

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely
Case No. 2016-CP-39-00103

Appellate Case No. 2019-000235

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SC Court of Appeals

Scott Arbet, Plaintiff..... Respondent

v.

Riverstone Development Group, Inc.....Appellant

FINAL BRIEF OF RESPONDENT SCOTT E. ARBET

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STATEMENT OF ISSUES ON APPEAL

- I. THE COURT PROPERLY FOUND THAT RIVERSTONE WAS PRECLUDED BY SOUTH CAROLINA CODE ANN. § 40- 11-370(C) FROM ENFORCING THE PROVISIONS OF THE CONSTRUCTION CONTRACT AT ISSUE

- II. THIS CASE IS NOT DISTINGUISHABLE FROM C-SCULPTURES

STATEMENT OF THE CASE

On or about February 1, 2016, Plaintiff/Respondent Scott E. Arbet (“Arbet”) brought this action against Defendant/Appellant Riverstone Development Group, Inc. (“Riverstone”). Arbet brought causes of action against Riverstone for declaratory judgment, breach of contract, breach of express and implied warranties, negligence, negligent misrepresentation, fraud, constructive fraud, breach of fiduciary duty, and violation of the South Carolina Unfair Trade Practices Act. [R. pp. 12-24]. Thereafter, on or about August 16, 2016, Arbet amended his complaint to add causes of action for violation of South Carolina Code Section 29-5-10, slander of title, and equitable indemnification. [R. pp. 25-46].

On or about September 15, 2016, Riverstone filed its answer and counterclaims for breach of contract and quantum meruit against Arbet and on September 19, 2016, Arbet filed his reply. [R. pp. 47-61]. On November 28, 2017, Arbet filed for summary judgment on his declaratory judgment cause of action and, subsequently, added sought summary judgment on Riverstone’s counterclaims. [R. pp. 108-111, 112]. A hearing on Arbet’s motion for judgment was held on December 6, 2019 before the Honorable Perry H. Gravely and, on January 7, 2019, the Court issued its Order granting Arbet’s motion. [R. pp. 1-6].

On or about January 11, 2019, Riverstone moved to alter or amend the Court’s January 7, 2019 Order. [R. pp. 125-129]. On February 6, 2019, the Honorable Perry H. Gravely denied Riverstone’s motion and this appeal ensued. [R. pp. 7-10].

STATEMENT OF FACTS

In February 2015, Riverstone was a licensed general contractor with the South Carolina Contractor's Licensing Board holding a “BD4” license classification under License No.: 114265. [R. p. 1, lines 8-9]. Pursuant to *South Carolina Code Ann.* § 40-11-260(A)(4) (2015), a BD4

license classification limited Riverstone from bidding on or performing jobs which exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00). [R. p. 1, line 12 – p. 2, line 1 and *See South Carolina Code Ann. § 40-11-260(A)(4)* (2015)].

Arbet and Riverstone entered into a written contract (“Contract”) on or about February 13, 2015, wherein Riverstone agreed to be the general contractor for the construction of a residence for Arbet, located in Pickens County, South Carolina (“Arbet Project”). [R. p. 2, lines 4-6]. The “Contract Sum” under the Contract was “Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) with final contract amount to be adjusted plus or minus 5% based upon client’s final selections and design changes to the Arbet Residence home plan to achieve this budget”. [R. p. 2, lines 7-10].

On April 9, 2015, Arbet and Riverstone entered into “Change Order Number: 001” wherein the additional cost of \$125,337.00 was added to the Contract Sum for the “final design changes as per Exhibit B dated 4-9-15” and builders risk insurance. [R. p. 2, lines 11-13]. Change Order Number: 001 increased the Contract Sum to \$875,337.00. [R. p. 2, lines 13-14]. Arbet and Riverstone subsequently entered into numerous other change orders such that Riverstone alleged that the final Contract Sum was \$1,004,197.00. [R. p. 2, lines 14-16].

ARGUMENT

I. THE COURT PROPERLY FOUND THAT RIVERSTONE WAS PRECLUDED BY SOUTH CAROLINA CODE ANN. § 40- 11-370(C) FROM ENFORCING THE PROVISIONS OF THE CONSTRUCTION CONTRACT AT ISSUE

Pursuant to *South Carolina Code Ann. § 40-11-370(C)* “[a]n entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract.” *See South Carolina Code Ann. § 40-11-370(C)*. Further, the South Carolina Supreme Court, in C-Sculptures, LLC v. Brown, was very clear in finding that an “under-

licensed” general contractor does not have a “valid license” as required by *South Carolina Code Ann.* § 40-11-370(C) as to avoid the door-closing effect and to enable the contractor to be able to enforce the terms of a contract. *See e.g. C-Sculptures, LLC v. Brown*, 403 S.C. 53, 742 S.E.2d 359 (2013) (*wherein an under-licensed general contractor was deemed not to have a valid license to perform work on the project and, consequently, was precluded from enforcing the provisions of the related construction contract*).

In determining the proper licensing group, *South Carolina Code Ann.* § 40-11-300(A) dictates that the “total cost of construction must be used to determine the appropriate license group for a project” and the ‘total cost of construction’ is defined in the Code as meaning “the actual cost incurred by the owner, all contractors, subcontractors, and other parties for labor, material, equipment, profit, and incidental expenses for the entire project”. *See South Carolina Code Ann.* §§ 40-11-300(A) and 20(23). Furthermore, and an entity “engaging in general or mechanical construction on a project without the required license or certificate **must immediately withdraw** from the construction project”. *See South Carolina Code Ann.* § 40-11-300(B) (*emphasis added*).

In the matter at hand, Riverstone held a “BD4” general contractor’s license with the South Carolina Department of Labor, Licensing and Regulation, which enabled Riverstone to be able to bid on and perform jobs which did not exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00). [R. p. 1, line 8 – p. 2, line 1 and *See South Carolina Code Ann.* § 40-11-260(A)(4) (2015)]. It was, therefore, unlawful for Riverstone to even enter into the Contract on February 13, 2015 where, on the face of the Contract itself, Riverstone offered to perform work which exceeded its license limitation of Seven Hundred Fifty Thousand Dollars (\$750,000.00) as the Contract states that the “Contract Sum” was “Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) with final contract amount to be adjusted **plus or minus 5%**”. *See South Carolina*

Code Ann. § 40-11-200(A) (A person who “offers to practice in this State in violation of this Chapter” “is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than five thousand dollars”).

It was equally unlawful for Riverstone to not immediately withdraw for the project on or about April 9, 2015, once the Project’s plans and specifications were finished and the parties came to the real ‘Contract Sum’ in Change Order Number: 001, the “Total Price” was \$875,337.00. [R. p. 2, lines 11-13 and *See South Carolina Code Ann. § 40-11-300(B) (An entity individual engaging in general construction on a project without the required license must immediately withdraw from the construction project)*. This “Total Price” of \$875,337.00 clearly exceeded Riverstone’s BD4 license capacity and Riverstone, accordingly, did not have a “valid license” to perform the work. *See e.g. C-Sculptures, LLC, 403 S.C. 53, 742 S.E.2d 359 and See South Carolina Code Ann. § 40-11-300(A) (requiring that “the actual cost incurred by the owner, all contractors, subcontractors, and other parties for labor, material, equipment, profit, and incidental expenses for the entire project” – the ‘total cost of construction’ – be used “to determine the appropriate license group for a project”)* and *See South Carolina Code Ann. § 40-11-270(A) (mandating that a licensee is confined to the limitations on its license group)*. Accordingly, the “appropriate license group” for the Project from at least April 9, 2015, when the “Total Price” was \$875,337.00, until the Riverstone left the Project, when the actual cost according to Riverstone’s own mechanics’ lien was \$1,004,197.00, exceeded Riverstone’s BD4 license. *Id.*

The Court, accordingly, was proper in finding that Riverstone did not have a valid license as required by *South Carolina Code Ann. § 40-11-370(C)* to bid or perform work on a project where the total cost of construction exceeded \$750,000.00. [R. p. 4, lines 12-14]. Further, as it is indisputable that: 1) on the face of the contract, the contract sum could exceed Riverstone’s

license limitation in violation of *South Carolina Code Ann.* § 40-11-260(A)(4) (2015) and 2) Riverstone failed to withdraw from the Arbet project when the total cost of construction exceeded Riverstone’s license limitation in violation of *South Carolina Code Ann.* § 40-11-300(B), the Court was proper in granting summary judgment. *See Moore v. Barony House Rest., LLC*, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009) (citing *Rife v. Hitachi Constr. Mach. Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005)) (*when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted*).

II. THIS CASE IS NOT DISTINGUISHABLE FROM C-SCULPTURES

In *C-Sculptures, LLC v. Brown*, the South Carolina Supreme Court was very clear in finding that an “under-licensed” general contractor does not have a “valid license” as required by *South Carolina Code Ann.* § 40-11-370(C) as to avoid the door-closing effect and to enable the contractor to be able to enforce the terms of a contract. *See e.g. C-Sculptures, LLC v. Brown*, 403 S.C. 53, 742 S.E.2d 359 (2013). The laws of South Carolina are equally clear that: 1) a contractor is confined to its license; 2) the ‘total cost of construction’ determines the license group; and 3) a contractor must immediately withdraw from a project when the total cost of construction exceeds its license limitation. *See South Carolina Code Ann.* §§ 40-11-270(A) , 300(A) and (B).

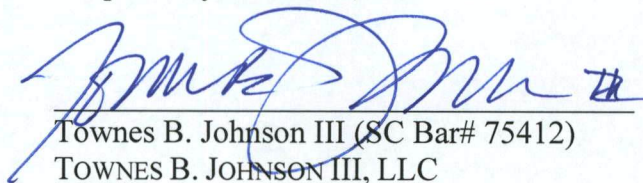
In the matter at hand, Riverstone was “under-licensed” to offer or continue to engage in any construction which exceeded \$750,000.00. [R. p. 1, line 8 – p. 2, line 1 *and See South Carolina Code Ann.* § 40-11-260(A)(4) (2015) *and See e.g. C-Sculptures, LLC v. Brown*, 403 S.C. 53, 742 S.E.2d 359 (2013) (*wherein an under-licensed general contractor was deemed not to have a valid license to perform work on the project and, consequently, was precluded from enforcing the provisions of the related construction contract*). The Arbet project was, pursuant to Riverstone’s

mechanics lien, \$1,004,197.00 and Riverstone, accordingly, was “under-licensed” to continue to perform services related to it. [*Id.* and R. pp. 39-41].

CONCLUSION

For the foregoing reasons, Arbet respectfully asks this Court to affirm the Circuit Court remand this matter back for trial on Arbet’s remaining causes of action against Riverstone.

Respectfully submitted,



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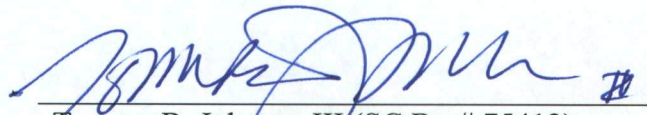
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.



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