows a contractor to pursue recovering for monies due under a building contract if the license is obtained after the work is performed.

CONCLUSION

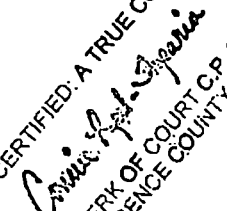
The Plaintiff did not have a license at the time the contract was entered nor any time during the course of performance and only obtained a license after he sought to collect under the contract. Since the Plaintiff is an unlicensed builder, he cannot "bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting." Based on the foregoing, the Defendants' Motion is Granted and the Plaintiff's Complaint is Dismissed.

AND IT IS SO ORDERED.


HONORABLE WILLIAMS H. SEALS
CIRCUIT COURT JUDGE

October 12, 2016
Marion, South Carolina

FILED
2016 OCT 12 AM 11:46
CLERK OF COURT
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

CASE NO

20 16 CP 21 1230

Harvey R. Campbell Jr,
D/B/A Metal Construction and
Roofing

Plaintiff,

vs.

Lee Lyerly and Ellen Marie Stone
Lyerly

Defendants.

SUMMONS

FILED
2016 MAY 17 PM 1:12
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

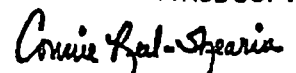
TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said complaint on the subscribers at their offices at 601 W. Evans St., Post Office Box 6139, Florence, South Carolina 29502-6139, within thirty (30) days after the service hereof, exclusive of the days of such service; and if you fail to answer the Complaint within the time aforesaid, Judgment by default will be rendered against you for the relief demanded in the Complaint


Louis D. Nettles

Folkens Law Firm P.A.
P.O. Box 6139
601 W Evans St.

CERTIFIED: A TRUE COPY



CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Florence SC 20502

843-665-0100

louis@folkenslaw.com

May 17, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

CASE NO

2016 CC-21 1230

Harvey R. Campbell Jr,
D/B/A Metal Construction and
Roofing

Plaintiff,

vs.

Lee Lyerly and Ellen Marie Stone
Lyerly

Defendants.

COMPLAINT

FILED
2016 MAY 17 PM 1:12
DANIEL REEL, CLERK
CCCP & GS
FLORENCE COUNTY, SC

The Plaintiff complaining of the Defendants would allege as follows:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a resident of Florence County and this actions arises out of a contract for work performed in Florence County.
2. Defendants are residents of Florence County.
3. The Plaintiff is licensed as a Residential Builder with Specialty License no. 2395. This license was first issued in 1998, but had expired at the time the work for the Defendant was begun. The license is now current.
4. On or about July 24, 2014 Defendants and Plaintiff entered in to a contract for roofing work on their property located at 5010 Old Georgetown Rd. Coward SC.

CERTIFIED: A TRUE COPY

Cornie Reel-Spearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

5. That Plaintiff performed the work and additional requested work totaling Twenty-six Thousand One Hundred Sixty (\$26,160.00) Dollars and paid Six Thousand (\$6000.00) Dollars and there is due and owing to the Plaintiff the sum of Twenty Thousand One Hundred Sixty (\$20,160.00) Dollars.

6. Plaintiff has made due demand for payment and the Defendants had refused to pay the Plaintiff.

7. Plaintiff has been damaged in the sum of Twenty Thousand One Hundred Sixty (\$20,160.00) Dollars

FOR A SECOND CAUSE OF ACTION

8. The allegations of the First Cause of Action are incorporated herein.

9. That at the specific request of the Defendants the Plaintiff preformed work for the Defendants at 5010 Old Georgetown Rd. Coward SC.

10. That the Defendant's property has increased in value as a result of Plaintiff's work in the amount of Twenty Thousand One Hundred Sixty (\$20,160.00) Dollars.

11. That in equity and good conscience the Defendant should be required to pay the Plaintiff for the value of his work.

WHEREFORE, the Plaintiff prays judgment against the Defendant's in
the amount of Twenty Thousand One Hundred Sixty (\$20,160.00) Dollars
plus costs, expenses and interest.



Louis D. Nettles
Folkens Law Firm P.A.
P.O. Box 6139
601 W Evans St.
Florence SC 29502
843-665-0100
louis@folkenslaw.com

May 17, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

BURCH ROOFING CO. INC.)
D/B/A METAL MAN CONSTRUCTION AND)
ROOFING)

PETITIONER,)

-VS-)

LEE LYERLY AND ELLEN MARIE)
STONE LYERLY,)

RESPONDENT.)

NOTICE OF MECHANIC'S LIEN

TO: THE RESPONDENTS ABOVE NAMED AND ALL OTHERS CONCERNED:

YOU WILL PLEASE TAKE NOTICE that the Petitioner above named, by virtue of the attached Affidavit, does hereby claim a Mechanic's Lien on real estate hereinafter described, said lien being in the amount of Twenty Thousand Five Hundred Ten and 00/100ths (\$20,510.00) Dollars, plus interest, attorneys fees and costs, for the labor and materials furnished and used in the improvements situated on the below described real estate, such having been authorized by the owner or by virtue of and in agreement with or by consent of the owner of such improvements or by some person or agent having authority from or rightfully acting for owner in the procuring or furnishing of such labor and materials which were placed on the subject real property. The said materials and labor were used on improving the subject property; that the aforesaid Respondents, Henry L. Lyerly Jr. and Ellen Marie Stone Lyerly, have not paid the Petitioner in full for the labor and materials used for improvement and the sum of Twenty Thousand Five Hundred Ten and 00/100ths (\$20,510.00) Dollars is now due and owing to the Petitioner for said materials and labor. That no part of the balance due has been paid by discount or otherwise and the Petitioner has incurred attorney fees and costs for the institution of this action.

of this action and is entitled to a reasonable attorney's fee incurred in this action and costs.

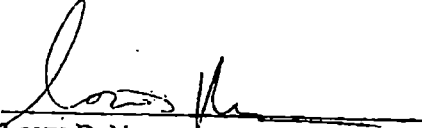
That the said materials were last furnished at the subject property within the last ninety (90) days; that the Petitioner is informed and believes that the furnishing of said materials and labor to the subject property was authorized and consented to by Henry L. Lyerly Jr. and Ellen Marie Stone Lyerly, the owners of the property. The property on which the materials were placed and used is located in the County of Florence and described as follows:

Parcel #1: All that parcel of land situate near the City of Coward, County of Florence, State of South Carolina, known and designated as containing 1.041 acres as shown on a map made for Bradley Edward McClam by Lower Florence County Engineering Company, dated September 24, 2008 and recorded in the Office of the Clerk of Court for Florence County in Plat Book 95 at Page 1. Said lot being bounded as follows, to wit: on the North by Lands of Jack Filyaw for distance of 214.76 feet; on the East by parcel of land containing 0.07 acres, known as Parcel A, for a distance of 213.06 feet; on the South by lands of Jack Filyaw for a distance of 211.12 feet; and on the West by S.C. Highway 72, known as Old Georgetown Road for a distance of 212.95 feet, reference being had to the above mentioned map for a more complete and accurate description.

Parcel #2: All that certain piece, parcel or lot of land lying, being and situate in the County of Florence, State of South Carolina, known and designated as Parcel "A", containing 0.07 acres as shown on a map made by Lower Florence County Engineering Company, date September 24, 2008 and recorded in the Office of the Clerk of Court for Florence county in Plat Book 95 at Page 1. Said Parcel "A" being bounded as follows, to wit: on the North by lands of Jack Filyaw, for a distance of 13.89; on the East by lands of Jack Filyaw for a distance of 213.06; on the South by Lands of Jack Filyaw for a distance of 13.89; and on the West by parcel containing 1.041 acres, for a distance of 213.06. Reference being had to the above mentioned map for a more complete and accurate description.

This being the same property conveyed to Ellen Marie Stone Lyerly by deed Robert E. Lee, Special Referee, dated February 4, 2014 and recorded February 4, 2014 in Book 508 at Page 643, in the Florence County Records, State of South Carolina.

TMS #: 00220-03-103


LOUIS D. NETTLES
601 W Evans St
Post Office Box 6139
Florence, South Carolina 29502-6139
(843) 665-0100
ATTORNEY FOR PETITIONER

February 18, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

BURCH ROOFING CO. INC.)
D/B/A METAL MAN CONSTRUCTION AND)
ROOFING)
PETITIONER,)

-VS-

HENRY L. LYERLY JR. AND ELLEN MARIE)
STONE LYERLY,)

RESPONDENTS.)
)
)

AFFIDAVIT

FILED
FEB 20 PM 4:10
CLERK OF COURT
FLORENCE COUNTY, S.C.

PERSONALLY appeared before me, Harvey R. Campbell, Jr. who being first duly sworn, deposes and states that certain materials and labor were furnished for the improvement of property described in the attached Notice of Mechanic's Lien, such labor and materials having been furnished at the special instance and request of the owner of said property or by consent of the owner or some person or agent having authority from or rightfully acting for such owner or authorized by the owner and that said labor and materials were last furnished within ninety (90) days from the date of this Affidavit.

Deponent further states that there is past due and owing from the owners of said property to him, the sum of Twenty Thousand Five Hundred Ten and 00/100ths (\$20,510.00) Dollars, representing the sum which said labor and materials are reasonably worth with interest as evidenced by the attached certified Statement of Account, together with a reasonable attorney's fee, plus interest and costs of collection.

Harvey R. Campbell, Jr.
Harvey R. Campbell, Jr.

SWORN before me this 20th day
of February, 2015

Charles W. [Signature]
Notary Public for South Carolina

My Commission Expires: 5/23/2016 Transcript of Record

0013

51821

CERTIFIED: A TRUE COPY
Connie [Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

BURCH ROOFING CO. INC.
D/B/A METAL MAN CONSTRUCTION AND
ROOFING

PETITIONER,

-VS-

HENRY L. LYERLY JR. AND ELLEN MARIE
STONE LYERLY,

RESPONDENTS.

STATEMENT OF ACCOUNT

Amount

\$20,510.00

PERSONALLY appeared before me, Harvey R. Campbell, Jr. who first being duly sworn and deposed, states that the foregoing is a true and correct statement of the account of Metal Man LLC as it relates to the property which is the subject of this Mechanic's Lien action, and that no part of same has been paid by discount or otherwise.

Burch Roofing Co. Inc. (License 10872)

By:

Harvey R. Campbell Jr.
HARVEY R. CAMPBELL JR.

SWORN to before me this
20th day of February, 2015

Carole M. Lytle (SEAL)
Notary Public for South Carolina
My Commission Expires: 5/20/2016

Transcript of Record
0014

1822

CERTIFIED: A TRUE COPY
Carole M. Lytle
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Appendix

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

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

☐ Plaintiff,

vs.

Lee Lyerly and Ellen Marie Stone Lyerly,

☒ Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-21-1230

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: Bar #: Louis D. Nettles, Esquire Folkens Law Firm P.O. Drawer 6139 Florence, SC 29502-6139 Phone: (843) 665-0100 Fax: (843) 665-0500 Email: louis@folkenslaw.com	Defendant's Attorney: Bar #: 66174 Gary I. Finklea, Esquire Finklea Law Firm Post Office Box 1317 Florence, SC 29503 Phone: (843) 317-4900 Fax: (843) 317-4910 Email: gfinklea@finklealaw.com
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Dismiss Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☐ Written Motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☒ Defendants June 9, 2016 Date Submitted	
SECTION III: Motion Fee	
☒ PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other Reason:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ DATE: _____
CLERK'S VERIFICATION	
Collected By: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	C/A #: 2016-CP-21-1230
	)	
Harvey R. Campbell, Jr., d/b/a Metal	)	
Construction and Roofing,	)	
	)	
Plaintiff,	)	ANSWER, MOTION TO DISMISS
	)	AND COUNTERCLAIM
Vs.	)	
	)	
Lee Lyerly and Ellen Marie Stone Lyerly,	)	
	)	
Defendants.	)	

The Defendants, Lee Lyerly and Ellen Marie Stone Lyerly, responding to the Complaint of the Plaintiff would respectfully allege as follows:

FOR A FIRST DEFENSE
(By Way of Affirmative Defenses)

1. The Defendants affirmatively set forth the defenses of accord and satisfaction, payment, offer of payment, tender, contributory negligence, comparative negligence, laches, misrepresentation, contract, agreement, bad faith, fraud, mutual mistake, rescission, default, breach of contract, offset, setoff, injury by fellow servant, unconscionability, unclean hands, release, waiver, estoppel, warranty and any other matter constituting an avoidance or affirmative defense that may develop through the discovery process.

FOR A SECOND DEFENSE
(By Way of Answer)

2. Each and every allegation of the Plaintiff's Complaint not specifically admitted, modified, or explained is denied and strict proof is demanded thereof.
3. The Defendants admit the allegations contained in Paragraphs 1, 2, 4, 6 and 9.

4. In regard to the allegations contained in Paragraph 3, the Plaintiff represented he was in fact a licensed residential builder at the time the contract was entered. However, the Defendants eventually learned when they sought administrative enforcement against the Plaintiff that he did not in fact have a license. Further, South Carolina Labor, Licensing and Regulation investigated the matter and determined that the Plaintiff had engaged in an unlicensed practice of residential building; unlicensed practice of specialty contracting; practice of specialty contracting outside of the scope of his registration; that he failed to obtain a building permit for this construction; and failed to obtain a bond for the construction since the amount would have exceeded the amount of the Plaintiff's license if he had in fact carried one.
5. In regard to the allegations contained in Paragraph 5, the Defendants admit the contract price and amount paid but deny that the Plaintiff is entitled to the balance due based upon the faulty, negligent, and poor workmanship.
6. The Defendant denies the allegations contained in Paragraphs 7, 10, 11 and the allegations of the Wherefore Clause.
7. Upon information and belief, no response is required as to the allegations contained in Paragraph 8.

FOR A THIRD DEFENSE
(By Way of Motion to Dismiss)
(S.C. Code §40-59-130)

8. Each and every relevant allegation contained hereinabove is reiterated as fully as if set forth herein verbatim.

9. At the time in which the parties entered into this contract and at all times during the performance of the contract, the Plaintiff had failed to procure a building license as required to do so.
10. Consequently, under S.C. Code §40-59-130, the Plaintiff may not bring an action at law or in equity to enforce the provisions of a building contract entered in violation of this chapter.

FOR A FOURTH DEFENSE
(By Way of First Counterclaim)
(Breach of Contract)

11. Each and every relevant allegation contained hereinabove is reiterated as fully as if set forth herein verbatim.
12. Heretofore, the Defendants contracted with the Plaintiff to install a new metal roof system. The contract price was Twenty Three Thousand and No/100 (\$23,000.00) Dollars and the Defendants placed a deposit of Six Thousand and No/100 (\$6,000.00) Dollars toward the construction.
13. The construction was complete but it was defective, negligent, not in accordance with industry standard, in violation of building practices, in violation of building codes, in violation of the Residential Standards Guides, and simply poor and shotty workmanship.
14. As a result, the Defendants withheld the balance of the funds due under the contract and demanded the Plaintiff to cure the defects.
15. The Plaintiff has failed to cure in accordance with South Carolina Law and the Defendants' home is subject to further damage as a result of rain and other conditions.

16. The Defendants are ready, willing and able to pay the balance of the monies owed but the improvements are not built to industry standards or the Residential Building Code.
17. The Defendants have provided notice and opportunity to cure in accordance in South Carolina Law but the Plaintiff has failed to remedy the defects.
18. As a direct and proximate result of breach of contract by the Plaintiff, the Defendants have been significantly harmed and actually damaged.

FOR A FIFTH DEFENSE
(By Way of Second Counterclaim)
(Negligence)

19. Each and every relevant allegation contained hereinabove is reiterated as fully as if set forth herein verbatim.
20. The Plaintiff owed duties to the Defendants to build all improvements in accordance with industry standards; manufacturer's recommendations; train and supervise its employees and contractors; comply with building codes; remedy defects upon notice; obtain proper licensing; obtain the proper permits; obtain inspections from local building officials; and procuring a bond.
21. The Defendants are informed and believe the Plaintiff has breached the duties referenced above.
22. As a direct and proximate result of the negligence, wantonness, recklessness, carelessness, and unlawfulness on the part of the Plaintiff, the Defendants have been actually damaged.
23. The Defendants are informed and believe the Plaintiff's negligence was willful, intentional, with malice towards the Defendants, and with a reckless disregard for the

rights of the Defendants. The Defendants therefore request an award of punitive damages in an amount to be determined by the jury.

FOR A SIXTH DEFENSE
(By Way of Third Counterclaim)
(Unfair Trade Practices)
(\$39-5-10, et seq.)

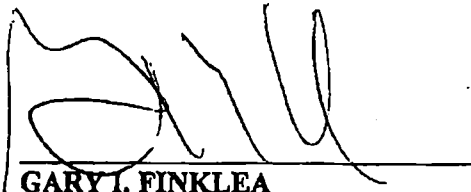
24. Each and every relevant allegation contained hereinabove is reiterated as fully as if set forth herein verbatim.
25. The Plaintiff's conduct amounted to unfair methods of competition and unfair deceptive acts or practices in the conduct of trade or commerce. The Defendants are informed and believe that the Plaintiff unfairly, deceptively, and negligently engaged in improper collection practices as it relates to the Defendants' dues.
26. Moreover, the unfair deceptive acts and practices on behalf of the Plaintiff has an impact upon the public interest and have the potential for repetition. The Defendants are informed and believe the Plaintiff will continue to unfairly, deceptively, and negligently engage in improper collection practices.
27. By virtue of the Plaintiff's unfair and deceptive acts and practices, the Defendants have been actually damaged.
28. The Plaintiff's use or employment of unfair or deceptive methods, acts, and practices was willful, wanton, and knowing; therefore, the Defendants are informed and believe they are entitled to an award of three (3) times the actual damages sustained, costs, reasonable attorney's fees, and for such other relief as this Court deems just and proper.

WHEREFORE, having fully responded to the Complaint of the Plaintiff, the Defendants respectfully pray that the Court dismiss the action of the Plaintiff, and award the Defendants

actual, punitive, treble, and other damages consistent with its prayers for relief and for such other and further relief as the Court deems just and proper.

Florence, South Carolina

June 9, 2016



GARY T. FINKLEA

Attorney for Defendants

Finklea Law Firm

814 West Evans Street

Post Office Box 1317

Florence, SC 29503-1317

Phone: (843) 317-4900

Fax: (843) 317-4910

gfinklea@finklealaw.com

Construction & Roofing

402 Mt. Carmel rd. Timmonsville SC 29161

(843)319-8500

Name: <u>Lee + Ellen Lyerly</u>		Phone: <u>843-240-3523</u>	Date: <u>7-24-14</u>
Street:		Job #:	
City/State/Zip:		Location:	
Architect:	Date of plan:	House & Pool House	

1. Protect ground as well as possible.
2. Clean up all job related debris and dispose of.
3. A 40yr. paint warranty will be furnished by manufacturer.
4. Workmanship 100% guaranteed under normal weather conditions, (example) hurricanes & hail storms.

5. Furnish & Install a 28-6A 40yr. paint
 Panel Loc plus metal roof system w/ all new flashing
 - Trims.
 6. 3-pipe flanges
 7. Remove & replace Aluminum fascia on complete
 pure

We Propose hereby to furnish material and labor complete in accordance with above specifications for the sum
 of Twenty three thousand Dollars 23000.00

Payment to be made as follows: balance
 upon completion of job

deposit \$6000.00

Authorized Signature: Ellen Lyerly

Note: This proposal may be withdrawn by us if not accepted within _____ days

Acceptance of proposal

Date of Acceptance: 7/24/14

Hand
 7-14

Extruded - Pool House -

\$960.00

Extruded - House \$900.00

Ext Vinyl \$1200.00

Wood work \$100.00

Transcript of Record

002

Append



Nikki R. Haley
Governor

Richele Taylor
Director

South Carolina
Department of Labor, Licensing and Regulation

Residential Builders Commission



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4696
FAX: (803) 896-4814

www.llronline.com/POL/ResidentialBuilders

HARVEY CAMPBELL JR
402 MOUNT CARMEL ROAD
TIMMONSVILLE SC 29161

This is to certify that the records of the Residential Builders Commission indicate the following information regarding:

Name: HARVEY CAMPBELL JR
Registration Type: Specialty
Registration Number: 2395
Date Issued: 07/17/1998
License/Registration Status: ACTIVE
Expiration Date: 06/30/2017
Licensure/Registration Based on: Reference letters
Authorized Trades: Carpentry, Roofing, Vinyl/Aluminum Siding

Disciplinary Action: Citation/Cease and Desist issued 6/30/2015 (see attached)

☒ A check mark indicates that licensure/registration has not been continuous.
Registration lapsed 6/30/2009 – 02/25/2015

If other information is needed, please contact this office at the number above.

*Please be advised that this form must be submitted in a sealed envelope, otherwise this form will not be accepted.

Janet Baumberger
Title Administrator
Date June 15, 2016

Unresolved disciplinary actions currently pending before the boards will not be included in the information presented. Reported discipline of licensees indicates the final disposition of contested cases, but may not reflect the current status of a license. Licensees are fully authorized to practice their professions unless their licenses have been restricted, suspended, revoked, deactivated or voluntarily surrendered. Licensees on probation may have been placed under certain professional restrictions which may limit the scope of their practice. Also, board actions reported here may not reflect any subsequent judicial actions to stay or modify the board's decision.

Transcript of Record
0023



S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
RESIDENTIAL BUILDERS COMMISSION

P.O. Box 11329
Columbia, SC 29211-1329

CITATION AND NOTIFICATION OF PENALTY
NOTICE TO CEASE VIOLATION OF LAW

HARVEY CAMPBELL JR
METAL ROOFING SPECIALTIES

License Number: RBS.2395

Issuance Date: 6/30/2015
Complaint #: 2015-246

TIMMONSVILLE, SC 29161

This citation describes alleged violation of §40-59-5, et seq., South Carolina Code of Laws, 1976, as amended. The penalties listed are based on these violations. You must immediately cease and desist from further violation until such time, if ever, as proper authorization is issued by the S.C. Residential Builders Commission. Pursuant to §40-59-105(D), you must pay the proposed penalties within thirty (30) days of receipt of the citation if no appeal is filed. Failure to pay the citation within thirty (30) days from the date of its issuance shall result in administrative suspension of your license until such time that the citation is paid in full. Any citation and/or penalty assessed by a representative of the South Carolina Department of Labor, Licensing and Regulation may be appealed by requesting, in writing, an administrative review. Such requests must be addressed to: Residential Builders Commission Administrator, South Carolina Department of Labor, Licensing and Regulation, P.O. Box 11329, Columbia, SC 29211-1329, and must be mailed within 10 calendar days from receipt of this Citation and Notification of Penalty. This citation concerns application of the South Carolina Residential Builders Act and Regulations and does not necessarily resolve all aspects of any disciplinary action currently pending before the Board or which may be filed in the future. Failure to make a timely request for review will result in the citation becoming a final order of the Residential Builders Commission.

ITEM	SECTION(S) VIOLATED	DESCRIPTION	PENALTY
1	§40-59-220	Unlicensed practice. Practice of Residential building at:	
		on:	
	§40-59-220	Unlicensed practice of Specialty contracting at: [REDACTED] Coward, SC	500.00
		on: 07/24/2014.	
	§40-59-240(A)	Practice of Specialty contracting outside the scope of the registration (S.C. Regulation 106-3)	
		at:	
		on:	
		by engaging in:	
	§40-59-240(C)	Specialty Registrant failure to obtain a building permit for construction at:	
	§40-59-110	Builder failure to obtain a building permit for construction at:	
	§40-59-240(D)	Undertaking a Specialty contract which exceeds \$5000 without bond for construction	
		at:	
	§40-1-110(c)	Aiding or abetting violation of licensing requirements by:	
		at:	
		on:	

☒ I certify that I explained the requirements of law and that the respondent must immediately cease and desist from further violation until such time, if ever, as proper authorization is issued by the S.C. Residential Builders Commission. I also provided the necessary application forms to be completed and forwarded to the Commission by the respondent.

Maurice Smith, Investigator III

TOTAL PENALTY: \$500.00

Please make check or money order payable to S.C. Department of Labor, Licensing and Regulation, and indicate citation number on remittance.

Copy received:

Signature of Respondent

Date

Certified True Copy

Dorothy A. Buchanan
FOIA & Governmental Affairs Coordinator
Communications & Governmental Affairs
SC Dept. of Labor, Licensing & Regulation

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date served this Citation and Notification of Penalty in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, certified, return receipt requested, and postage paid, or in the Interagency Mail Services, addressed to the party(ies) or their attorney(s) to the following address: 402 MOUNT CARMEL ROAD, TIMMONSVILLE, SC 29161.

This 30 day of JUNE, 2015.

By: Maurice Smith, Investigator III

Transcript of Record
0024

Appe



S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
RESIDENTIAL BUILDERS COMMISSION
P.O. Box 11329
Columbia, SC 29211-1329

CITATION AND NOTIFICATION OF PENALTY
NOTICE TO CEASE VIOLATION OF LAW

HARVEY CAMPBELL JR
METAL ROOFING SPECIALTIES
402 MOUNT CARMEL ROAD
TIMMONSVILLE, SC 29161

License Number: RBS.2395

Issuance Date: 6/30/2015
Complaint #: 2015-246

This citation describes alleged violation of §40-59-5, et seq., South Carolina Code of Laws, 1976, as amended. The penalties listed are based on these violations. You must immediately cease and desist from further violation until such time, if ever, as proper authorization is issued by the S.C. Residential Builders Commission. Pursuant to §40-59-105(D), you must pay the proposed penalties within thirty (30) days of receipt of the citation if no appeal is filed. Failure to pay the citation within thirty (30) days from the date of its issuance shall result in administrative suspension of your license until such time that the citation is paid in full. Any citation and/or penalty assessed by a representative of the South Carolina Department of Labor, Licensing and Regulation may be appealed by requesting, in writing, an administrative review. Such requests must be addressed to: Residential Builders Commission Administrator, South Carolina Department of Labor, Licensing and Regulation, P.O. Box 11329, Columbia, SC 29211-1329, and must be mailed within 10 calendar days from receipt of this Citation and Notification of Penalty. This citation concerns application of the South Carolina Residential Builders Act and Regulations and does not necessarily resolve all aspects of any disciplinary action currently pending before the Board or which may be filed in the future. Failure to make a timely request for review will result in the citation becoming a final order of the Residential Builders Commission.

ITEM	SECTION(S) VIOLATED	DESCRIPTION	PENALTY
1	§40-59-220	Unlicensed practice. Practice of Residential building at:	
	§40-59-220	on: Unlicensed practice of Specialty contracting at: Coward, SC	500.00
	§40-59-240(A)	on: 07/24/2014.	
	§40-59-240(A)	Practice of Specialty contracting outside the scope of the registration (S.C. Regulation 106-3)	
		at:	
		on:	
		by engaging in:	
	§40-59-240(C)	Specialty Registrant failure to obtain a building permit for construction at:	
	§40-59-110	Builder failure to obtain a building permit for construction at:	
	§40-59-240(D)	Undertaking a Specialty contract which exceeds \$5000 without bond for construction	
		at:	
	§40-1-110(c)	Aiding or abetting violation of licensing requirements by:	
		at:	
		on:	

☒ I certify that I explained the requirements of law and that the respondent must immediately cease and desist from Further violation until such time, if ever, as proper authorization is issued by the S.C. Residential Builders Commission. I also provided the necessary application forms to be completed and forwarded to the Commission by the respondent.

TOTAL PENALTY: \$500.00

Please make check or money order payable to S.C. Department of Labor, Licensing and Regulation, and indicate citation number on remittance.

Maurice Smith, Investigator III

Copy received:

Signature of Respondent

Date

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date served this Citation and Notification of Penalty in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, certified, return receipt requested, and postage paid, or in the Interagency Mail Services, addressed to the party(ies) or their attorney(s) to the following address: 402 MOUNT CARMEL ROAD, TIMMONSVILLE, SC 29161.

This 30 day of JUNE, 2015.

By: Maurice Smith, Investigator III

Transcript of Record
0025

South Carolina General Assembly
118th Session, 2009-2010

A40, R97, H3187

STATUS INFORMATION

General Bill

Sponsors: Reps. Chalk and Willis

Document Path: l:\council\bill\agm\19320ab09.docx

Introduced in the House on January 13, 2009

Introduced in the Senate on March 3, 2009

Last Amended on April 29, 2009

Passed by the General Assembly on May 20, 2009

Governor's Action: June 2, 2009, Signed

Summary: Landscape service

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/16/2008	House	Prefiled
12/16/2008	House	Referred to Committee on Labor, Commerce and Industry
1/13/2009	House	Introduced and read first time <u>HJ-83</u>
1/13/2009	House	Referred to Committee on Labor, Commerce and Industry <u>HJ-83</u>
2/18/2009	House	Committee report: Favorable Labor, Commerce and Industry <u>HJ-6</u>
2/24/2009	House	Member(s) request name added as sponsor: Willis
2/24/2009	House	Read second time <u>HJ-31</u>
2/24/2009	House	Roll call Yeas-103 Nays-2 <u>HJ-31</u>
2/26/2009	House	Read third time and sent to Senate <u>HJ-12</u>
3/3/2009	Senate	Introduced and read first time <u>SJ-12</u>
3/3/2009	Senate	Referred to Committee on Banking and Insurance <u>SJ-12</u>
4/28/2009	Senate	Committee report: Favorable with amendment Banking and Insurance <u>SJ-21</u>
4/29/2009		Scrivener's error corrected
4/29/2009	Senate	Committee Amendment Adopted <u>SJ-24</u>
4/29/2009	Senate	Amended <u>SJ-24</u>
4/29/2009	Senate	Read second time <u>SJ-24</u>
4/30/2009		Scrivener's error corrected
5/14/2009	Senate	Read third time and returned to House with amendments <u>SJ-23</u>
5/20/2009	House	Concurred in Senate amendment and enrolled <u>HJ-44</u>
5/20/2009	House	Roll call Yeas-111 Nays-0 <u>HJ-44</u>
5/27/2009		Ratified R 97
6/2/2009		Signed By Governor
6/11/2009		Effective date 06/02/09
6/12/2009		Act No. 40

VERSIONS OF THIS BILL

12/16/2008

2/18/2009

4/28/2009

4/29/2009

4/29/2009-A

4/30/2009

(A40, R97, H3187)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 29-5-26 SO AS TO PROVIDE A PERSON WHO PROVIDES CERTAIN LANDSCAPE SERVICES MAY HAVE A MECHANICS' LIEN ON THE REAL ESTATE WHERE THE LANDSCAPE SERVICES WERE PROVIDED, AND TO DEFINE LANDSCAPE SERVICES; BY ADDING SECTION 29-5-15 SO AS TO PROVIDE THE MANNER BY WHICH A CONTRACTOR MUST FILE A MECHANICS' LIEN AND A PENALTY FOR FILING A FRIVOLOUS MECHANICS' LIEN; TO AMEND SECTION 29-5-120, RELATING TO THE DISSOLUTION OF LIENS NOT TIMELY BROUGHT, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH A MECHANICS' LIEN MAY BE RELEASED BY A COURT; AND TO AMEND SECTION 40-59-30, AS AMENDED, RELATING TO LICENSE REQUIREMENTS, ENFORCEMENT OF CONTRACTS, AND RESTRAINING ORDERS, SO AS TO PROVIDE A PENALTY FOR FAILING TO REGISTER WITH THE COMMISSION BEFORE ENGAGING OR OFFERING TO ENGAGE IN THE BUSINESS OF RESIDENTIAL BUILDING, AMONG OTHER THINGS.

Be it enacted by the General Assembly of the State of South Carolina:

Mechanics' lien for landscape services; landscape services defined

SECTION 1. Chapter 5, Title 29 of the 1976 Code is amended by adding:

"Section 29-5-26. (A) A person who provides a landscape service on a parcel of real estate, which service exceeds five thousand dollars, by virtue of a written agreement with the owner of the real estate and to whom a debt is due for his performance of the landscaping service has a mechanics' lien on the real estate to secure payment of debt due to him as provided by Section 29-5-10 and Section 29-5-20. The lien attaches to the land and a building, structure, or other improvement on the land.

(B) As used in this chapter, a landscape service includes:

(1) land clearing, grading, filling, plant removal, natural obstruction removal, or other preparation of land;

(2) provision or installation, or both of them, of a landscaping item including plant material, mulch, paving, walkway, swimming pool, fountain, retaining wall, bulkhead, deck, patio, lightscaping system, irrigation system, drainage structure, drainage system, underground utility, or other feature incidental and necessary to a landscape plan or site design; or

(3) both.

(C) A landscaping service does not depend on whether the service is related to the construction, erection, alteration, or repair of a building or other structure."

Mechanics' lien filing requirements; penalty for frivolous lien

SECTION 2. Chapter 5, Title 29 of the 1976 Code is amended by adding:

"Section 29-5-15. (A) To file a mechanics' lien, a contractor must provide the county 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.

(B) A contractor who files a frivolous lien is subject to a fine up to five thousand dollars, the loss of his registration or contractor license, or both."

Release of mechanics' lien under certain conditions

SECTION 3. Section 29-5-120 of the 1976 Code is amended to read:

"Section 29-5-120. (A) Unless a suit for enforcing the lien is commenced and notice of pendency of the action is filed within six months after the person desiring to avail himself of it ceases to labor on or furnish labor or material for the building or structure, the lien must be dissolved.

(B) A mechanics' lien and associated bonds may be released by a court order, a written affidavit of the bond holder's attorney, or by a written affidavit from the defendant's attorney stating:

(1) six months has passed since the lien was attached and no suit or notice of pendency has been filed; or

(2) the failure of the filing party to take some other timely action required by this chapter. This affidavit must be in the form approved

by the appropriate local office where the mechanics' lien was filed and must reference the lien's recording information."

License requirement; enforcement of contracts; restraining orders

SECTION 4. Section 40-59-30 of the 1976 Code is amended to read:

"Section 40-59-30. (A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or registering with the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) 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.

(C) Pursuant to Article 5, Chapter 23, Title 1, the commission may petition an administrative law judge to issue a temporary restraining order enjoining a violation of this chapter, pending a full hearing to determine whether the injunction must be made permanent."

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Circuit Judge

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MAR 06 2017
SC Court of Appeals

Case No. 2016-CP-21-1230

Harvey R. Campbell, Jr., ...Appellant

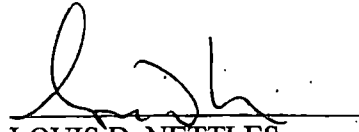
Vs.

Lee Lyerly and Ellen Marie Stone Lyerly Respondents

CERTIFICATE OF SERVICE

I certify that I have served the Appellant's Final Brief, on
Respondent's Attorney by depositing copies of the same in the United States
Mail, postage prepaid, on March 3, 2017 addressed to the following
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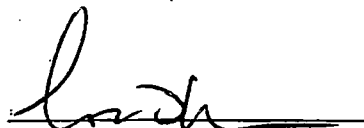
Harvey R. Campbell, Jr., ...Appellant

Vs.

Lee Lyerly and Ellen Marie Stone Lyerly Respondents

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Brief compiles with Rule 211(b), SCACR.



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March 2, 2017

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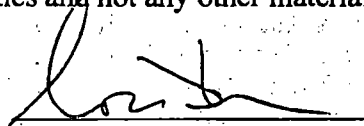
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Vs.

Lee Lyerly and Ellen Marie Stone Lyerly Respondents

CERTIFICATE OF COUNSEL

The undersigned certifies that the the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Circuit Judge

Case No. 2016-CP-21-1230

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

Vs.

Lee Lyerly and Ellen Marie Stone Lyerly Respondents

BRIEF OF APPELLANT

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QUESTIONS PRESENTED

DID THE TRIAL COURT ERR IN GRANTING JUDGMENT ON THE PLEADING BECAUSE THE AMENDMENT TO THE STATUTE RELIED ON BY THE COURT TO BAR APPELLANT CLAIM MEANT THAT THE APPELLANT COULD PROCEED ONCE HIS LICENSE HAD BEEN REINSTATED.

STATEMENT OF THE CASE

Appellant, Campbell brought this suit on a contract for residential construction work by complaint filed May 17, 2016. The complaint alleged that Appellant had a contract for residential construction with Respondents, Lysterly, that Appellant performed the contract and Respondents refused to pay. The complaint also alleged that Appellant has been licensed as a residential contractor, but that the license had expired at the time the contract was performed. The complaint alleged that Appellant's residential license had been reinstated.

Respondent's filed a timely answer and motion for judgment on the pleadings arguing that because Appellant did not have a valid residential builder's license at the time the work was performed barred his claim.

The motion for judgment on the pleading came before Judge William H. Seals, Jr. and Judge Seals granted the Respondent's motion dismissing the Complaint by order entered on October 12, 2016. RoA p.3 Respondent filed and served the Notice of Appeal on November 14, 2016.

ARGUMENT

QUESTION ONE: THE TRIAL COURT ERRED IN GRANTING JUDGMENT ON THE PLEADING BECAUSE THE AMENDMENT TO THE STATUTE RELIED ON BY THE COURT TO BAR APPELLANT CLAIM MEANT THAT THE APPELLANT COULD PROCEED ONCE HIS LICENSE HAD BEEN REINSTATED.

This is an appeal for the dismissal of a complaint and is appealable.

The Plaintiff argues that the licensing statute has been amended and does not bar Plaintiffs claim.

Previous South Carolina case laws held that a Residential Homebuilder cannot sue if he did not have a license at the time contract was made. *Duckworth v. Cameron*, 244 S.E.2d 217, 270 S.C. 647 (S.C., 1978). The Duckworth case was decided on South Carolina Code § 40-59-130. At that time that section read:

"(n)o residential home builder who does not have the license required herein may bring any action either at law or in equity to enforce the provisions of any contract for residential home building which he entered into in violation of this chapter."

The current statute §40-59-30 reads:

(B) 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.

Chapter 59 of Title 40 was completely revised in 2002 by Act 237. It was amended again in 2009 (RoA p. 26) to its current form;

Section 40 59 30. (A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or registering with the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) 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 violation of this chapter.

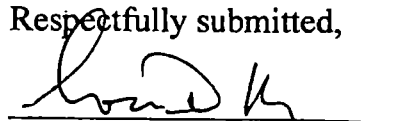
Appellant argues that the current language of the statute allows a contractor who obtains or reinstates his license may thereafter sue on the contract. In *Duckworth supra*, the Supreme Court decided the language of the then current statute prohibited a residential contractor from enforcing a contract made without a current license. This is a very harsh penalty. The statute focused on the status of the license at the time the contract was made. The Legislature subsequently amended the licensing statute to change the prohibition on enforcing the contract to add the language "who first has not

procured a license" may not enforce the contract. This language has no meaning unless it is to allow enforcement of the contract after obtaining the proper license and there would be no purpose for the amendment. It changes to focus of the licensing from the time the contract was made to the time the suit is filed.

CONCLUSION

If the amendments to the licensing statute made in 2002 and 2009 are to have any meaning or purpose they should be construed to allow enforcement of a residential contractor who has a valid license at the time the enforcement action brought.

Respectfully submitted,



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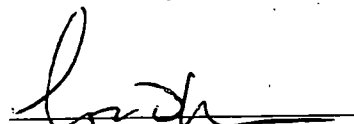
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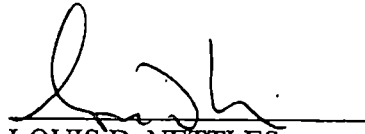
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APPEAL FROM FLORENCE COUNTY
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The Honorable William H. Seals, Jr., Circuit Court Judge

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.

FINAL BRIEF OF RESPONDENTS

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QUESTION PRESENTED

DID THE TRIAL COURT PROPERLY APPLY SOUTH CAROLINA CODE SECTION 40-59-30(B) BY DISMISSING APPELANT'S CLAIM FOR MONIES DUE UNDER A CONSTRUCTION CONTRACT WHERE THE APPELANT WAS NOT LICENSED WHEN THE CONTRACT WAS EXECUTED OR DURING THE TIME IN WHICH THE WORK COMPLETED?

STATEMENT OF THE CASE

Respondents, Lee Lyerly and Ellen Marie Stone Lyerly, are husband and wife and reside at 5010 North Old Georgetown Road, Coward, South Carolina. They sought to install a metal roof on their home and contracted with Harvey R. Campbell, Jr., d/b/a Metal Construction and Roofing to do so for \$23,000.00. The contract was entered July 24, 2014. A \$6,000.00 deposit was paid on the same date. R.p. 22. The work began on or about November 3, 2014, and was complete that same month but the Respondents allege multiple deficiencies with the construction of the roof. Allegedly the deficiencies are so grave that the entire metal roof must be removed and replaced. Based upon the estimates received, the cost to replace and properly repair the alleged damages caused by the Appellant is \$38,500.00. No further monies beyond the deposit were paid by the Respondents. The Appellant first sought to file a Mechanic's Lien under his father's business, Burch Roofing, Co., Inc., on February 20, 2015. R.pp. 11-14. Thereafter a Summons and Complaint was filed on May 17, 2016, naming the proper parties. The Complaint alleges causes of action based in contract and quantum merit. R.pp. 6-10.

The Respondents answered, moved to dismiss under South Carolina Code Section 40-59-30 and filed Counterclaims for breach of contract, negligence and unfair trade practices. R.pp. 15-21.

The Respondents' Motion to Dismiss was heard by the Honorable William H. Seals, Jr., Circuit Court Judge, on September 13, 2016. Judge Seals granted the Respondents' Motion to Dismiss by Order filed on October 12, 2016. R.pp. 1-3. Appellant timely appealed the decision.

ARGUMENT

THE TRIAL JUDGE PROPERLY APPLIED SOUTH CAROLINA CODE SECTION 40-59-30(B) AND DISMISSED APPELLANT'S COMPLAINT FOR BREACH OF CONTRACT AND QUANTUM MERUIT SINCE THE APPELLANT FAILED TO POSSESS A BUILDERS LICENSE BEFORE ENTERING THE ROOF REPLACEMENT CONTRACT AND DURING THE CONSTRUCTION ACTIVITY.

The statutory and case law on this issue is clear and unequivocal. The South Carolina Homebuilders Act was adopted by the General Assembly in 1974 in Act 897 and created the South Carolina Residential Home Builders Commission to regulate residential home builders to ensure safe homes would be built and "to protect the home-buying public from inexperienced and financially irresponsible builders." Henderson v. Evans, 268 S.C. 127, 232 S.E.2d 331 (1977) Gregory, J. dissenting. See Watson v. Harmon, 280 S.C. 214, 312 S.E.2d 8 (Ct. App. 1984).

The Residential Home Builders Act was codified in the Code of Laws at Section 40-59-130 and declares:

Any residential builder or residential specialty who undertakes or attempts to undertake the business of residential building or residential specialty contracting without first having procured a valid license or registered with the commission as required in Section 40-59-50 which has neither expired or been revoked; or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or becoming registered is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars or imprisoned for not less than thirty days.

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. Whenever it appears to the

commission that any residential builder or residential specialty contract has violated, or is about to violate, the provisions of this chapter, the commission may in its own name petition an administrative law judge as provided under Article 5 of Chapter 23 of Title 1 to issue a temporary restraining order enjoining the violations of this chapter, pending a full hearing to determine where or not the injunction must be made permanent.

Five appellate court cases have applied this statute to similar fact situations. The first was Henderson v. Evans, 268 S.C. 127, 232 S.E.2d 331 (1977) Gregory, J. dissenting. In Henderson, the builder sought to recover the balance due under the construction contract. The homeowner denied payment based upon construction defects and the fact the builder failed to procure a license. The Court granted Summary Judgment to the homeowner but the Court of Appeals reversed. This case is distinguished on the grounds that although the contractor had not yet procured a license, the contract was entered and home built during the time in which the contractor was grandfathered from the licensing requirement. Specifically, the contract to build the home was made February 1975 and was completed shortly thereafter. The newly adopted Residential Home Builders Act provided those engaged in home construction prior to July 1, 1974 had one year from that date to become licensed.

In Duckworth v. Cameron, 270 S.C. 647, 244 S.E.2d 217 (1978), the Supreme Court refused to enforce a contract entered into in violation of the Residential Home Builders Act. At the time the contract for the construction of the home was made the contractor was unlicensed. Although the builder obtained a license just prior to the completion of the construction, he was precluded from enforcing the contract since he entered into the contract without first having obtained the license. The Court specifically stated:

South Carolina Code Section 40-59-130 provides, in part, that "(n)o residential home builder who does not have the license required herein may bring any action either at law or in equity to enforce the provisions of any contract for residential home building which he entered into in violation of this chapter."

As a general rule, when a statute is plain and unambiguous, it should be applied literally because the legislative design is unmistakable. Martin v. Ellisor, 266 S.C. 377, 223 S.E.2d 415 (1976).

It is our opinion that Section 40-59-130 is clear and unambiguous. Any builder who violates the chapter by entering into a contract for home construction without obtaining the required license simply cannot enforce the contract.

The appellant relies on language found in Henderson v. Evans, 268 S.C. 127, 232 S.E.2d 331 (1977), the only prior case which has construed this chapter, to support his contention that suit on a contract entered into in violation of the chapter is precluded only until a license is obtained. The language relied upon by appellant is dicta. Unlike the present case, the builder in Henderson was not in violation of the chapter when he entered into the contract he subsequently sought to enforce. The facts in Henderson are clearly distinguishable from the present case.

Having entered into the contract with the respondents without first having obtained a license, the appellant is precluded from prosecuting this action. The judgment of the lower court is affirmed.

The Court again refused to enforce a contract entered into in violation of the Residential Home Builders Act in Roberta, Inc. v. Trust, 274 S.C. 53, 260 S.E.2d 818 (1979). In an attempt to distinguish his case from the Duckworth, the contractor did not seek to recover for his labor, profits and overhead but simply to recover amounts paid to third-parties for labor and materials furnished in performance of the contract. The Court barred the unlicensed contractor from recovery and held:

Section 40-59-70 requires residential home builders to obtain a license in order to do business in this State; and Code Section 40-59-130 provides, in part, that "no residential home builder who does not have the license required herein may bring any action either at law or in equity to enforce the provisions of any contract for residential home building which he entered into in violation of this chapter."

We held in Duckworth v. Cameron, 270 S.C. 647, 244 S.E.2d 217 (1978), in accordance with the foregoing statutes, that any builder who violates the Code provisions by entering into a contract for home construction without obtaining the required license cannot enforce the contract.

Appellant, conceding that the statute which prohibits an unlicensed builder from enforcing the contract bars any action for services rendered by it, either on the theory of contract, quantum meruit, or unjust enrichment, contends that the statute should not be so construed as to bar recovery by an unlicensed builder for amounts paid to third parties for labor and materials used in construction, at least, to the extent that the landowner was benefited. In other words, appellant argues that the statute should be construed to prevent any benefit or profit to the unlicensed builder, but should not bar recovery for labor and materials used in the construction from which the unlicensed builder received no [274 S.C. 55] profit and from which the landowner received a benefit. We find no basis in the statute for this construction.

The recovery sought in this action is for work and material contracted to be furnished by appellant in the construction of respondent's house. The fact that the work and materials, for which recovery is sought, were furnished by appellant through third parties does not render the bar of the statute any less applicable. Regardless of the language used to state the theory of attempted recovery, the undisputed fact remains that appellant brings this action to enforce payment under the contract to build a residence for respondent. Since appellant was an unlicensed builder, it cannot "bring an action" to enforce the provisions of the building contract, including one to recover, as here, for amounts paid by it to third parties in the performance of the contract. This is the scope of the plain language of the statute. We have no authority to change it.

Though the primary issue in Columbia Pools, Inc v. Moon, 284 S.C. 145, 325 S.E.2d 540 (1985) was whether the contractor was a residential home builder, the Supreme Court upheld the decision of the trial court which dismissed the suit of the unlicensed builder seeking to recover payment for its construction of a pool under South Carolina Code Section 40-59-130.

The most recent published case on this subject is Wagner v. Graham, 296 S.C. 1, 370 S.E.2d 95 (Ct. App. 1988). Here the contractor sought to recover monies from the homeowner following completion of the homeowner's residence. The contractor did not

have a license as required by Section 40-59-10, *et seq.* After quoting Section 40-59-130, the Court articulated:

It is submitted that the Homeowner should not be given the benefit of the statute because she knew that the Contractor did not have a license. In pursuit of reversal, counsel for the Contractor argues general propositions of estoppel law with which we have no quarrel. The law of estoppel is simply inapplicable to the facts of this case. Assuming, without so deciding, that it might be found by the preponderance of the evidence that the Homeowner was at the time of the agreement aware of the fact that the Contractor did not have a license, it would be of no comfort to the Contractor. The statute, as enacted by the Legislature, is for the benefit of the public. Watson v. Harmon, 280 S.C. 214, 312 S.E.2d 8 (1984). If one might avoid the impact of the statute by applying the law of estoppel, one could, by a similar reasoning, avoid the act by agreement between the Contractor and Homeowner. Clearly this would not be allowed.

The intent of the Legislature to protect the public by requiring home builders to be licensed is emphasized by that portion of the statute quoted above which makes a violation of the act a criminal offense. Construction of this statute has been before our appellate courts on several occasions. *See, Henderson v. Evans*, 268 S.C. 127, 232 S.E.2d 331 (1977); Watson v. Harmon, *supra*; Roberta, Inc. v. Trust, 274 S.C. 53, 260 S.E.2d 818 (1979); Columbia Pools, Inc. v. Moon, 284 S.C. 145, 325 S.E.2d 540 (1985); and Duckworth v. Cameron, 270 S.C. 647, 244 S.E.2d 217 (1978). The Court has consistently honored the statute even though the result in some of the cases appears to be drastic.

The Legislature subsequently amended Section 40-59-130 in 2002 and codified the statute at Section 40-59-30 which requires:

SECTION 40-59-30. License requirement; enforcement of contracts; restraining orders.

(A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) 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.

(C) If it appears to the commission that a person or firm has violated, or is about to violate, a provision of this chapter, the commission may in its own name petition an administrative law judge, as provided under Article 5 of Chapter 23 of Title 1, to issue a temporary restraining order enjoining the violation of this chapter, pending a full hearing to determine whether or not the injunction must be made permanent.

The Legislature amended the statute in 2009 to its current form:

SECTION 40-59-30. License requirement; enforcement of contracts, restraining orders.

(A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or registering with the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) 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.

(C) Pursuant to Article 5, Chapter 23, Title 1, the commission may petition an administrative law judge to issue a temporary restraining order enjoining a violation of this chapter, pending a full hearing to determine whether the injunction must be made permanent.

Although no published opinions have applied the latest revision to the statute, Stolf Construction, LLC v. Sweetgrass Home Builder, LLC, Unpublished Opinion No. 2013-UP-375 (Ct. App. 2013) concluded since “Stolf did not have a residential builder’s license at the time the contract was executed, ... the trial court properly found Stolf

lacked standing to bring this action” seeking to collect sums alleged due under the contract.

The Appellant argues the verbage of the current statute allows a contractor to enforce the terms of a building contract when his license is obtained after entering into a contract in violation of the law and after completing the work for which recovery is sought simply if he simply obtains a license before filing a lawsuit.

All of the 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 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 applicable provisions stated:

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).

Although tacitly admitted, the Appellant has obviously failed to comply with the licensing requirements of the Act. R.p. 29. Therefore a brief review of the licensing

requirements promulgated would be efficacious. South Carolina Code Section 40-11-30 announces the general licensing requirement for contractors:

No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for general contracting or greater than five thousand dollars for mechanical contracting without a license issued in accordance with this chapter.

Additionally, South Carolina Code Section 59-40-220 provides:

(A) All residential builders must be licensed, and all residential specialty contractors must be registered, by the commission for a period established by the commission in regulation.

A residential specialty contractor is distinguished from a residential home builder only in scope of the work he or she may perform work. A residential builder has a license to perform most all aspects of trades in residential building and can accept work whose cost exceeds \$5,000.00. On the other hand a residential specialty contractor's work is limited to less than \$5,000.00 with limited exceptions. Section 40-59-220(7) is instructive:

"Residential specialty contractor" means an independent contractor who is not a licensed residential builder, who contracts with a licensed residential builder, general contractor, or individual property owner to do construction work, repairs, improvement, or reimprovement which requires special skills and involves the use of specialized construction trades or craft, when the undertakings exceed two hundred dollars and are not regulated by the provisions of Chapter 11. Residential specialty contracting includes the following areas of contracting and other areas as the commission may recognize by regulation:

- (a) plumbers;
- (b) electricians;
- (c) heating and air conditioning installers and repairers;
- (d) vinyl and aluminum siding installers;
- (e) insulation installers;
- (f) roofers;
- (g) floor covering installers;
- (h) masons;

- (i) dry wall installers;
- (j) carpenters;
- (k) stucco installers;
- (l) painters/wall paperers.

When a residential specialty contractor performs work within one of the three areas in which he has been approved, if the work exceeds \$5,000.00, the “residential specialty contractor shall obtain an executed bond with a surety in an amount approved by the commission and shall furnish a signed original to the commission....” S.C. Code Section 40-59-240(D).

It is undisputable that at the time the contract for the work at the Respondents’ home was made, the Appellant was not licensed and he had not been licensed for more than five years. R.p. 23. Although the Appellant did obtain a license until approximately three months after the work was complete, the statute provides no exceptions for the Appellant’s failing to obtain a license. Further, the intent of the statute to protect the public from inexperienced and financially irresponsible builders would be defeated if the Court adopted the Appellant’s arguments. In this particular case, the Residential Builders Commission had no jurisdiction to require the Appellant to return to the Respondents’ home to perform the work to code requirements or in accordance with industry standards since not licensed.

A final point worthy of consideration is how the Court and Legislature handles this issue on the commercial side of contracting. In W&N Construction Company, Inc. v. Williams, 322 S.C. 448, 472 S.E.2d 622 (1996) the contractor entered in a contract to perform commercial work while unlicensed. The Court observed nothing in the Code pertaining to commercial contractors “prohibits an unlicensed general contractor from bringing suit to enforce a contract entered into without a license.” That notwithstanding

the trial court held the contractor "acted illegally in entering into the contract such that it was void and unenforceable". The Court affirmed with the following analysis:

In Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993), we recognized the general rule that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the constitution. See also Grant v. Butt, 198 S.C. 298, 17 S.E.2d 689 (1941); Rountree v. Ingle, 94 S.C. 231, 77 S.E. 931 (1913). Similarly, the Court of Appeals recently held:

It is a well-founded policy of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act. This rule applies at both law and in equity and whether the cause of action is in contract or in tort.... Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 276, 437 S.E.2d 168, 170 (1993).

A number of jurisdictions adopt the view that an unlicensed contractor may not recover on a contract even though the relevant licensing statute contains no express provision relating to the enforceability of the contract. See Dougherty, Failure of Building Contractor to Procure Business or Occupational License As Affecting Enforceability of Contract or Right of Recovery for Work Done, 44 ALR 4th 271, §§ 11, 12 (1986). The rationale is that such licensing statutes protect the public and to permit unlicensed contractors to circumvent licensing requirements by payment of a small fine would defeat the legislative intent. Id. We concur with these authorities. Accordingly, we affirm the ruling of the master.

Also instructive is the Supreme Court's comment in footnote 3 of the W&N Construction opinion that compares the commercial and residential industry: "Residential homebuilders are similarly prohibited from undertaking the business of home building without first obtaining a license. However, S.C. Code Ann. Section 40-59-130 (1986) specifically prohibits unlicensed home builders from bringing any action to enforce the provisions of any contract entered into without a valid license."

Likely in response to W&N Construction, the Legislature adopted South Carolina Code Section 40-11-370 in 1998 to clarify that general contractors who undertake work without a valid license are precluded from enforcing contracts:

SECTION 40-11-370. License required to use term "licensed contractor"; engaging in construction under assumed name; enforcement of contract.

(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.

(B) 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. This requirement does not include advertising on vehicles, which may use an abbreviated version of the license name so long as the advertising is not misleading.

(C) An entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract. An entity that enters into a contract to engage in construction in a name other than the name that appears on its license may not bring an action either at law or in equity to enforce the provisions of the contract.

Therefore in both residential and commercial trades, a contractor must be licensed at the time of entering the contract.

CONCLUSION

For the reasons stated herein and all other grounds appearing in the record, this Court should affirm the judgment of the Circuit Court.

February 27, 2017

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 01 2017

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

SC Court of Appeal

The Honorable William H. Seals, Circuit Court Judge

Case No.: 2016-CP-21-1230

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

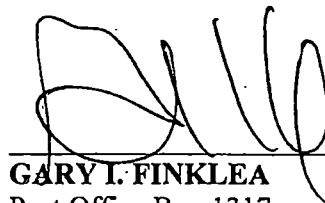
vs.

Lee Lyerly and Ellen Marie Stone Lyerly, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b),
SCACR.

February 27, 2017



GARY I. FINKLEA
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Attorney for Respondents

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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM FLORENCE COUNTY
Court of Common Pleas**

The Honorable William H. Seals, Circuit Court Judge

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.

CERTIFICATE OF SERVICE

I certify that I have served the Final Brief of Respondents and Certificate of Counsel on Appellant's Attorney by depositing copies of the same in the United State Mail, postage prepaid, on February 28, 2017, addressed to the following address:

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



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FINKLEA LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW

Gary I. Finklea
Charlie J. Blake, Jr.
J. Gregory Hendrick
Joshua A. Bailey
Patrick B. Ford

February 28, 2017

RECEIVED

VIA FEDEX TO:

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

MAR 01 2017

SC Court of Appeals

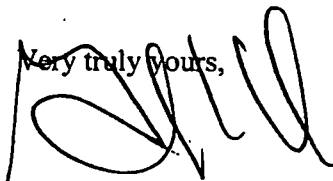
Re: Henry L. Lyerly, Jr. and
Ellen Marie Stone Lyerly
adv. Harvey Campbell, Jr.
d/b/a Metal Construction and
Roofing
Case No.: 2016-CP-21-1230
Our File No.: 16008GFDS

Dear Ms. Kitchings:

Please find enclosed original Final Brief of Respondents, Certificate of Counsel, Certificate of Service showing these were served on Appellant's counsel by mail. Also enclosed are fourteen (14) bounded copies of Final Brief of Respondents.

With kindest regards, I am

Very truly yours,



GARY I. FINKLEA

GIF/jea

Enclosures

cc: Mr. and Mrs. Henry L. Lyerly, Jr.
Louis D. Nettles, Esquire, Folkens Law Firm

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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

v.

Lee Lyerly and Ellen Marie Stone Lyerly, Respondents.

Appellate Case No. 2016-002315

Appeal From Florence County
William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-438
Submitted October 1, 2017 – Filed November 22, 2017

AFFIRMED

Louis David Nettles, of Folkens Law Firm, P.A., of
Florence, for Appellant.

Gary Ivan Finklea, of Finklea Law Firm, of Florence, for
Respondents.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: S.C. Code Ann. § 40-59-30(B) (2011) ("[A] person or firm who first
has not procured a license or registered with the [South Carolina Residential
Builders 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."); *Martin v. Ellisor*, 266 S.C. 377, 381, 223 S.E.2d 415, 417 (1976) ("When . . . the statute is plain and unambiguous, it becomes the duty of the court to apply it literally because the legislative design is unmistakable."); *Duckworth v. Cameron*, 270 S.C. 647, 649, 244 S.E.2d 217, 218 (1978) ("Any builder who violates [section 40-59-30(B)] by entering into a contract for home construction without obtaining the required license simply cannot enforce the contract.").

AFFIRMED.¹

SHORT, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Circuit Judge

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DEC 07 2017

SC Court of Appeals

Case No. 2016-CP-21-1230

Harvey R. Campbell, Jr., ... Appellant

Vs.

Lee Lyerly and Ellen Marie Stone Lyerly Respondents

Appellate Case No. 216-002315

PETITION FOR REHEARING

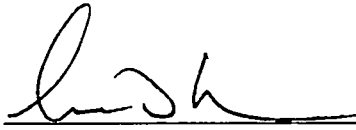
Appellant, Harvey R. Campbell, Jr. moves for a rehearing in this matter based on the following grounds.

1. That the Court erred in relying on *Duckworth v. Cameron*, 244 S.E.2d 217, 270 S.C. 647 (S.C., 1978) because that case was based on a statute that had been significantly amended after that case was decided. The amendment changed the focus of the suit prohibition to require a current license prior to filing, not at the

time of the contract.

2. That the Court misapprehended the significance of the addition of a time qualification to the literal meaning of the plain language of the amended statute.

Martin v. Ellisor, 266 S.C. 377, 223 S.E.2d 415 (S.C., 1976)



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December 7, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

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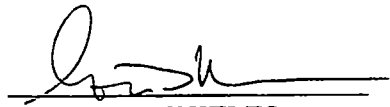
Lee Lyerly and Ellen Marie Stone Lyerly Respondents

Appellate Case No. 216-002315

CERTIFICATE OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing and
Memorandum along with the Certificate of Service on Respondent's Attorney by
depositing copies of the same in the United States Mail, postage prepaid, on
December 7, 2017 addressed to the following addressee:

Gary I. Finklea, Esq.
Finklea Law Firm
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Florence, South Carolina 29503



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Karl A. Folkens
Louis D. Nettles
Philip B. Atkinson
Kave Patel Fralev

December 7, 2017

The Honorable V. Claire Allen
Deputy Clerk, The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Campbell v. Lyerly 2016-CP-21-1230
2016-002315

Dear Ms. Allen;

Enclosed please find Appellant's Motion for Rehearing, Memorandum, Certificate of Service and a check for the filing fee.

With kind regards, I am,

Yours very truly,

A handwritten signature in black ink, appearing to be 'Louis D. Nettles', written over the typed name.

Louis D. Nettles

CC: Gary I. Finklea, Esq

Post Office Box 6139 Florence, South Carolina 29502-6139

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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William H. Seals, Circuit Judge

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Case No. 2016-CP-21-1230

Harvey R. Campbell, Jr.,..... Appellant

Vs.

Lee Lyerly and Ellen Marie Stone Lyerly Respondents

Appellate Case No. 216-002315

MEMORANDUM ON PETITION FOR REHEARING

Appellant, has moved for a rehearing. This Court has by unpublished opinion 2017-UP-438 ruled against Appellant. The Court cited two cases *Duckworth v. Cameron*, 244 S.E.2d 217, 270 S.C. 647 (S.C., 1978) and *Martin v. Ellisor*, 266 S.C. 377, 223 S.E.2d 415 (S.C., 1976).

The Court cited *Martin* for the proposition that a court is required to apply the plain language of a unambiguous statute literally. The Court cited *Duckworth*

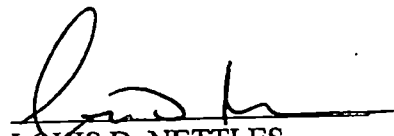
for the proposition that the statute was to be applied at the time of entering into of the contract. Reliance on *Duckworth* was misplaced. In *Duckworth* the statute as it then existed was silent as to when it applied. After *Duckworth* was decided, the Legislature amended the statute by adding the words "who first has not procured a license or registered with the commission" and creating a fine for a lapse in licensing. This introduced a time element into the restriction on filing suit and not on having a license at the time of contracting. Under amended statute the filing of suit is conditional on having a license. This is the logical interpretation of the plain meaning of all the words of the statute. This Courts interpretation makes the added language of the statute meaningless and defies the mandate of *Martin v. Ellisor*, 266 S.C. 377, 223 S.E.2d 415 (S.C., 1976)

Respectfully submitted,

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SC Court of Appeals



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December 7, 2017

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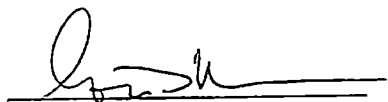
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Appellate Case No. 216-002315

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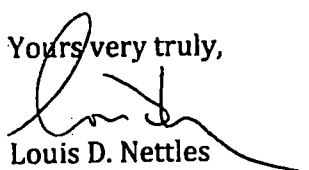
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2016-002315

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Louis D. Nettles

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The South Carolina Court of Appeals

Harvey R. Campbell, Jr., d/b/a Metal Construction and
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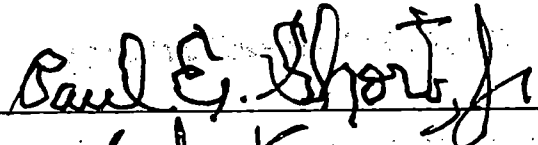
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Lee Lyerly and Ellen Marie Stone Lyerly, Respondents.

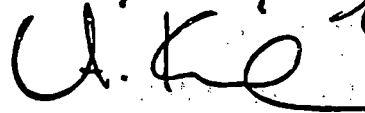
Appellate Case No. 2016-002315

ORDER

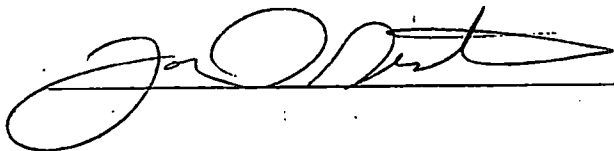
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:
Louis David Nettles, Esquire
Gary Ivan Finklea, Esquire
The Honorable William H. Seals, Jr.

FILED

January 18, 2018