

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

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FEB 20 2018

SC Court of Appeals

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

Vs.

Lee Lyerly and Ellen Marie Stone Lyerly Respondents

Appellate Case No. 216-002315

PETITION FOR CERTIOARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on January 18, 2018

QUESTION PRESENTED

DID THE COURT OF APPEALS ERR IN UPHOLDING THE TRIAL COURT'S JUDGMENT ON THE PLEADING BECAUSE THE STATUTE RELIED ON BY THE COURT TO BAR PETITIONER'S CLAIM WAS AMENDED TO PROVIDE THAT AT THE PETITIONER COULD PROCEED ONCE HIS LICENSE HAD BEEN REINSTATED.

STATEMENT OF THE CASE

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

Respondent's filed a timely answer and motion for judgment on the pleadings arguing that because Petitioner 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. The case was appealed to the Court of Appeals. The Parties filed briefs. The Court of Appeals decided the matter on the briefs in Opinion 17-UP-438 filed November 22, 2017. Petitioner filed a Petition for rehearing on December 7, 2017 which was denied on January 18, 2018.

ARGUMENT

Question 1. The Court of Appeals erred in upholding the trial court's judgment on the pleading because the statute relied on by the court to bar Petitioner's claim was amended to provide that at the Petitioner could proceed once his license had been reinstated

This is an appeal from the dismissal of Petitioner's complaint and is appealable.

The Petitioner argues that the licensing statute has been amended and does not bar Petitioner's claim.

The Court of Appeals relied on a 1978 decision of this Court. The statute construed in the 1978 decision has be the subject of amendments in 2002 and 2009. Those amendments at the heart of this Petition.

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.

Petitioner argues that the current language of the statute allows a contractor who obtains or reinstates his license and pays the statutory penalty, may thereafter sue on the contract. In *Duckworth supra.*, this 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 and to add an administrative penalty. The new language of the statute has no meaning unless it is to allow enforcement of the contract after obtaining the proper license and paying the statutory penalty, 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. This Court should give effect to the new language of the revised statute and grant the Petition.

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. This would align the actual penalty to the contractor with the statutory scheme, make the penalty reasonable and still make the enforcement scheme rational.

Respectfully submitted,



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February 20, 2018

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Vs.

Lee Lyerly and Ellen Marie Stone Lyerly Respondents

CERTIFICATE OF SERVICE

I certify that I have served the Petition for Certiorari on Respondent's Attorney by depositing copies of the same in the United States Mail, postage prepaid, on February 20, 2018 addressed to the following addresses:

Gary I. Finklea, Esq., Finklea Law Firm, P. O. Box 1317, Florence, South Carolina 29503



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SC Court of Appeals

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
1231 Gervais St.
Columbia, SC 29201-3236

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

Dear Mr. Shearouse:

Enclosed herewith please find the original and 6 copies of a Petition for Certiorari in this matter, along with the Certificate of Service showing that I have served the Respondent by mailing a copy of this to Mr. Bagby, and a copy of my transmittal letter to the Clerk of the Court of Appeals. The petition includes the certificate required under Rule 226(d)(1), SCRAP. I also enclose two copies of the Appendix.

I also enclosed our check for \$100.00 for the filing fee.

With kind regards, I am,

Yours very truly,

Louis D. Nettles

CC: Gary I. Finklea, Esq
Hon. Jenny Abbott Kitchings