

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Scott E. Arbet,

Plaintiff,

vs.

Riverstone Development Group, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2016-CP-39-00103

ORDER DENYING MOTION TO
RECONSIDER

FEB 15 2019

SC Court of Appeals

Defendant Riverstone Development Group, Inc. (Riverstone) filed a Motion to Alter or Amend Judgment regarding the Court's Order of January 7, 2019 granting Plaintiff's Partial Summary Judgment. The Defendant asserts two grounds for its Motion: (1) the contract is ambiguous and the intent of the parties cannot be determined from the four corners of the contract; and (2) the Court improperly applied *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 742 S.E.2d 359 (2013). After reviewing both the Defendant's Motion, Plaintiff's Response, and all matters presented in this case, the Court determined that an additional hearing would not be necessary to issue an opinion on this Motion. Therefore, the Court respectfully denies the Defendant's Motion for the reasons set forth below.

(1) The Defendant asserted that the terms of the contract in question were ambiguous and summary judgment was not appropriate. In finding that a contract is unambiguous as a matter of law, the Court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways. *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976). Also,

In construing and determining the effect of a written contract, the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning

cannot be given it other than that expressed. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed. *McPherson v. J.E. Serrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 209 (1945).

Defendant here attempts to argue the existence of an ambiguity because the contract states "to be adjusted plus or minus 5%" yet, states its intent was that the Contract was solely for \$750,000. While the contract does allow for a variation in price to be paid, the Court finds that the terms are unambiguous and clearly calls for a potential contract price in excess of \$750,000 without even addressing the change orders that increases the contract price in excess of \$1,004,197. This contract price exceeds its license cap under *S.C. Code* 40-11-260(A)(4). Even though the contract potentially could have remained under \$750,000 the subsequent change orders increased the price well beyond \$750,000 to which the Defendant agreed. Therefore, the contract is unambiguous as to the price of the job and exceeds the amount allowed by the Defendant's license.

(2) The Court rejects the Defendant's second argument that the Supreme Court case of *C-Sculptures, LLC v. Brown* should not be applied to this case. In *C-Sculpture*, the Supreme Court stated that "[u]nder the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 362 (2013) (citing *Hodge v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). Based on this holding in *C-Sculpture*, it is clear that an "under-licensed" general contractor does not have a "valid license" as required by *South Carolina Code Ann.* § 40-11-370 (c). See e.g. *id.*, at 53, 742 S.E.2d 359.

Even though the contractor in *C-Sculptures* was "grossly under-licensed" (a general contractor agreeing to build a home for \$800,000 with a limitation of \$100,000 on its license), the Supreme Court did not make a distinction as to the gap between one's license and the contract

price. *See id.* at 57, 742 S.E.2d 361. *C-Sculptures* stands for the proposition that if a contractor's license limitations are less than the contract price, then the provisions of S.C. Code Ann. § 40-11-370 apply and the contract is unenforceable. Since the Defendant here was under-licensed, the provisions of S.C. Code Ann. § 40-11-370 apply and the contract is unenforceable.

Based on the foregoing analysis, the Court denies Defendant's Motion to Alter or Amend the Order of January 7, 2019 granting Partial Summary Judgment.

Signature of Judge Gravely on following page



Pickens Common Pleas

Case Caption: Scott E Arbet VS Riverstone Development Group Inc

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Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755