

Smith | Closser, P.A.

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578

Steven L. Smith
ssmith@scnlaw.com

Office – 843-760-0220
Fax – 843-552-2678
www.smithclosser.com

November 27, 2012

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Tim McGee v. David Thornton and Thornton Brothers Construction
Case No. 2008-CP-18-2565
SJC File No. 08-990

Dear Ms. Kitchings:

Enclosed please find the original and fifteen copies of the Final Brief of Respondent in the above referenced matter. I would appreciate it if you would file this and return a filed copy to me in the envelope provided.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Zachary J. Closser

ZJC/kak

Enclosures

cc: Max G. Mahaffee, Esquire

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Judge

Case No. 2008-CP-18-2565

TIM MCGEE

Appellant

v.

DAVID THORNTON and THORNTON BROTHERS
CONSTRUCTION

Respondents

FINAL BRIEF OF RESPONDENTS

ZACHARY J. CLOSSER
SMITH | CLOSSER, P.A.
7455 Cross County Road, Suite One
P.O. Box 40578
Charleston, SC 29423-0578
(843) 760-0220
(843) 552-2678 facsimile
ATTORNEYS FOR RESPONDENTS

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SC Court of Appeals

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ISSUES PRESENTED

- (1) WHETHER THE COURT OF APPEALS SHOULD REVERSE FACTUAL FINDINGS OF THE TRIAL COURT WHERE THERE IS EVIDENCE IN THE RECORD TO SUPPORT THOSE FINDINGS.
- (2) WHETHER THE COURT SHOULD REVERSE THE LEGAL CONCLUSION OF THE TRIAL COURT THAT STATUTORY LANGUAGE BARRING “ANY SUIT” IN ACTIONS BASED ON CONTRACTS ENTERED INTO BY AN UNLICENSED CONTRACTOR APPLIES IN CASES OF CONTRACTOR-CONTRACTOR DISPUTES.
- (3) WHETHER THERE IS ANY ERROR IN THE TRIAL COURT’S DISMISSAL OF A CAUSE OF ACTION AFTER TRIAL EVEN THOUGH THE SAME COURT PREVIOUSLY DENIED A MOTION FOR SUMMARY JUDGMENT BROUGHT ON THE SAME THEORY.

FACTS

A significant portion of Appellant's Brief is focused upon the ostensible error made by the Trial Court in finding, as a matter of fact, that Appellant Tim McGee acted as the General Contractor on the Shields residence, which is the construction project that forms the basis of this action. As such, Appellant's Statement of the Facts presents a distorted view of the evidence. Respondent agrees that there was a great deal of testimony during which various persons tried to assert that someone other than Appellant was the General Contractor on the project at issue in this case. At the same time, these same witnesses eventually either admitted that, in fact, he was, the GC, or defined "general contractor" in such a manner that regardless of titles the only conclusion even they could draw was that Appellant was the GC.

Respondent need not identify every page or every statement made during the trial from which it could easily be concluded – contrary to Appellant's argument – that Appellant was the general contractor. A few answers given by Brent Shirts, the owner of the property, will suffice as a summary. For example, some of the testimony that clearly identifies the individual with whom the owner of the property believed he had contracted for the construction of his home includes the following:

Q: ...who did you hire to build your home?

A: Tim McGee.

Tr., p. 26, lines 1 – 2; R. p. 158, lines 1 – 2.

* * * *

Q: What did you understand Mr. McGee's role to be...?"

A: ...he was going to handle all the coordination of the different contractors that he hired... he got all the building permits...

Q: And he offered to construct your home?

A: Well, he offered, yeah...

Tr., p. 27, lines 1 – 17, R. p. 159, lines 1 – 17.

* * * *

Q: Do you recognize that document, sir?

A: Yes, it's the purchase contract for the construction. . . .

Q: And do you recognize that to be Mr. McGee's signature...?

A: Yes.

Tr., p. 28, lines 5 – 12, R. p. 160, lines 5 – 12.

* * * *

Q: I want to know what Tim was responsible for in your mind as far as what this contract encompasses...

A: All of these things, all of these things.

Tr., p. 35, lines 1 – 4, R. p. 167, lines 1 – 4.

(Following this question, Mr. Shirts was asked, item by item, to list the elements for which Appellant was responsible, a list that encompassed every part of the building, from foundation to roof, as well as electrical and plumbing work.)

Q: In short, you had a raw piece of land, and you were hiring Tim McGee to come and build you a home, correct?

A: Correct.

Tr., p. 36, lines 3 – 5, R. p. 168, lines 3 – 5.

Similarly, it was the understanding of other witnesses, all of whom also worked on the construction, that this was Tim McGee's project, and that he was the general contractor building

the Shirts' residence. For instance, Charles Michael Robbins, who is a licensed residential contractor, testified that he was the individual who pulled the permit, and initially that was to be the extent of his work. Tr., p. 74, R. p. 206. As it developed, he did do additional work. Despite his efforts to portray himself as the general contractor, he eventually admitted that the individual who actually fulfilled that role was Appellant:

Q. If you would, please, tell the Court what you believe a general contractor is, in a nutshell?

A. Well, the general contractor to me is somebody that has knowledge of building, that hires the subs and fires the subs, has control over who does what work, monitors the work that's being done to make sure it's done correctly, and makes sure that all the bills are paid and that there's nothing owed at the end.

Q. And is it your testimony that you were the general contractor on this job?

A. I went and got the, I went and got the permit so I'm assuming that makes me the general contractor, but I didn't determine who was hired and who was fired and pay any bills.

Q. You didn't act as a general contractor on this job, did you?

A. No.

.....

Q. Who was the general contractor, was it Tim McGee?

A. I don't know, I mean, I guess you could call him the general contractor, it just, he kind of coordinated everything.

.....

Q. He coordinated subs?

A. Yeah.

Q. And he paid the bills . . . Is that a yes?

A. Yes.

Q. He controlled all the money?

A. Yes.

Q. And he actually entered the contract with the homeowners to build the job?

A. Yes.

Tr., pp. 84 – 85, R. pp. 216 – 217.

Although Appellant himself denied having been the General Contractor, his testimony regarding his duties and responsibilities was similar. He was paid to oversee the construction of the residence. He hired a number of subcontractors to do the actual work. Although he claimed that his function was to assist the homeowner with the supervision, oversight, and management of the construction, he admitted that he was paid to perform certain work, and that he did none of it personally. Rather, he “picked up the phone” and contracted with others – precisely the definition of subcontracting. Tr. pp. 128 – 130, R. pp. 260 – 262. Once their work was completed, he paid for it by writing and signing the necessary paperwork and checks. He executed the final paperwork for the release by the bank of the construction draws. *Id.*

Respondent concedes that he does not have a contractor’s license. This is, however, not relevant to the issues raised by this case; although it is the legal foundation for the Trial Court’s ruling, it is an agreed-upon fact. The only relevant issue required to be developed by the facts is whether or not Appellant was the General Contractor.

ARGUMENT

I. THIS COURT SHOULD NOT REVIEW FACTUAL FINDINGS BY THE TRIAL JUDGE UNLESS IT DETERMINES THAT THERE IS NO EVIDENCE TO SUPPORT THOSE FINDINGS.

Because the legal conclusion reached by the Trial Judge rests upon his conclusion that Appellant was the General Contractor on the Shirts' home, Appellant spends considerable time attacking that factual finding. As Appellant notes, the final Order at issue herein relies heavily on the Trial Court's finding that Appellant "was the *de facto* general contractor on the Shirts residence." Based upon the testimony at trial, it is clear that this conclusion is correct. Every witness eventually testified, even if reluctantly, that there was no General Contractor other than Appellant, and that Appellant fulfilled all of the duties normally associated with the job of General Contractor, from execution of the contract with the owner to hiring, firing, and paying the subcontractors, to coordination of the work from commencement of the project through to the finished product.

The conclusion that Appellant was the General Contractor, in fact even if not specifically so identified on any documents, is a factual finding by the Trial Court. It is based upon that Court's having listened to the testimony and weighed the credibility of the witnesses before it. As such, this factual finding is entitled to great deference. Factual findings made by the Trial Judge should not be disturbed unless the appellate tribunal concludes, from the record, that there is no evidence to support them. *Howard v. Mutz*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993); *see also Townes Assocs, Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)("In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably

supports the judge's findings... The judge's findings are equivalent to a jury's findings in a law action.");

The factual finding that Appellant was the General Contractor on the project in question is the fundamental basis of the legal conclusion drawn by the Trial Court, and forms the grounds upon which the decision from which Appellant takes the instant appeal is predicated. The Record of the trial of this matter demonstrates clearly that the Trial Court had ample evidence upon which to base that finding. As noted *supra*, Appellant's witnesses, who uniformly refused to formally or officially refer to Appellant as being the General Contractor, also uniformly admitted that he acted in that capacity. The owner of the property testified that he had contracted with Appellant to build the house. The contractor who pulled the building permit – which Appellant, being unlicensed, could not do himself – testified that Appellant hired, supervised, fired, and paid the subcontractors. Appellant himself testified to the same: that he had been hired by the owner, that he hired and directed subcontractors, and that he coordinated, approved, and made all payments.

This Court should not overturn the factual findings of the finder of fact absent a determination that there is no evidence in the record to support those findings. *Barker v. Barker*, 330 S.C. 361, 499 S.E.2d 503 (Ct. App. 1998). The Trial Court correctly determined that Appellant was the *de facto* General Contractor on this project, and that factual finding should be conclusive.

II. THE TRIAL COURT CORRECTLY RULED THAT THIS IS AN ACTION TO ENFORCE A CONSTRUCTION CONTRACT AND THAT, AS IT WAS BROUGHT BY AN UNLICENSED CONTRACTOR, IT IS BARRED PURSUANT TO S.C. CODE § 40-59-30.

After hearing the evidence, the Trial Court dismissed Appellant's Complaint, on the grounds that it was barred by Section 40-59-30 of the South Carolina Code of Laws. That section reads, in its entirety:

§ 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 portion of the section relevant to the instant appeal is Subdivision (B). The Trial Court held that, as a matter of law, Appellant was barred from instituting this or any other action arising from his contract to build the Shirts' house.

Appellant makes a number of different arguments, all intended to show that this section is, for some reason, inapplicable to this case. None of these arguments has merit. Although Respondent agrees, and the Trial Court noted in its Order, that there has been no reported case applying the complete prohibition contained in Subsection B to a contractor-contractor dispute,

the language of the statute makes it clear that it is not subject to interpretation but rather constitutes an absolute bar on any action, under any theory, when the plaintiff is an unlicensed contractor seeking to enforce, in any manner, a construction contract.

A. The Language of the Statute is Clear and Unambiguous, and the Trial Court Correctly Refused to Alter Its Plain Meaning.

The long-standing rule in this State is that “[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where a statute is unambiguous, the Court has no need to, and should not, attempt to read additional language into it, or try to interpret terms that are clear.

Section 40-59-30 says, clearly, that an unlicensed contractor may not bring any action to enforce the terms of a residential building contract entered into without a license. That language is not susceptible to interpretation. Rather, when looking at the statute, the Court should limit its examination to the actual words employed by the Legislature, as what the statute actually says is the best evidence of the Legislature’s intent in enacting it. *Id.* The Court should presume that the Legislature is familiar with the commonly accepted meanings of common words. It should follow those words unless they to a result so patently absurd that the General Assembly could not have intended it. *Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011).

The language used in this Section of the Code is clear and simple. In ascertaining the meaning of language used in a statute, the Court should presume the General Assembly is "aware of the common law, and where a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense." *State v. Bridgers*, 329 S.C. 11, 14, 495 S.E.2d 196, 198 (1997); *see also Beck v. Prupis*, 529 U.S. 494, 500-01 (2000) (“[W]hen Congress uses language with a settled meaning at common law,

Congress 'presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.'" (*quoting Morissette v. United States*, 342 U.S. 246 (1952))).

The Trial Court properly viewed the statute as prohibiting any unlicensed residential contractor – such as Appellant – from bringing any action to enforce the terms of the contract. Appellant's argument that the statute could not have intended the result reached in this case fails as a simple matter of statutory interpretation. So long as Appellant is an unlicensed contractor, which is undisputed, and so long as he is attempting to enforce the terms of a contract for residential construction, which is the factual conclusion reached by the Trial Court when it found he was the *de facto* General Contractor, the action is completely barred by operation of law.

B. Section 40-59-30 Speaks Only to the Status of the Plaintiff Whose Action Is Barred; It Does Not Differentiate Between Defendants.

Appellant makes two arguments which are essentially variations on the same theory. First, he contends that Respondent should be estopped from using Section 40-59-30 as a shield against Appellant as Respondent is himself unlicensed. In addition, he argues that this Court has stated that Section 40-59-30 is "intended to protect homeowners," *Lenz v. Walsh*, 362 S.C. 603, 607, 608 S.E.2d 471, 743 (Ct. App. 2005), and can consequently not be used by a subcontractor against the General Contractor. Both of these arguments are attempts to transform the plain meaning of the Statute by shifting its focus.

Section 40-59-30(B) of the South Carolina Code of Laws looks exclusively at the status of the contractor attempting to bring an action. It does not mention the potential defendant, and draws no distinction between homeowners, other contractors, or subcontractors, developers, or

any other person or entity who might possibly be the target of a lawsuit. It is blanket prohibition on the maintenance of any type of action, regardless of its nature and regardless of the identity of the defendant, if the plaintiff is an unlicensed contractor, and the action arises from a residential construction contract.

Whether the primary purpose is, as this Court has stated, to protect homeowners, or whether it is meant for some other purpose, the plain language of Section 40-59-30 shows that the Legislature did not intend for it to be limited to one class of defendants. Had the legislature wished to protect homeowners from the imposition of mechanic's liens if the contractor lacks a license, it could easily have said so. The Statute could easily have been written in such a manner as to make it clear that it applies only if the General Contractor brings suit against the owner of the home. It could easily have differentiated between unlicensed contractors bringing suit and unlicensed contractors defending such actions. In fact, at the same time this Court ruled that it operates as a shield to a suit by an unlicensed contractor against the homeowner, in *Lenz, supra*, it also recognized that it cannot be used as a sword, and refused to permit the homeowners to recovery money paid to the unlicensed contractor.

Although Appellant cites to and uses *Lenz* in support of his contention that Section 40-59-30 is intended to protect homeowners only, and is consequently inapplicable to this case, that is a far too broad inference to draw from the short phrase in the case. Obviously, this comment is dictum, and not part of the holding. More importantly, the case itself arose in the context of an action involving the homeowner. In fact, as both the Trial Court and Appellant have noted, there are no reported cases involving contractor-contractor disputes. As all of the reported cases arise in the homeowner context, the comments in the cases discuss the implications of the Statute in that context as well.

In a certain sense, Appellant's estoppel argument has, however, been addressed. The homeowners in *Lenz* could not argue that, because the contractor was unlicensed and the construction contract was therefore illegal, they were entitled to recover the money they had already paid. They could not use 40-59-30 to attack the validity of the work that had been performed. In other words, the contractor was not estopped from receiving payment for the work that he had already completed, even though he was unlicensed and even though both the contract and the work itself were therefore illegal. In fact, both *Lenz* and the plain language of the Statute make its intent and the manner in which it operates clear. The Statute operates only to prohibit certain actions by the unlicensed contractor. It does not discuss, and does not have any effect upon, any other party to the construction. It does not address, either by actual language or by implication, any secondary or extraneous actions, by any party. Its effect is exclusively upon the unlicensed contractor, and it is he and he alone who is prohibited from taking any action.

Furthermore, in order to establish any estoppel, there must have been some reliance by the party asserting it on a material and false statement of fact, or the concealment of a relevant fact, by the party sought to be estopped. That reliance on the false statement must cause the party to change his position, to his detriment, and the falsity of the statement must be something he could not have reasonably discovered. *S. Dev. Land and Golf Co. v. S.C. Pub. Serv. Auth.*, 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993); *O'Cain v. O'Cain*, 322 S.C. 551, 473 S.E.2d 460 (Ct. App. 1996). Although Appellant asserts that Respondent, who is not in the category of persons whose activity is restricted by Section 40-59-30, should nevertheless be estopped from using it as a defense, he fails to specify what Respondent is alleged to have done, or in what manner Appellant might have relied on it, that might give rise to any estoppel argument.

For the same reasons, Appellant's argument that the Statute is intended only to protect homeowners, and is therefore not availing in the instant action, is without merit and was properly rejected by the Trial Court. The Statute does not draw any distinctions among defendants, only among potential plaintiffs. That is, it divides the possible plaintiff class of "residential contractors" into two separate parts: those with licenses, to whom the Statute does not apply, and those without, who are barred from commencing any action on their construction contracts. Since Appellant is in the latter category, it is clear that the Trial Court properly found that he could not maintain his action against Respondent, and the Trial Court equally properly dismissed the case.

C. Appellant Seeks to Ignore the Plain Language of the Statute, Which Bars "Any Action," and the Trial Court Properly Found that Appellant's Case Against Respondent Arose Under a Contract for Residential Construction.

Appellant concedes that Section 40-59-30 bars "any suit arising from [the unlicensed contractor's] unlicensed construction." He nonetheless contends that this does not bar him from bringing this action, either in contract or in tort. Although somewhat unclear, it appears that his contention is that this case does not itself arise under the unlicensed construction contract, but is independent of it. This is patently incorrect, and the Trial Court correctly rejected this line of reasoning.

As noted in both the Order from which this Appeal is taken and the Initial Brief of Appellant, neither the parties nor the Trial Court were able to find any case law applying the Statute to a contractor-contractor dispute. That does not, however, mean that it is inapplicable. A dispute between contractors on a given project is no less a suit "arising from" a construction contract than is one between the contractor and the homeowner.

This is a simple “but-for” analysis. Appellant is seeking damages he alleges he incurred as a result of his having to repair work done by Respondent. That work was performed on the Shirts’ residence, the residence Appellant, although unlicensed, contracted to build. But for the existence of the unlicensed contract, Appellant would not have hired Respondent to perform work. But for the existence of the unlicensed contract, Appellant would have had no obligation to make the repairs he claims to have caused his damages, repairs he alleges were required to make the Shirts’ home suitable for the purposes called for by Appellant’s contract with the homeowner. But for the existence of the unlicensed contract, Appellant and Respondent would have had no dealings, and Appellant would have had no losses.

Furthermore, as noted above, the Statute does not differentiate between classes of defendants or between classes of residential construction contracts. It merely makes it absolutely clear that an unlicensed residential contractor may not seek to enforce any residential construction contract. The contract between Appellant and the owner is, obviously, an “unlicensed residential construction contract.” So is the contract between Appellant and Respondent.

It is axiomatic that, unless there is a particular specialized or technical definition, words in statutes are used, and intended to be read, in their common meaning. “Words in the statute should be given their plain and ordinary meaning without resulting to forced or subtle construction.” *Original Blue Ribbon Taxi Corp. v. S.C. DMV*, 380 S.C. 600, 608, 670 S.E.2d 674 , 679 (Ct. App. 2008)(citing *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008); *Sonoco Prods. Co. v. S.C. Dep’t of Revenue*, 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008)). “Residential construction contract” has an ordinary, common meaning: it is an agreement between any two or more persons to build a structure intended to be used as a home.

The terms do not differentiate between contracts between owners and contractors, or contractors and subcontractors. As used by the Statute, it clearly means any such agreement, between anybody and anybody, when for a particular purpose.

Section 40-59-30 prohibits any contractor who lacks a license at the time of contracting from enforcing any terms of the contract, so long as the contract in question involves the building of a home. Appellant's contract with Shirts is such a contract; so too is his contract with Respondent. By bringing an action against Respondent herein, Appellant was attempting to enforce the terms of a residential construction contract.

The Statute bars any action seeking to enforce an unlicensed contract, whether in law or in equity. It is immaterial whether Appellant filed this suit in contract or in tort. All of Appellant's relationships with Respondent, all of Appellant's alleged damages resulting from Respondent's work, and all of the activity conducted by any person hired by Appellant to work on the Shirts' home, "arise under" the unlicensed contract between Appellant and the owner, and the unlicensed contract between Appellant and Respondent. The Trial Court correctly found that all of Appellant's claims, regardless of how characterized, were barred as a matter of law by the application of S.C. Code § 40-59-30.

III. DISMISSAL OF THE ACTION WAS APPROPRIATE AFTER THE EVIDENCE DEMONSTRATED THAT APPELLANT WAS THE *DE FACTO* GENERAL CONTRACTOR.

Appellant's final assertion is that that Trial Court erred in denying a motion for summary judgment, and a motion for directed verdict, and then dismissing Appellant's case at the close of the evidence. He makes no true argument in this regard, and cites no authority for the proposition that it would be improper to deny a dispositive motion prior to hearing the evidence but then grant a similar, or identical, dispositive motion afterwards. In fact, it is clear that this is

procedurally proper, appropriate in the right circumstances, and was the correct action in this case.

Respondent's Motion for Summary Judgment was predicated upon the same argument made at the conclusion of the case: that Appellant, as an unlicensed contractor, could not bring suit to enforce the contract. At that time, however, the record lacked the testimony of the various individuals, such as Brent Shirts and Mike Robbins, who testified in court about the scope of Appellant's duties, and whose testimony led the Trial Court to conclude that Appellant was the *de facto* General Contractor. The evidence before the Court pretrial failed to fully identify the roles of various people in the construction, and was contradictory in at least one, material, respect.

It is axiomatic that summary judgment should only be granted where "there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." S.C.R.C.P. 56(c). The material fact in this case was the precise nature of Appellant's role with respect to the construction. Prior to trial, there were a number of genuine issues with respect to this role. In response to Respondent's Motion for summary judgment, Appellant submitted, *inter alia*, evidence that showed that Mike Robbins had pulled the permit on the project, and that he might have been the General Contractor on the project. Although the Court concluded, after hearing the testimony, that this was not the case, the evidence presented in opposition to Respondent's original motion was sufficient to meet Appellant's burden of demonstrating that a genuine issue of material fact remained.

The fact that a dispositive motion is denied prior to trial does not alter the Court's ability to grant a similar, or identical, motion after the evidence has been presented. This is, or can be, the normal process through which a case progresses: the preliminary identification of contested

facts, motions addressed to the lack or sufficiency of contested issues, and a trial in which the finder of fact hears the witnesses, reviews the physical evidence, and determines which of the parties has greater credibility. At the same time, and whether prior, case-dispositive, motions have been filed or not, the Trial Court is always free to grant a motion for directed verdict when it determines that, after all of the non-moving party's evidence has been presented, it has failed on its burden of proof with respect to a fact vital to its cause of action.

The grant of a motion to dismiss is the functional equivalent of the entry of a directed verdict in a jury case. This matter was tried directly to the Court, and, at the conclusion of the presentation of the evidence, that Court found that there was no question but that Appellant had been the *de facto* General Contractor on the Shirts' job. As a result, and as a matter of law, the Court then concluded that Appellant was barred by Section 40-59-30 from pursuing his claim against Respondent.

As noted, Appellant presents no legal argument as to why this procedure was improper, and it is not. The Trial Court made its varying rulings – that of denying the motion for summary judgment and of granting the motion to dismiss – at different procedural points and upon different facts. At the conclusion of the testimony, it determined that the Appellant's claims could not be maintained. To the extent that Appellant's contention that it was improper to dismiss those claims raises an issue for appeal, it should be denied.

CONCLUSION

Appellant's principal challenge to the ruling of the Trial Court is that the Court failed to properly interpret the facts and testimony. This Court should affirm those findings unless it concludes that there is no evidence to support the factual conclusions reached below. The evidence clearly shows that such evidence exists. In addition, Appellant attempts to challenge the plain language of Section 40-59-30 of the South Carolina Code of Laws. There is abundant law for the proposition that an unambiguous statute needs no interpretation, and there is nothing ambiguous about the section of the Code in question.

Respondent respectfully requests that the decision below be affirmed in its entirety.

Respectfully submitted,

SMITH | CLOSSER, P.A.



Zachary J. Closser
7455 Cross County Road, Suite One
P.O. Box 40578
Charleston, SC 29423-0578
(843) 760-0220
(843) 552-2678 facsimile
Attorneys for Respondents

11/27, 2012
Charleston, SC

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Judge

Case No. 2008-CP-18-2565

TIM McGEE

Appellant

v.

DAVID THORNTON and THORNTON BROTHERS
CONSTRUCTION

Respondents

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Appellants' Final Briefs are in compliance with Rule 211 (b) of the South Carolina Rules of Appellate Procedure.



Zachary J. Closser
SMITH | CLOSSER, PA
P.O. Box 40578
Charleston, SC 29423-0578
(843) 760-0220
Attorney for Appellants

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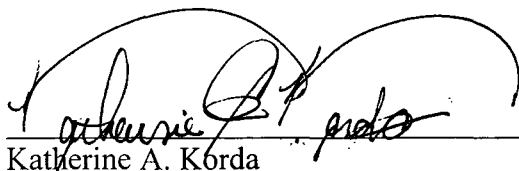
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CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Respondents' Final was served by mailing or hand delivery on the following:

**Max G. Mahaffee, Esquire
Grimball & Cabaniss, LLC
P.O. Box 816
Charleston, SC 29402-0816**


Katherine A. Korda

November 27, 2012

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SC COURT OF APPEALS