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From: Nate Pierce <Nate.Pierce@mortongettys.com>

Sent: Thursday, July 9, 2020 3:31 PM

To: Britney Mosteller <Britney.Mosteller@mortongettys.com>

Subject: FW: Seagraves v. North Regional

Nate Pierce, Attorney
Direct Tel: 803.366.3414

-----Original Message-----

From: Williams, Kymberlee <kwilliams@sccourts.org>
Sent: Sunday, May 31, 2020 4:20 PM
To: Nate Pierce <Nate.Pierce@mortongettys.com>
Subject: Re: Seagraves v. North Regional

Good afternoon, Mr. Pierce:

Enclosed please find the transcript and invoice you have requested.

Let me know if you need anything additional.

Thank you!

Kymberlee Mignanelli Williams, CSR/RPR
SC Official Circuit Court Reporter
(704) 281-3816

From: Nate Pierce <Nate.Pierce@mortongettys.com>
Sent: Wednesday, April 8, 2020 10:32:19 AM
To: Williams, Kymberlee
Subject: Seagraves v. North Regional

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pg 9 of 21

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**To:**

J. Nathaniel Pierce, Esquire  
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**Date Submitted:** 05/30/20

**Case Name:** Seagraves v. North Regional III

**Number  
of Pages:** 10

**Price Per Page:** \$4.25

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STATE OF SOUTH CAROLINA  
LANCASTER COUNTY

IN THE COURT OF COMMON PLEAS  
CIRCUIT COURT DIVISION  
2019-CP-29-01143

-----X  
 JA SEAGRAVES dba SEAGRAVES :  
 CITY WIDE PAVING, :  
 :  
 Plaintiff, :  
 :  
 vs. :  
 :  
 NORTH REGIONAL III, LLC, :  
 :  
 Defendant. :  
 -----X

TRANSCRIPT OF RECORD

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**SC Court of Appeals**

March 4, 2019  
Lancaster, South Carolina

B E F O R E

The Honorable Kristi Curtis, Judge Presiding.

A P P E A R A N C E S

J. NATHANIEL PIERCE, ESQ.  
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Rock Hill, South Carolina 29731

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Reported by: Kimberlee M. Williams, CSR/RPR  
State of South Carolina  
Official Court Reporter  
P.O. Box 283  
Pineville, North Carolina 28134

SEAGRAVES CITY WIDE PAVING v. NORTH REGIONAL III, LLC – 2019-CP-29-01143

I N D E X

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| CERTIFICATE OF DELIVERY | 10 |

E X H I B I T S

(NONE OFFERED)

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SEAGRAVES CITY WIDE PAVING v. NORTH REGIONAL III, LLC – 2019-CP-29-01143

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P R O C E E D I N G S

\* \* \*

MONDAY, MARCH 4, 2019

LANCASTER, SOUTH CAROLINA

\* \* \*

(Whereupon, the following proceedings were held in open court. All parties were present.)

THE COURT: JA Seagraves dba Seagraves City Wide Paving v. North Regional III, LLC. This is a Motion to Dismiss.

MR. MCCOY: Yes, ma'am. May it please the Court, Brian McCoy. I represent North Regional in this case as well. North Regional owns property in the commercial park here in Lancaster County.

The plaintiff in this case, Seagraves, is a paving contractor. I believe it's not incorporated or it's an LLC. They did some work on my client's property, paving work, and has asserted a claim -- filed a mechanic's lien and then asserted a complaint asserting three causes of action.

One is foreclosure of the mechanic's lien.

Two is a breach of contract; the contract being the contract to provide the paving services.

Three is the quantum meruit, which, I guess, is the same work in case the contract claim goes awry as is

## SEAGRAVES CITY WIDE PAVING v. NORTH REGIONAL III, LLC – 2019-CP-29-01143

1 often pleaded.

2 My client's motion is based on Statute 40-11-370.  
3 Your Honor probably is familiar with that statute. I  
4 think it's a very clear statute. I won't say it's a  
5 harsh statute, but it was intended to be that way by our  
6 Legislature; that is, to avoid having unlicensed  
7 contractors perform work in South Carolina.

8 So 40-11-370(c) provides: "An entity which does  
9 not have a valid license as required by this chapter may  
10 not bring an action either at law or in equity to  
11 enforce the provisions of a contract."

12 The other statutory provision that applies is  
13 specific to Mechanic's Liens. There was a fairly recent  
14 amendment a few years ago, 29-5-15(a), that requires to  
15 file a Mechanics's Lien, the contractor must provide the  
16 County's Clerk of Court or Registrar of Deed proof that  
17 he is licensed or registered, if required by law to be  
18 licensed or registered, his proof of licensure or  
19 registration. The contractor must record his  
20 contractor's license number or registration number on  
21 the lien document when the lien document is filed.

22 So a Mechanic's Lien has to have a license number  
23 on it to be valid if a license is required for that  
24 work.

25 So my client's motion to dismiss is fairly

## SEAGRAVES CITY WIDE PAVING v. NORTH REGIONAL III, LLC – 2019-CP-29-01143

1 straightforward under these two statutes. There is no  
2 license number on the Mechanic's Lien, so it's invalid.  
3 That means the motion to foreclose that Mechanic's Lien  
4 should be dismissed.

5 Then the breach of contract and quantum meruit  
6 claims are also foreclosed by 40-11-370(c), because Mr.  
7 Seagraves does not have a South Carolina licence.

8 So that requires a dismissal for all three of the  
9 claims, Your Honor. Maybe to save time and to  
10 anticipate Mr. Pierce's argument which he provided to me  
11 in a memo -- I believe his argument is, well, this is in  
12 the nature of an affirmative defense, and therefore it  
13 shouldn't be knocked out on a motion to dismiss.

14 My response to that would be, I believe it's an  
15 element of the claim when it comes to a construction  
16 contract that requires a license. An element of the  
17 claim is that I have a license in South Carolina, and  
18 they have not satisfied that element anywhere in  
19 compliance.

20 So based on the statutes I cited, the plain  
21 language of those statutes, Your Honor -- and there are  
22 cases as well. The plain language of those statutes, we  
23 believe, requires dismissal of the claim in its  
24 entirety.

25 THE COURT: Thank you. Tell me your name.

## SEAGRAVES CITY WIDE PAVING v. NORTH REGIONAL III, LLC – 2019-CP-29-01143

1 MR. PIERCE: I am Nate Pierce from Morton &  
2 Gettys. I represent the plaintiff in this case.

3 With all due respect to Mr. McCoy's argument, I  
4 would like to object on an ongoing basis to any facts  
5 outside the four corners of the complaint. I think that  
6 he was pretty careful to avoid that; however, the case  
7 law surrounding the arguments I am going to make does it  
8 make pretty clear that it's very easy for a party to  
9 waive their right to appeal based on consideration of  
10 facts outside the record. So I will simply make that  
11 ongoing objection.

12 Your Honor, I did file a memorandum in opposition.  
13 I do have a hard copy of that along with all of the  
14 cases that I will be citing.

15 Your Honor, Mr. McCoy did state my position  
16 generally. As you are aware, in my Motion to Dismiss  
17 under Rule 12, the Trial Court should consider only the  
18 allegations set forth in the Plaintiff's complaint.  
19 Under the first case Unlimited, Inc. v. Holbreck  
20 (phonetic). That is cited at 390-SC-609. The Statutory  
21 prohibitions concerning the enforcement of a contract  
22 are considered to be affirmative defenses in South  
23 Carolina, because affirmative defenses necessarily  
24 require an examination of facts outside the four corners  
25 of the complaint.

## SEAGRAVES CITY WIDE PAVING v. NORTH REGIONAL III, LLC – 2019-CP-29-01143

1 Affirmative defenses ordinarily are not allowed to  
2 be asserted in a motion to dismiss. They are typically  
3 required to be asserted in a summary judgment motion, a  
4 directed verdict motion, or a trial.

5 To be candid with the Court, there is a slight  
6 exception to this rule when the affirmative defense is  
7 obviously the base of the complaint, whereas all of the  
8 necessary elements for the defense are available in the  
9 complaint.

10 To address Mr. McCoy's points, Your Honor, I don't  
11 believe there is any difference in the standard for any  
12 run-of-the-mill breach of contract case and breach of  
13 contract, only construction, contracts. I don't believe  
14 we are required to plead any additional information in  
15 that context, simply because the underlying dispute has  
16 to do with construction.

17 Also, Your Honor, the sole basis today for the  
18 defendant's motion are these two statutory defenses,  
19 because that is their sole basis and because they are  
20 affirmative defenses which require inquiry outside the  
21 four corners of the complaint. We would say his motion  
22 should be dismissed because there is not sufficient  
23 grounds for it to be granted. I think that is it, Your  
24 Honor. It's pretty straightforward.

25 THE COURT: So is he licensed or is he not

## SEAGRAVES CITY WIDE PAVING v. NORTH REGIONAL III, LLC – 2019-CP-29-01143

1 licensed?

2 MR. PIERCE: Your Honor, subject to my objection,  
3 he is not licensed, Your Honor.

4 THE COURT: I understand that your argument is that  
5 that is not appropriate for a motion for dismissal. It  
6 should be raised in a motion for summary judgment. Are  
7 we just prolonging the agony here?

8 You feel like it's not appropriate for a motion to  
9 dismiss, but is there some other ground that you would  
10 be arguing for a motion for summary judgment?

11 MR. PIERCE: Your Honor, as far as the contract in  
12 equity claims, I do believe under South Carolina law  
13 there is a potential for curing moving forward. I don't  
14 believe it's right to foreclose that option on the  
15 grounds that have been alleged for a motion to dismiss,  
16 which are not proper under South Carolina law.

17 As far as the Mechanic's Lien statute, Your Honor,  
18 it doesn't say you have to have a license to file a  
19 Mechanic's Lien. It says if you are required to have a  
20 license, you must list your license number to file a  
21 Mechanic's Lien.

22 So because it's required by law, that is an  
23 additional fact that we will be arguing.

24 THE COURT: Mr. McCoy, is there anything you want  
25 to tell me in response?

SEAGRAVES CITY WIDE PAVING v. NORTH REGIONAL III, LLC – 2019-CP-29-01143

1           MR. MCCOY: Just that even if we are looking at the  
2           four corners of the complaint, there is no allegation  
3           that I, Mr. Plaintiff, am a licensed contractor. I  
4           think that is fatal for all claims.

5           THE COURT: I will look at the statute and the case  
6           law that you have provided, Mr. Pierce, and I will take  
7           it under advisement.

8           MR. PIERCE: Thank you, Your Honor.

9                           - - -END OF TRANSCRIPT- - -

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CERTIFICATE OF REPORTER

I, Kimberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Lancaster County, South Carolina, on the 4th day of March, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

This, the 30th day of May, 2020.



KYMBERLEE M. WILLIAMS, CSR/RPR