

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Honorable Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge
Case No. 2015-CP-07-2599

Appellate Case No. 2016-002021

CGBS Residential, LLC,

Respondent,

vs.

Christopher Briggs,

Appellant,

FINAL BRIEF OF RESPONDENT CGBS RESIDENTIAL, LLC

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MAR 20 2017

SC Court of Appeals

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STATEMENT OF THE CASE

On October 29th, 2015, Respondent filed a Summons and Complaint against the Appellant alleging three causes of action: (1) Breach of Contract; (2) Breach of Contract Accompanied by Fraudulent and Deceptive Acts and Conduct; and (3) Conversion for alleged failure to pay monies owed pursuant to a management agreement to assist the Appellant in building a house. The Appellant was personally served with the Summons and Complaint on November 22nd, 2015. The Appellant failed to file an answer or any type of responsive pleading and on January 29th, 2016, the Respondent, through counsel, filed an Affidavit of Default. Pursuant to an Order of Reference filed June 15th, 2016, the Trial Court declared the Appellant to be in default. Thereafter, a damages hearing was scheduled and held on July 27th, 2016, in front of the Honorable Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge for Beaufort County, South Carolina. The Appellant did not appear at the damages hearing but was represented by counsel. Pursuant to Howard v. Holiday Inns, Inc., 271 S.C. 238, 246 S.E.2d 880 (1978), counsel for the Appellant was permitted to cross-examine the Respondent's witnesses and had the opportunity to object to any evidence offered by the Respondent. On August 25th, 2016, judgment was entered for Respondent and against Appellant on Respondent's first cause of action, breach of contract, in the amount of \$80,771.30.¹ The Appellant now appeals that portion of the judgment which awarded the Respondent \$46,438.47 for materials ordered and used in the construction of the Appellant's home from Grayco, a local building supply store.

¹ The Trial Court stated it was not going to award damages based on the second or third cause of action and therefore did not address them. (Transcript p. 85) (R. p. 122, lines 7-11).

FACTS

On March 26th, 2015, the Respondent and the Appellant entered into a written Construction Management Agreement (hereinafter the "Contract") in which the Appellant hired the Respondent to provide general management services in the construction of the Appellant's personal residence located at Lot 34, Vivian's Island, Beaufort, South Carolina. (Plaintiff's Exhibit 8) (R. pp. 168-172). The Appellant acted as his own contractor on the project and filed an Unlicensed Residential Builder's Disclosure Statement in the Beaufort County records. Such a statement allows the owner of real property to act as their own contractor to build or improve a one-family or two-family residence. (Plaintiff's Exhibit 4) (R. pp. 126-127). Appellant pulled his own Residential Building Permit which lists him as both the applicant and the contractor and further indicates the valuation of the construction as \$376,710.00. (Plaintiff's Exhibit 5) (R. pp. 129-131). As the contractor, the Appellant was responsible for and approved everything relating to the building and construction of his personal residence to include, but not limited to: where materials were to be purchased, what subcontractors would be working on the residence, and for the payment of all materials and labor used in the construction of the home. (Transcript p. 48) (R. p. 81, line 19). Appellant specifically chose Grayco to supply the necessary building materials for the project. (Transcript p. 48) (R. p. 81, lines 14-15). While the parties' Contract did not include the Respondent paying for materials or labor, at times, the Respondent did make some material and labor payments when the Appellant could not be located. The Appellant reimbursed the Respondent for most of the payments made on his behalf but not all of them. (Transcript pp. 49, 51, 74, 75) (R. pp. 82-85, 109-111) (Plaintiff's Exhibit 9) (R. pp. 173-174).

During the period from March of 2015 until July of 2015, building materials were ordered on the Respondent's account at Grayco, a local building supply company, for use in the construction of the Appellant's personal residence. The Appellant and Respondent agreed that Respondent's Grayco account could be used and would be used to purchase building materials as long as the Appellant paid off the account each week. (Transcript p. 60, 61, 65) (R. pp. 94-96, 99-100). The method of ordering and paying for materials was adhered to until the end of June 2015, when the Respondent received a call from Grayco that the Appellant hadn't made a payment in several weeks. (Transcript p. 61) (R. pp. 95-96). In July of 2015, Appellant notified the Respondent that he was cancelling the Contract. (Complaint, Exhibit C) (R. p. 27).

The Contract contains an indemnity provision in which the Appellant agreed to indemnify, defend and hold the Respondent harmless from and against all claims, damages, losses and expenses, incurred in the furtherance of the parties' agreement and included a provision for the payment for attorneys' fees in the event of a breach of the parties' agreement. (Plaintiff's Exhibit 8) (R. pp. 168-172). The Appellant did not make any further payments to Grayco and the amount currently owed to Grayco on the Respondent's account is \$46,438.47. (Transcript p. 41) (R. p. 73, line 4). This figure includes all credits that were due to Appellant on the account, roughly \$6,000.00, which resulted from chargebacks for products no longer needed on the jobsite that were returned to the store. (Transcript pp. 42, 43) (R. pp. 74-76).

- I. THE COURT DID NOT ERR IN GRANTING A JUDGMENT AGAINST THE APPELLANT WHICH INCLUDES AN AMOUNT OF \$46,438.47 TO PAY THE OUTSTANDING BALANCE AT GRAYCO FOR BUILDING MATERIALS

ORDERED AND USED IN THE CONSTRUCTION OF THE APPELLANT'S RESIDENCE.

ARGUMENT

“An action for a breach of contract is an action at law.” Consignment Sales Llc v. Tucker Oil Co., 391 S.C. 266, 270, 705 S.E.2d 73, 76 (Ct.App.2011)(citing Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc. 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct.App.2004)). “In an action at law, on appeal of a case tried without a jury, the appellate court’s standard of review extends only to the correction of errors of law.” Id. at 271. “The trial judge’s findings of fact will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge’s findings.” Id.

In a case in which the defendant is in default, “all allegations in the complaint are deemed admitted.” Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 212, 723 S.E.2d 597, 608 (Ct.App.2012). Stated another way, a defaulting party has admitted or conceded liability and the only issue before the judge at a damages hearing is the amount of liability or the amount of damages. Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC, 408 S.C. 87, 90, 757 S.E.2d 557, 558 (Ct.App.2014). This point was specifically argued and ruled upon during the damages hearing when Respondent’s counsel objected to a line of questioning by the Appellant’s counsel that was trending toward liability and not focused on damages. (Transcript pp. 70, 71) (R. pp. 105-107).

The Appellant’s sole issue on appeal asks the question, “did the trial court err in finding that Appellant was “**LIABLE**” to Respondent for payment for the building materials used in the construction of Appellant’s home?” [Emphasis Added] By asking that question, the Appellant is attempting to impermissibly attack facts supporting the Appellant’s “liability” for building materials ordered from Grayco on the Respondent’s

account. The South Carolina case law is clear; a defaulting party is only allowed to attack the amount of liability/damages not whether or not they are liable for the damages. As argued by Appellant's counsel at the hearing, the Appellant believes the only way he can be liable for the Grayco bill is if he "personally" ordered the building materials in question. Moreover, this narrow view on liability disregards a number of key facts: (1) the fact that the Appellant was the contractor on the project; (2) the fact the Appellant had final say on all matters from the hiring of subcontractors to selecting the building supply company; (3) the fact the Appellant had final say on all materials used in the construction process; and (4) the fact that Appellant had a contractual agreement with Respondent and the subcontractors the Appellant hired to act as Appellant's agents in the construction of his home. The testimony at the hearing further illustrated that the Appellant did indeed have direct contact with Grayco at various times and that not all contact with Grayco was through the Appellant's hired agents.

A Grayco employee testified that Appellant interacted with Grayco on several occasions to include ordering "special ordered doors" for the home which the Appellant later refused to accept as they were the "wrong color." (Transcript p. 30) (R. p. 61, lines 1-7). The special order doors are specifically part of the amount Grayco claims is owed on the Respondent's account for building materials ordered, picked up, or delivered to the Appellant's residence for use in the construction of his home. (Transcript p. 30) (R. pp. 61-62). The Grayco employee stated that he had several conversations with Appellant to include the Appellant making multiple complaints about the invoicing on the Respondent's account which is the subject matter of the Appellant's appeal. The employee testified that

the Appellant complained that amount of materials that were actually delivered were less than what he was being billed for on the invoices.² (Transcript pp. 32-33) (R. p. 63-65).

The Appellant's complaints were direct complaints by the Appellant over building materials that are part of the "tickets" that Grayco states are owed for building materials either delivered to or picked up for use at the Appellant's residence. (Transcript pp. 32-33) (R. p. 63-65). The testimony clearly indicates that the Appellant had interaction with Grayco concerning materials that were ordered directly by Appellant or by subcontractors/agents hired by the Appellant to assist in the construction of his residence.

The Trial Court specifically found that "materials used in the construction of the [Appellant's] home were purchased **by various parties** at Grayco, on the [Respondent's] business account pursuant to an oral agreement between the [Respondent] and [Appellant]. (Order, p. 6) (R. p. 8). [Emphasis Added]. The "various parties" were all agents of the Appellant or the Appellant himself, including the Respondent and their employees, who were acting through the management agreement, and the subcontractors that were hired/chosen by the Appellant himself. (Transcript, p. 48) (R. pp. 80-81).

The testimony was clear that the amount due and owing at Grayco on the Respondent's account was for materials ordered and used in the construction of the Appellant's personal residence. (Transcript pp. 34, 61) (R. pp. 65-66, pp. 95-96). The parties' contract specifically called for and the Court found that the Appellant was required to indemnify, defend and hold the Respondent harmless from and against any and all claims, damages, losses, and expenses. (Order, p. 7) (R. p. 9). Based on the contract

² One such specific complaint was that the Appellant believed the amount of oriented strand board (OSB) that was delivered was less than the amount Grayco showed on the invoices in question. (Transcript p. 32) (R. p. 63, lines 14-16). This further illustrates the point that Appellant's opportunity to "argue" his "liability" should have been through an appropriate responsive pleading and not at a damages hearing.

indemnity language, the Trial Court further found that the Appellant purchased or caused to be purchased items for which Grayco had not received payment. Therefore, the Court found that the Respondent was entitled to a judgment against the Appellant on the outstanding Grayco bill in the amount of \$46,438.47. (Order, pp. 7-8) (R. pp. 9-10).

It is uncontroverted that building materials were ordered and delivered to the Appellant's jobsite and that the Appellant and Respondent had an agreement that the Appellant could order building products on the Respondent's account at Grayco. It is also uncontroverted that the building materials in question, representing the outstanding balance owed to Grayco of \$46,483.47, were used in the construction of the Appellant's residence.

CONCLUSION

The Trial Court properly awarded the Respondent damages of \$46,483.47 for the amount due and owing on the Respondent's Grayco building supply account for materials purchased and used in the construction of the Appellant's residence. The Appellant acted as his own contractor. The Appellant hired the Respondent to assist him in the management of the construction of Appellant's residence and the Appellant agreed to indemnify and hold the Respondent harmless from any and all claims, damages and losses he might incur in the performance of his duties under the Contract. The Appellant approved and hired all of the subcontractors that provided services to him in the construction of his home to include the ones that ordered materials on the Respondent's Grayco account. As Mr. Thorpe, a representative of the Respondent, testified, the Appellant "approved everything in the end." (Transcript p. 48) (R. p. 81, line 19).

As the Trial Court found, materials for the construction of the Appellant's home were procured by various individuals, to include the Appellant, on the Respondent's

account. Those “individuals,” were hired by and supervised by the named contractor on the job, the Appellant. Numerous witnesses testified that the amount still due and owing on the Respondent’s Grayco account was for materials delivered and used in the construction of the Appellant’s home, with all due credits being given to the Appellant for materials returned. They further testified that the Appellant had, at times, contact with Grayco to include complaining about certain shipments in which he believed he had been shorted material. Those were the same shipments that were being charged on the Respondent’s account. If the Appellant did not believe he was responsible for the payment on the Respondent’s account, he would have never argued with Grayco the invoice amounts concerning the quantity of materials delivered.

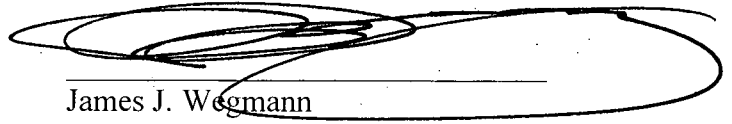
The Appellant’s belief as to his liability for the account is however, not relevant. Liability in the matter is admitted and presumed as a result of the Appellant’s default. The only question to be determined at the damages hearing was the “amount” of liability or the “amount” of damages to be awarded. The Respondent has clearly demonstrated that the amount owed under the Grayco account for the materials ordered, delivered, and used in the construction of the Appellant’s residence is \$46,483.47 and the Trial Court properly issued a judgment that included the Grayco amount of \$46,483.47.

For the foregoing reasons, Respondent requests this court to affirm the Trial Court’s award of damages and asks the court to affirm the decision below for any ground appearing in the record, as provided by Rule 220(c), SCACR.

[Signature to Follow]

Respectfully Submitted,

Weidner, Wegmann & Harper, LLC

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James J. Wegmann
Attorney for the Respondent

Beaufort, South Carolina
March 15, 2017

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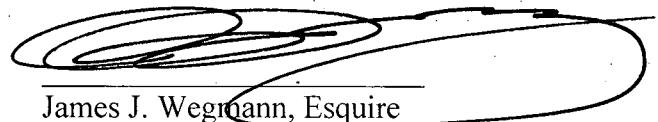
vs.

Christopher Briggs,

Appellant,

CERTIFICATE OF COUNSEL

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



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