

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Henry W. Brown
Special Referee

Appellate Case Number 2019-000513

RECEIVED
OCT 07 2019
SC Court of Appeals

Brown Contractors, LLC, under S.C. Residential Builders License No. 20378,
.....Appellant/Respondent,

v.

Andrew Joseph McMarlin a/k/a Andrew Joseph McMarlin and Amy Salzhauer,
.....Respondents/Appellants.

And

Andrew McMarlin and Amy Salzhauer,Respondents/Appellants,

v.

James Brown, IV and Brown-Meihaus Construction Co., LLC,Third-Party Defendants.

RESPONDENTS/APPELLANTS REPLY BRIEF

Robert T. Lyles, Jr. (SC Bar # 10299)
Lyles & Associates, LLC
342 East Bay Street
Charleston, SC 29401
843.577.7730
rtl@lylesfirm.com
Attorneys for Respondents/Appellants

TABLE OF CONTENTS

ARGUMENT1

- I. The Special Referee Erred as a Matter of Law by Misapplying the Law of Personal Liability.
- II. The Special Referee Erred Because his Rule Regarding the Personal Liability of Jay Brown is Unsupported by the Evidenced.
- III. The Special Referred Erred by Failing to Rule on The McMarlins' Claims of Alter/Ego and Amalgamation.

CONCLUSION2

ARGUMENT

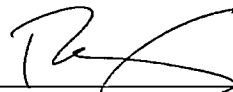
- I. The Special Referee Erred as a Matter of Law by Misapplying the Law of Personal Liability.**
- II. The Special Referee Erred Because his Rule Regarding the Personal Liability of Jay Brown is Unsupported by the Evidenced.**
- III. The Special Referred Erred by Failing to Rule on The McMarlins' Claims of Alter/Ego and Amalgamation.**

To be clear, the Special Referee cited the proper law regarding personal liability, but then failed to apply it to the undisputed facts of the case. It is undisputed that Jay Brown failed to act in conformance with the requirements of the law that would afford him the protections granted to properly functioning corporate entities. He completely disregarded corporate structure or formality in negotiating with the McMarlins (using letterhead of Brown-Meihaus) (Designation Exhibit No. 29) and not contracting with the McMarlins via his claimed corporate entity, Brown Contractors. Instead, he got the job as Jay Brown (Trial Transcript pgs. 501-502) and did the job as Jay Brown, who, according to him, was the person solely in charge of construction (Trial Transcript pg. 87, l. 9-14). The only basis for limiting liability to Brown Contractors was Jay Brown's unilateral decision to invoice the McMarlins with invoices that referenced Brown Contractors, with no acknowledgment that the McMarlins ever consented to doing business with the entity. In fact, the testimony was directly contrary to that. To allow Jay Brown to unilaterally limit liability to an entity he types on the top of his invoices would be to allow anyone, after contracting, to simply set up an insolvent entity and then reference it on subsequent invoices, placing the burden on the unknowing public to discern that and affirmatively object to it. There is no case, anywhere, which supports the concept of corporate liability protection essentially by default, which is what Brown advocates and what the Special Referee allowed, in violation of the law.

Finally, the Special Referee himself found that Jay Brown was acting in violation of the law when he was offering to and contracted to work for the McMarlins without a license (Final Order filed May 4, 2018). In so finding, the Special Referee noted that Brown misrepresented the status of Vuong Nuguyn as an "employee" on his Certificate of Authority application (Designation Exhibit No. 2, 3, 24, & 25), and thus wrongfully, if not fraudulently, secured the Certificate which he then used in support of his mechanic's lien (Designation Exhibit No. 6), in derogation of the law. That resulted in dismissal of that action and a right to fees and costs for the McMarlins (Appellant's Designation Exhibit No. 8). Jay Brown was directly responsible for all of those wrongful actions and signed the forms personally. The Special Referee failed to apply the law of South Carolina by holding that, somehow, the liability for the consequences of those actions, namely the attorneys' fees that were awarded in the amount of \$133,161.00 (Appellant's Designation Exhibit No. 8) should only be assessed against Brown Contractors, not Jay Brown personally.

CONCLUSION

For the reasons set forth above, the findings of the Special Referee with respect to the personal liability of Jay Brown should be reversed.



Robert T. Lyles, Jr. (SC Bar # 10299)

Lyles & Associates, LLC

342 East Bay Street

Charleston, SC 29401

843.577.7730

rtl@lylesfirm.com

Attorneys for Respondents/Appellants

October 4, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Henry W. Brown
Special Referee

Appellate Case Number 2019-000513

RECEIVED
OCT 07 2019
SC Court of Appeals

Brown Contractors, LLC, under S.C. Residential Builders License No. 20378,
.....Appellant/Respondent,

v.

Andrew Joseph McMarlin a/k/a Andrew Joseph McMarlin and Amy Salzhauer,
.....Respondents/Appellants.

And

Andrew McMarlin and Amy Salzhauer,Respondents/Appellants,

v.

James Brown, IV and Brown-Meihaus Construction Co., LLC,Third-Party Defendants.

PROOF OF SERVICE

I certify that I have served a copy of the Respondents/Appellants' Reply Brief on counsel for the Appellant/Respondent by depositing a copy in the United States Mail, First Class postage prepaid, this 4th day of October 2019, addressed to the following:

Robert B. Varnado
Brown & Varnado, LLC
P.O. Box 1127
Mt. Pleasant, SC 29465
Attorneys for Appellant/Respondent

Cindy Worsham

Cindy Worsham, Paralegal for
Robert T. Lyles, Jr. (SC Bar # 10299)

Lyles & Associates, LLC

342 East Bay Street

Charleston, SC 29401

843.577.7730

rtl@lylesfirm.com

Attorneys for Respondents/Appellants

October 4, 2019

LYLES & ASSOCIATES, LLC

ATTORNEYS AT LAW

342 East Bay Street

Charleston, South Carolina 29401

Telephone: (843) 577-7730

Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

October 4, 2019

VIA U.S. MAIL

The Honorable V. Claire Allen
Deputy Clerk, The South Carolina Court of Appeals
Post Office Box 11629
1220 Senate Street (29201)
Columbia, SC 29211

RECEIVED
OCT 07 2019
SC Court of Appeals

Re: *Brown Contractors, LLC, et al. vs. Andrew Joseph McMarlin, et al.*
Appellate Case No.: 2019-000513

Dear Ms. Allen:

Enclosed please find the original and one (1) copy each of the Respondents/Appellants' Reply Brief with Proof of Service for filing in the above-referenced matter.

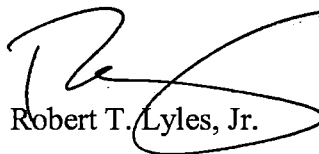
By copy of this correspondence and as indicated on each Proof of Service, a copy of the enclosed Reply Brief has been served on opposing counsel.

Should you have any questions regarding the enclosed, please give me a call.

Thank you for your assistance, and with kindest regards, I am

Very truly yours,

LYLES & ASSOCIATES, LLC


Robert T. Lyles, Jr.

RTL/cw

Enclosures

cc: Robert B. Varnado, Esquire (Via Email & U.S. Mail)

LYLES & ASSOCIATES, LLC

ATTORNEYS AT LAW

342 East Bay Street

Charleston, South Carolina 29401

RECEIVED

OCT 07 2019

SC Court of Appeals

The Honorable V. Claire Allen
Deputy Clerk, The South Carolina Court of Appeals
Post Office Box 11629
1220 Senate Street (29201)
Columbia, SC 29211



02 1P \$ 000.95⁰
0001971445 OCT 04 2019
MAILED FROM ZIP CODE 29401

29201:53729 0076

