

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2300695

Milton A Gatlin et al
PLAINTIFF(S)

John M Hornbeck, III et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY.**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

See page 2.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/17/2019 .

Marla S Gatlin for Marla S Gatlin
 Marla S Gatlin for Marla S Gatlin
 Milton A Gatlin for Milton A Gatlin
 Milton A Gatlin for Milton A Gatlin

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

RECEIVED
 JUN 24 2019
 SC Court of Appeals

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

This matter comes before the Court upon Defendants' Motion to Reconsider the Order of May 21, 2019 denying the Defendants' Motion to Dismiss or Stay. The Court does not believe that a hearing is necessary for determination of Defendants' Motion.

The first argument presented by Defendants is that the Court applied the wrong standard in denying the Defendants' Motion to Dismiss. The Court considered the matter as a Rule 12(b)(6) motion since it was captioned as a Motion to Dismiss which included a Motion to Stay. The basis of Defendants' Motion is an affirmative defense asserting that the Plaintiffs could not file the suit without complying with S.C. Code §40-59-810, et. seq. The initial Complaint was filed on February 2, 2018 relating to a contract of July 31, 2017 and the Defendants filed their Answer on March 19, 2018 and a Motion to Dismiss on May 11, 2018. At no time did the Defendants raise any issue with the Plaintiffs' failure to comply with §40-59-840. It was not until after the case was stasured and placed on a trial roster that the Defendants moved to assert this issue as an affirmative defense. More than 18 months had elapsed since the contract had been executed and the Plaintiffs' claim is partially based on their ongoing damages and thus were required to mitigate their damages by having repairs made to their house. To dismiss or stay the case at this point in light of a late assertion of an affirmative defense would be very prejudicial to the Plaintiffs. Clearly, that is not the intent nor public policy behind §40-59-810, et. seq. Thus the court finds that Defendants' Motion to Dismiss nor Motion to Stay were not timely made.

The second argument presented by Defendants is that the Court improperly found that the provisions of §40-59-840 did not apply to this matter since it was not the construction of a dwelling. The various provisions of this act seem to be contradictory. The definition of "claimant" and "action" covers construction and remodeling, but the notice provision of §40-59-840 clearly states that it applies to actions for "the construction of a dwelling" and "construction" is not defined to include the work being performed under the contract which is the basis of this claim. The contract which is the subject of this action was not for "the construction of a dwelling" as indicated in the original order.

Therefore, the Court finds that there is no basis to alter the previous order and Defendants' Motion is denied.



Greenville Common Pleas

Case Caption: Milton A Gatlin , plaintiff, et al vs. John M Hornbeck III , defendant,
et al
Case Number: 2018CP2300695
Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

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