

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 201196386

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc.,
Respondents,

v.

Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Roasles
Defendants,

Of whom, Professional Plastering & Stucco, Inc. is the Appellant.

Professional Plastering & Stucco, Inc., Appellant,

v.

Maria Ariasm, Miquel Roasles, and APS Enterprises Unlimited, Inc., Third-Party
Plaintiffs,

Of whom APS Unlimited, Inc. is Respondent.

SUPPLEMENTAL RECORD ON APPEAL
(Pages 1 – 5)

RECEIVED

MAR 19 2013

SC Court of Appeals

1 Professional Plastering, when they did the work,
2 did it under the guidance and direction of the general
3 contractor. Working on a construction site, as some
4 of you may know, is a lot like being in the army.
5 You've got a general contractor, who sets the tone and
6 tells everybody else what they can do, what they can't
7 do, when they're going to do it, and basically how to
8 do it. And part of that is negotiated out early in a
9 contract between the general contractor and the
10 subcontractors. And there is such a contract in this
11 case. You will be seeing it. You'll be seeing it in
12 quite a bit of detail.

13 And there is also a contract between the general
14 contractor and the owner. There's also another group
15 involved. And the owner has hired an architect. And
16 the architect in this case did the design of the
17 building, did the pricing on the building, and helped
18 the general contractor in the cost and what materials
19 to use.

20 The materials that are used were selected either
21 by the owner, the architect, or the general contractor
22 in this case. In this case the subcontractor did not
23 select what type of stucco to put up. They were
24 merely hired to put up the Magna Wall and were told
25 that that would be the system that they would be

1 using.

2 Now, I'm telling you this in anticipation so
3 that you know that each one of these -- this different
4 levels, you've got the -- you've got the owners. We
5 also have another one, and those are the bankers, the
6 people who financed the project. And you have the
7 architects, you have the general contractor, and you
8 have the manufacturer, Magna Wall.

9 When Professional Plastering was doing its job,
10 it was inspected by the architects, it was inspected
11 by the general contractor, it was inspected by the
12 inspectors for the banks, and it was inspected by
13 Magna Wall. And you will see and hear testimony about
14 those inspections. And they were told in those
15 inspections that what they were doing was exactly what
16 they were supposed to be doing, they were putting it
17 up in accordance with the manufacturer, in accordance
18 with the plans and specifications, in accordance with
19 the contract documents.

20 Now, some of you may scratch your head and say,
21 well, how did we end up with this, then, if that is,
22 in fact, the case. And that's one of the things that
23 is very important to Professional Plastering is that
24 you pay attention and listen very carefully as to
25 where the water came from. And in a case like this,

MIA PERRON, CVR-CM

-92-

SUPP. 2

1 it's following the water. That will give you an idea
2 as to where the problem is, if you follow the water.
3 And you need to know what the source of the water is,
4 and that information is going to be given to you.
5 Some of you will be able to look at a picture, some of
6 the pictures that we have and say, ah, ha, that's
7 where it is. You then, then we would ask, would
8 determine who was responsible for that water, who was
9 the contractor or the subcontractor that was
10 responsible for that particular water.

11 Now, this particular construction project had
12 one thing that was a little bit different than a lot
13 of the stucco projects that are done. The sealant or
14 the caulk that was used on the stucco in the joints
15 around the windows and the doors and so forth was not
16 applied by Professional Plastering. It was not in
17 their contract to do that. It was applied through --
18 by someone else. And it was their -- another
19 contractor, subcontractor's job, who were -- called
20 LosCompos [phonetic], who were tasked with, you know,
21 putting in the sealant.

22 So the stucco subcontractor completes his work.
23 He leaves or moves on to the next building and then
24 LosCompos comes in and does the sealant work. Now, I
25 give you that as kind of a clue and ask you to follow

1 that when you're tracing the water through this case.

2 So Professional Plastering has the five
3 different levels of inspections going on, from the
4 manufacturer, the architect, the general contractor,
5 the owners, and the -- excuse me -- the various levels
6 of that. I'm sorry. I lost track of my counting.
7 But, anyway, the various levels. And everybody is
8 telling them, you're doing a good job, you're doing it
9 correctly. So they did not have a clue at the times
10 that they -- or nine years later were going to be said
11 -- told, you didn't do it correctly. And that's
12 what's happening.

13 So they complete their work in 2002 and then in
14 2008, 2009, other people were brought out to
15 investigate it, and nine years later here we are in a
16 court and we're asking you to make the determination
17 as to whether or not at the time that they performed
18 the job in 2002, was it done to the satisfaction of
19 the owners and pursuant to the contract that they had
20 with Summit.

21 Now, Mr. Leath was kind enough to preview some
22 of the rules in the case. And there are some that are
23 important to us. In order for them to prove
24 liability, they have to show that they have damages.
25 All right? And you can see from the initial previews

MIA PERRON, CVR-CM

-94-

SUPP. 4

1 that there's something wrong in that building, that
2 there is damage to that building.

3 Well, the other part of it is they have to show
4 that Professional Plastering was negligent in their
5 work and that the product that they produced was
6 improper. And the final connection is they have to
7 show that that particular negligence or that
8 particular defect, if that's an easier word to deal
9 with, caused the damages that you're seeing. And you
10 have to be able to make that connection of their work
11 causing that damage.

12 So as you listen to the evidence, we would ask
13 you to keep in mind the question is the damage that's
14 being claimed the result of the defendant's applying
15 the stucco incorrectly, is what you're seeing out
16 there actually a result of that or is it a result of
17 the faulty roof, the faulty window installation, the
18 faulty ceilings, and any of the other areas that are
19 incorrect or may have been incorrect.

20 You are going to get to go on a little journey
21 of dissecting a project estimate in the construction
22 project. And it's a math exercise. I didn't do well
23 in math and I didn't find it particularly -- you know,
24 it's a painful process for me. We'll get it
25 streamlined down so it's not quite as painful as it

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 201196386

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc.,
Respondents,

v.

Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Roasles
Defendants,

Of whom, Professional Plastering & Stucco, Inc. is the Appellant.

Professional Plastering & Stucco, Inc., Appellant,

v.

Maria Ariasm, Miquel Roasles, and APS Enterprises Unlimited, Inc., Third-Party
Plaintiffs,

Of whom APS Unlimited, Inc. is Respondent.

**SUPPLEMENTAL RECORD ON APPEAL
(Pages 1 – 5)**

RECEIVED
FEB 20 2013
SC Court of Appeals

1 Professional Plastering, when they did the work,
2 did it under the guidance and direction of the general
3 contractor. Working on a construction site, as some
4 of you may know, is a lot like being in the army.
5 You've got a general contractor, who sets the tone and
6 tells everybody else what they can do, what they can't
7 do, when they're going to do it, and basically how to
8 do it. And part of that is negotiated out early in a
9 contract between the general contractor and the
10 subcontractors. And there is such a contract in this
11 case. You will be seeing it. You'll be seeing it in
12 quite a bit of detail.

13 And there is also a contract between the general
14 contractor and the owner. There's also another group
15 involved. And the owner has hired an architect. And
16 the architect in this case did the design of the
17 building, did the pricing on the building, and helped
18 the general contractor in the cost and what materials
19 to use.

20 The materials that are used were selected either
21 by the owner, the architect, or the general contractor
22 in this case. In this case the subcontractor did not
23 select what type of stucco to put up. They were
24 merely hired to put up the Magna Wall and were told
25 that that would was the system that they would be

1 using.

2 Now, I'm telling you this in anticipation so
3 that you know that each one of these -- this different
4 levels, you've got the -- you've got the owners. We
5 also have another one, and those are the bankers, the
6 people who financed the project. And you have the
7 architects, you have the general contractor, and you
8 have the manufacturer, Magna Wall.

9 When Professional Plastering was doing its job,
10 it was inspected by the architects, it was inspected
11 by the general contractor, it was inspected by the
12 inspectors for the banks, and it was inspected by
13 Magna Wall. And you will see and hear testimony about
14 those inspections. And they were told in those
15 inspections that what they were doing was exactly what
16 they were supposed to be doing, they were putting it
17 up in accordance with the manufacturer, in accordance
18 with the plans and specifications, in accordance with
19 the contract documents.

20 Now, some of you may scratch your head and say,
21 well, how did we end up with this, then, if that is,
22 in fact, the case. And that's one of the things that
23 is very important to Professional Plastering is that
24 you pay attention and listen very carefully as to
25 where the water came from. And in a case like this,

1 it's following the water. That will give you an idea
2 as to where the problem is, if you follow the water.
3 And you need to know what the source of the water is,
4 and that information is going to be given to you.
5 Some of you will be able to look at a picture, some of
6 the pictures that we have and say, ah, ha, that's
7 where it is. You then, then we would ask, would
8 determine who was responsible for that water, who was
9 the contractor or the subcontractor that was
10 responsible for that particular water.

11 Now, this particular construction project had
12 one thing that was a little bit different than a lot
13 of the stucco projects that are done. The sealant or
14 the caulk that was used on the stucco in the joints
15 around the windows and the doors and so forth was not
16 applied by Professional Plastering. It was not in
17 their contract to do that. It was applied through --
18 by someone else. And it was their -- another
19 contractor, subcontractor's job, who were -- called
20 LosCompos [phonetic], who were tasked with, you know,
21 putting in the sealant.

22 So the stucco subcontractor completes his work.
23 He leaves or moves on to the next building and then
24 LosCompos comes in and does the sealant work. Now, I
25 give you that as kind of a clue and ask you to follow

1 that when you're tracing the water through this case.

2 So Professional Plastering has the five
3 different levels of inspections going on, from the
4 manufacturer, the architect, the general contractor,
5 the owners, and the -- excuse me -- the various levels
6 of that. I'm sorry. I lost track of my counting.
7 But, anyway, the various levels. And everybody is
8 telling them, you're doing a good job, you're doing it
9 correctly. So they did not have a clue at the times
10 that they -- or nine years later were going to be said
11 -- told, you didn't do it correctly. And that's
12 what's happening.

13 So they complete their work in 2002 and then in
14 2008, 2009, other people were brought out to
15 investigate it, and nine years later here we are in a
16 court and we're asking you to make the determination
17 as to whether or not at the time that they performed
18 the job in 2002, was it done to the satisfaction of
19 the owners and pursuant to the contract that they had
20 with Summit.

21 Now, Mr. Leath was kind enough to preview some
22 of the rules in the case. And there are some that are
23 important to us. In order for them to prove
24 liability, they have to show that they have damages.
25 All right? And you can see from the initial previews

MIA PERRON, CVR-CM

-94-

SUPP. 4

1 that there's something wrong in that building, that
2 there is damage to that building.

3 Well, the other part of it is they have to show
4 that Professional Plastering was negligent in their
5 work and that the product that they produced was
6 improper. And the final connection is they have to
7 show that that particular negligence or that
8 particular defect, if that's an easier word to deal
9 with, caused the damages that you're seeing. And you
10 have to be able to make that connection of their work
11 causing that damage.

12 So as you listen to the evidence, we would ask
13 you to keep in mind the question is the damage that's
14 being claimed the result of the defendant's applying
15 the stucco incorrectly, is what you're seeing out
16 there actually a result of that or is it a result of
17 the faulty roof, the faulty window installation, the
18 faulty ceilings, and any of the other areas that are
19 incorrect or may have been incorrect.

20 You are going to get to go on a little journey
21 of dissecting a project estimate in the construction
22 project. And it's a math exercise. I didn't do well
23 in math and I didn't find it particularly -- you know,
24 it's a painful process for me. We'll get it
25 streamlined down so it's not quite as painful as it

EXHIBIT A

Proposed Supplemental Record on Appeal

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 201196386

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc.,
Respondents,

v.

Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Roasles
Defendants,

Of whom, Professional Plastering & Stucco, Inc. is the Appellant.

Professional Plastering & Stucco, Inc., Appellant,

v.

Maria Ariasm, Miquel Roasles, and APS Enterprises Unlimited, Inc., ^{Third Party}
Plaintiffs,

Of whom APS Unlimited, Inc. is Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by all parties and not any other material.

Signature Page of Counsel to Follow

RECEIVED
MAR 19 2013
SC Court of Appeals

Respectfully submitted,



Michael A. Timbes
Jesse A. Kirchner
THURMOND KIRCHNER TIMBES & YELVERTON, P.A.
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
Phone: (843) 937-8000

Justin O'Toole Lucey, Esquire
Justin O'Toole Lucey, P.A.
415 Mill Street
Mount Pleasant, SC 29464
Telephone: (843) 849-8400

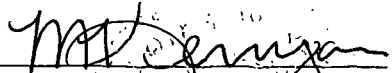
Phillip Ward Segui, Jr., Esquire
Segui Law Firm
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464
Telephone: (843) 884-1865

John T. Chakeris, Esquire
The Chakeris Law Firm
231 Calhoun Street
Charleston, South Carolina 29401
Telephone: (843) 853-5678

W. Jefferson Leath, Jr., Esquire
Leath Bouch & Seekings, LLP
Post Office Box 59
Charleston, SC 29402
Telephone: (843) 937-8811

***Attorneys for Respondents Mark F. Teseniar and
Nan M. Teseniar, on behalf of themselves and
others similarly situated, & Twelve Oaks at
Fenwick Property Owners Association, Inc.***

Sworn to and subscribed before me
This 15th day of March, 2013.



Notary Public for South Carolina
My Commission Expires 11/16/2020.

