

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 30 2020

APPEAL FROM LANCASTER COUNTY SC Court of Appeals
Court of Common Pleas
Lancaster County Civil Action Number 2018-CP-29-01191

The Honorable Kristi F. Curtis, Circuit Court Judge,

Appellate No. 2019-001143

J.A. Seagraves d/b/a J.A. Seagraves City Wide Paving,Appellant,

v.

North Regional III, LLC,Respondent.

INITIAL BRIEF OF APPELLANT

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5 Wright and Miller, *Federal Practice and Procedure Civil 3d*, § 1277 (2004).....2

STATEMENT OF ISSUES ON APPEAL

- I. **Did the trial court err in considering evidence outside the four corners of the complaint during a hearing on a motion to dismiss under South Carolina Rule of Civil Procedure 12(b)(6)?**

STATEMENT OF THE CASE

The underlying matter in this case was initiated by the filing of a Summons and Complaint by Appellant on October 15, 2018 in the Lancaster County Court of Common Pleas. The action concerns the non-payment of amounts owed to Appellant by Respondent for paving work performed in Lancaster, South Carolina. Respondent, through counsel, filed a motion to dismiss in response to the Summons and Complaint, alleging statutory defenses. The Honorable Kristi F. Curtis heard Respondent's Motion to Dismiss March 4, 2019. At the hearing, Appellant's counsel objected to the trial court's consideration of evidence outside the four corners of the Complaint.

Judge Curtis granted Respondent's Motion to Dismiss June 10, 2019, relying on the statutory defenses raised by Respondent's counsel at the March 4, 2019 hearing. Appellant filed a Motion to Alter or Amend Judgment June 13, 2019. Judge Curtis denied Appellant's motion June 17, 2019, via a Form 4 order. This appeal followed.

STANDARD OF REVIEW

On appeal from the dismissal of the case pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, an appellate court applies the same standard of review as the Circuit Court. *Rydde v. Morris*, 381 S.C. 643, 675 S.E.2d 431, 433 (2009) (citing *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001)). That standard requires the Court to construe the complaint in a light most favorable to the nonmovant. *Id.*

ARGUMENT

I. The trial court erred in considering evidence outside the four corners of the complaint during a hearing on a motion to dismiss under South Carolina Rule of Civil Procedure 12(b)(6).

In deciding a motion to dismiss pursuant to 12(b)(6), SCRCPP, the trial court should consider only the allegations set forth on the fact of the plaintiff's complaint. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). The question on a motion to dismiss pursuant to 12(b)(6), SCRCPP, is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Id* (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)). The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Id* (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)).

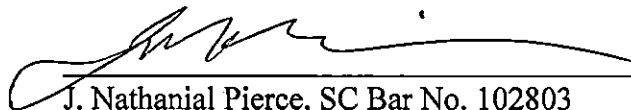
Statutory prohibition is in the nature of an affirmative defense precluding enforcement of a contract and should be pled. *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 615, 703 S.E.2d 221, 224 (2010); *Madren v. Bradford*, 378 S.C. 187, 193, 661 S.E.2d 390, 393 (Ct. App. 2008) (citing *Costa and Sons Const. Co. v. Long*, 306 S.C. 465, 469, 412 S.E.2d 450, 453 (Ct. App. 1991)). An affirmative defense ordinarily may not be asserted in a motion to dismiss under Rule 12(b)(6) unless the allegations of the complaint demonstrate the existence of the affirmative defense. *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006). Because the factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint, an affirmative defense usually must be pled in an answer and either resolved in later motions such as a summary judgment or directed verdict or at trial. *Id* (citing 5 Wright and Miller, *Federal Practice and Procedure Civil 3d*, § 1277 (2004)).

In its Motion to Dismiss, Defendant relied solely statutory defenses. Because these statutory defenses are in the nature of affirmative defenses and necessarily require examination of facts outside the four corners of the complaint, they were not properly before the court on a Rule 12(b)(6) Motion to Dismiss. Appellant objected to the introduction of this evidence at the March 4, 2019 hearing and again in his Motion to Alter or Amend. Disregarding Appellant's objection, the trial court directly relied upon evidence outside the four corners of the Complaint, asking Appellant's counsel "[a]re we just prolonging the agony here?" Tr. of Hr'g on Mot. to Dismiss, at 8. In taking a position on the ultimate outcome of the case based on improper evidence, the court committed reversible error.

CONCLUSION

The trial court erred in considering evidence outside the four corners of the Complaint, in the nature of a statutory defense, and Appellant is entitled to relief in the form of remand for further proceedings.

June 29, 2020



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In The Court of Appeals

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APPEAL FROM YORK COUNTY
Court of Common Pleas

SC Court of Appeals

The Hon. William A. McKinnon, Circuit Court Judge

Civil Case No.: 2018-CP-46-03672

Appellate Case No. 2019-001827

David J. Mattox,

Appellant,

v.

Lisa Jo Bare Mattox,

Respondent.

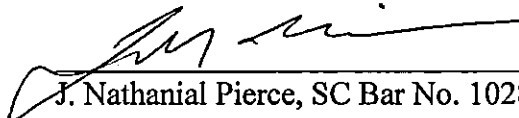
PROOF OF SERVICE

The undersigned certifies that she has served this Appellant's Initial Brief by mailing a copy of it via Federal Express, postage prepaid, on June 29, 2020, addressed to its attorneys of record to the below addresses:

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June 29, 2020

South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29210

**RE: JA Seagraves dba JA Seagraves City Wide Paving v. North
Regional III, LLC
Appellate Number: 2019-001143
Morton & Gettys Matter Number: 18-1120-10-P**


Dear Sir or Madam:

Enclosed please find the original and one copy of the following:

- Appellant's Designation of Matter; Certificate of Counsel;
Proof of Service
- Initial Brief of Appellant; Proof of Service

Please file the original and return a clocked copy in the self-addressed stamped envelope provided for your convenience. Please do not hesitate to contact our office with any questions. With kind regards, I am

Sincerely,


Britney M. Mosteller
Legal Secretary for J. Nathaniel Pierce

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Enclosures

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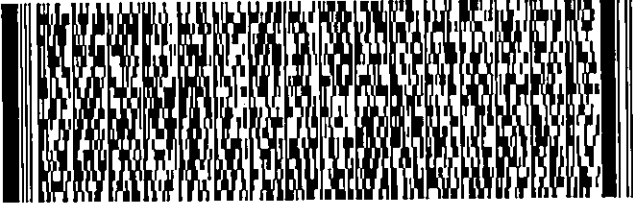
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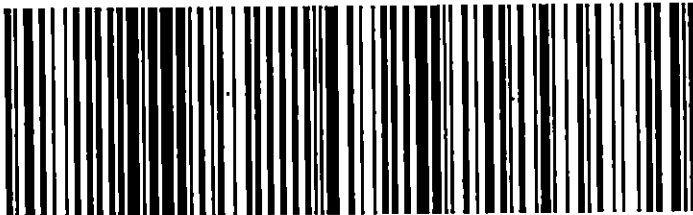
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