

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Scott E. Arbet,	)	C. A. No. 2016-CP-39-00103
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER GRANTING PLAINTIFF'S</b>
	)	<b>AMENDED MOTION FOR PARTIAL</b>
	)	<b>SUMMARY JUDGMENT</b>
Riverstone Development Group, Inc.,	)	
	)	
Defendant.	)	
	)	

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SC Court of Appeals

THIS MATTER came before the Court on December 6, 2018 on the Plaintiff Scott E.

Arbet ("Plaintiff")'s Amended Motion for Partial Summary Judgment, pursuant to *South Carolina Rules of Civil Procedure* Rule 56(c). Present at the hearing was Townes B. Johnson III on behalf of the Plaintiff and R. Mills Ariail, Jr. on behalf of Defendant Riverstone Development Group, Inc ("Defendant"). Based on the pleadings, memorandums and affidavits of record, *South Carolina Code Ann.* § 40-11-5, et seq. and its related authority, I make the final findings of fact and conclusion of law:

**UNDISPUTED FACTS**

In February 2015, Defendant was a licensed general contractor with the South Carolina Contractor's Licensing Board holding a "BD4" license classification under License No.: 114265. See *Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss and in Support of Plaintiff's Motion to Amend* (hereinafter "*Plaintiff's Memorandum*"), Ex. 1 and See e.g. *November 27, 2018 Affidavit of Courtney Macke* (hereinafter "*Macke Affidavit*"), ¶ 8. Pursuant to *South Carolina Code Ann.* § 40-11-260(A)(4) (2015), a BD4 license classification limited Defendant from bidding on or performing jobs which exceed Seven Hundred Fifty Thousand

Dollars (\$750,000.00). *See South Carolina Code Ann. § 40-11-260(A)(4) (2015) and See Defendant Riverstone Developments Group, Inc.'s Opposition to Plaintiff's Motion for Partial Summary Judgment (hereinafter "Defendant's Memorandum"), Pg. 3.*

Plaintiff and Defendant entered into a written contract ("Contract") on or about February 13, 2015, wherein Defendant agreed to be the general contractor for the construction of a residence for Plaintiff, located in Pickens County, South Carolina ("Arbet Project"). *See Macke Affidavit, Ex. A.* The "Contract Sum" under the Contract was "Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) with final contract amount to be adjusted plus or minus 5% based upon client's final selections and design changes to the Arbet Residence home plan to achieve this budget". *Id.*

On April 9, 2015, Plaintiff and Defendant entered into "Change Order Number: 001" wherein the additional cost of \$125,337.00 was added to the Contract Sum for the "final design changes as per Exhibit B dated 4-9-15" and builders risk insurance. *Id.*, ¶ 16 and *Ex. C.* Change Order Number: 001 increased the Contract Sum to \$875,337.00. *Id.* Plaintiff and Defendant subsequently entered into numerous other change orders such that Defendant alleged that the final Contract Sum was \$1,004,197.00. *See Plaintiff's Memorandum, Ex. 5.*

### STANDARD

Summary judgment should be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCF; *see also Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 579, 629 S.E.2d 375, 376 (Ct. App. 2006). When examining a motion for summary judgment, the "evidence and all inferences reasonably drawn therefrom must be viewed in the light most favorable to the non-

moving party.” *Strother v. Lexington Cnty Recreation Comm’n*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998) (citing *Hamiter v. Retirement Div. of SC*, 326 S.C. 93, 484 S.E.2d 586 (1997)). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Moore v. Barony House Rest., LLC*, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009) (citing *Rife v. Hitachi Constr. Mach. Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005)).

### LAW AND ANALYSIS

*South Carolina Code Ann.* § 40-11-370(C) provides that “[a]n 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.” See *South Carolina Code Ann.* § 40-11-370(C). Furthermore, in *C-Sculptures, LLC v. Brown*, The South Carolina Supreme Court clarified that an “under-licensed” general contractor did not have a “valid license” as required by *South Carolina Code Ann.* § 40-11-370(C) as to avoid the door-closing effect and to enable the contractor to be able to enforce the terms of a contract. See e.g. *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 742 S.E.2d 359 (2013) (wherein an under-licensed general contractor was deemed not to have a valid license to perform work on the project and, consequently, was precluded from enforcing the provisions of the related construction contract). Consistently, *South Carolina Code Ann.* § 40-11-300, requires that a contractor immediately withdraw from a project if the total cost of construction - the actual cost incurred by the owner, all contractors, subcontractors, and other parties for labor, material, equipment, profit, and incidental expenses for the entire project – exceeds the contractor’s license limitation. See *South Carolina Code Ann.* § 40-11-300(A) and (B) and See *South Carolina Code Ann.* § 40-11-20(23).

In the matter at hand, Defendant was limited to bidding on and performing jobs which did not exceed \$750,000.00. *South Carolina Code Ann.* § 40-11-260(A)(4) (2015). Defendant, however, bid on the Arbet Project which, on its face, could have exceed Defendant's license limitation in violation of *South Carolina Code Ann.* § 40-11-260(A)(4) (2015) since the contract sum was \$750,000.00 "plus or minus 5% based upon client's final selections and design changes". Furthermore, it cannot be disputed that: 1) the Arbet Project exceeded \$750,000.00; 2) Defendant did not withdraw from the Arbet Project once the total cost of construction exceeded the Defendant's \$750,000.00 license limitation as required by *South Carolina Code Ann.* § 40-11-300(B); and 3) Defendant continued to perform work on the Arbet Project after the contract sum exceeded Defendant's \$750,000.00 license limitation in violation of *South Carolina Code Ann.* § 40-11-260(A)(4) (2015).

The Court, accordingly, finds that Defendant was under-licensed to perform work on the Arbet Project and did not have a valid license as required by *South Carolina Code Ann.* § 40-11-370(C) to bid or perform work on the project.

**CONCLUSION**

Based on the foregoing and pursuant to *South Carolina Code Ann. § 40-11-370(C)*, Defendant is barred in law or in equity from enforcing the provisions of the contract Plaintiff. Plaintiff's Amended Motion for Partial Summary Judgment is, accordingly, **GRANTED**.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

- A. Riverstone Development Group, Inc. is barred in law and equity by *South Carolina Code Ann. § 40-11-370(C)* from enforcing the provisions of its contract with Scott E. Arbet;
- B. Riverstone Development Group, Inc.'s counterclaims for Quantum Meruit and Breach of Contract are dismissed with prejudice; and
- C. That certain mechanics' lien filed by Riverstone Development Group, Inc. in the Office of the Register of Deeds for Pickens County in Mechanics Lien Book 2016 at Page 520. Against that certain real property owned by Scott E. Arbet located at 1074 Cliffs Vista Parkway, Six Mile, SC 29682 is hereby dissolved and cancelled.

IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Pickens Common Pleas

**Case Caption:** Scott E Arbet VS Riverstone Development Group Inc

**Case Number:** 2016CP3900103

**Type:** Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755