

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUL 31 2020

SC Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Lancaster County Civil Action Number 2018-CP-29-0191

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; Edgewater Corporate Center Association, Inc.; J&S Inc.; Loan Trust,
LLC; Sharestores Investments, LLC, Defendants,

Of which North Regional III, LLC,Respondent.

INITIAL BRIEF OF RESPONDENT

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Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

- I. Was the trial court justified in considering the statutory requirements for a contractor to bring an action when entering a dismissal pursuant to South Carolina Rule of Civil Procedure 12(b)(6)?**

STATEMENT OF THE CASE

The Appellant filed the Summons and Complaint on October 15, 2018 in the Lancaster County Court of Common Pleas. The basis for the filing by Appellant, Plaintiff J.A. Seagraves d/b/a J.A. Seagraves City Wide Paving, concerned paving work it performed on property owned by the Respondent, Defendant North Regional III, LLC. There were three (3) causes of action proffered: Foreclosure of a Mechanic's Lien, Breach of Contract, and Quantum Meruit. Respondent, through its then counsel, brought a Motion to Dismiss for failure to state a claim upon which relief could be granted pursuant to South Carolina Rule of Civil Procedure ("SCRCP") 12(b)(6), asserting that the Complaint failed to allege that the Appellant was a licensed contractor in the State of South Carolina.

The hearing on the Motion to Dismiss was held on March 4, 2019. The Court entered an Order Granting Motion to Dismiss of Defendant North Regional III, LLC on June 10, 2019. In that Order, the Court found that the Complaint did not allege the the Appellant was a licensed, South Carolina contractor, and that pursuant to S.C. Code §40-11-370, such an unlicensed contractor is prohibited from bringing an action at law or equity to enforce the contract. The Court further found that the mechanic's lien filed prior to the filing of the lawsuit was invalid pursuant to S.C. Code § 29-5-15(A) and ordered that it must be cancelled. This appeal followed.

STANDARD OF REVIEW

It is well settled law that, "[i]n reviewing the dismissal of a claim for failure to state facts

sufficient to constitute a cause of action under Rule 12(b)(6), SCRCRCP, the appellate court applies the same standard of review as the trial court. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The circuit court may dismiss a claim when the defendant demonstrates the plaintiff's, "failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." Hambrick v. GMAC Mortgage Corporation, 370 S.C.118, 121, 634 S.E.2d 5, 7 (2006).

ARGUMENT

In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Doe at 395, 645 S.E.2d at 247. If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Id., citing Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. Flateau v. Harrelson, 355 S.C. 197, 201-202, 584 S.E. 2d 413, 415 (2003) citing Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001); see also Gray v. State Farm Auto Insurance Company, 327 S.C. 646, 491 S.E.2d 272 (Ct.App.1997) (motion must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case).

Appellant argues that the trial court erred by considering the South Carolina Code sections that require contractor licensure to bring the claims brought in this case. Appellant asserts that statutory requirements applicable in this case are in the nature of affirmative defenses and thus, not being within the "four corners of the complaint", should not have been considered

by the court during a 12(b)(6) motion.

The two sections referenced by both prior Respondent counsel and the trial court are S.C. Code section 40-11-370 (c), and S.C. Code section 29-5-15(A). S.C. Code Section 41-11-370 (c) provides:

An 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.** An entity that enters into a contract to engage in construction in a name other than the name that appears on its license may not bring an action either at law or in equity to enforce the provisions of the contract.

(emphasis added). S.C. Code Section 29-5-15(A) provides:

To file mechanic's lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien is filed.

The language in section S.C. Code 40-11-370 (c) is clear; an unlicensed or unregistered contractor cannot bring an action to enforce provisions of a contract. The code section being prohibitive, it is essential for any such contract enforcement cause of action to survive that such licensure or registration be properly pled.

Likewise, S.C. Code Section 29-5-15(A) clearly provides a requirement that a contractor must be licensed or registered to file a mechanic's lien, and provide proof of same by recording the license or registration number on the lien document. Not only was such licensure or registration not properly pled, a review of Exhibit "A" to the Appellant's Complaint contains no

such license or registration number. The Court did not review anything outside of the “four corners” of the complaint but, in dismissing the case, found that the “Complaint does not allege that the Plaintiff is a contractor licensed in South Carolina.” Order Granting Motion to Dismiss Defendant North Regional III, LLC, P. 1. Finding that the statutory requirements were not properly pled by the Appellant, the Appellant could not legally bring the cause of action. Even viewing the facts and allegations and inferences therefrom in a light most favorable to the plaintiff, the Complaint lacked the required element showing licensing. Therefore, the trial court properly dismissed the action pursuant to SCRCP 12(b)(6).

Further, Appellant’s argument misstates South Carolina case law. In Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006), the South Carolina Supreme Court addressed the issue of whether the defense of being a bona fide purchaser, for value, could be asserted in a 12(b)(6) motion. In Spence a litigant asserted that 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, 368 S.C. at 123, 628 S.E.2d at 878. That Court explained that this rule has been relaxed in modern practice, “when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense[.]” Id. That court determined that the litigant “properly asserted the affirmative defense of bona fide purchaser for value in a Rule 12(b)(6) motion. The defense did not raise a disputed issue of fact and the relevant facts were completely disclosed in the complaint. ...The circuit court properly dismissed the complaint[.]” Id.

The case sub judice presents that same issue. The Respondent properly raised the statutory issues listed above in its Rule 12(b)(6) motion. No additional fact finding was needed

and there is no disputed issue of fact.¹ Thus, the court could properly consider the statutory requirements in deciding to grant the motion to dismiss.

Appellants argument that the law precludes the assertion of an affirmative defense at a Rule 12(b)(6) proceeding defies logic. For example, such reasoning would preclude the raising of a statute of limitations claim in a case where the complaint alleges that the cause of action accident occurred more than statutory three (3) years prior to the filing of the complaint. In the Flateau case, previously cited, a motion to dismiss pursuant to Rule 12(b)(6) was brought, raising a number of issues, including that the action was barred by the statute of limitations. Flateau, 355 S.C. at 201, 584 S.E.2d at 415. The Supreme Court upheld the dismissal due to bringing the action after the statute of limitations had run. Id. at 208, 584 S.E.2d at 419.

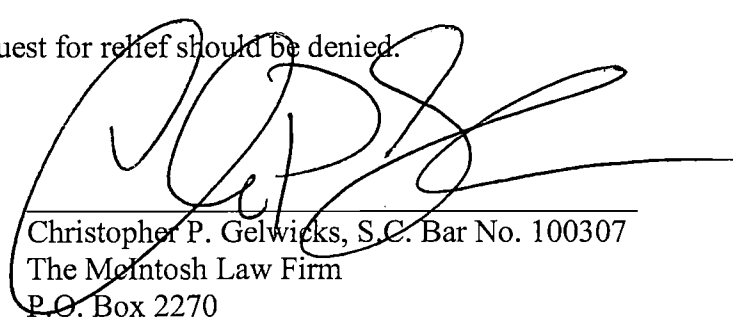
Logically, defending such a complaint should not, and in accordance with Flateau, did not require the defendant to file an answer and list the affirmative defense of statute of limitations. Thus, a motion pursuant to SCRPC 12(b)(6) is the proper mechanism to address such a defense that is exhibited from the allegations in the complaint itself. Similarly, since being a licensed contractor is required in order for a contractor to bring an action to enforce a contract and to place a mechanic's lien, the Complaint having not alleged such licensing, fails to plead an essential element of the cause of action. Consequently, the trial court was correct in dismissing the Complaint.

¹ A review of the transcript shows no offer of proof that the Appellant was a licensed or registered contractor, and no amended complaint was filed to add this allegation.

CONCLUSION

The trial court was correct when it considered the statutory requirements of a contractor bringing an action to enforce a contract in the South Carolina Code. Consequently, the trial court did not err, and the Appellant's request for relief should be denied.

July 30, 2020



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STATE OF SOUTH CAROLINA
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Appellate No. 2019-001143

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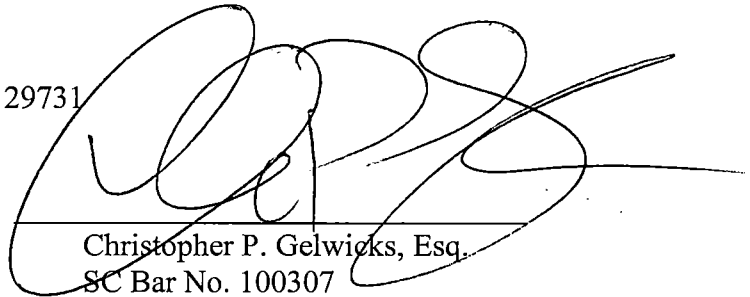
Of which North Regional III, LLC,Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that he has served this Brief of Respondent upon counsel for said Appellant by placing said copy in a postpaid envelope addressed as follows, which is the last known address, and by depositing said envelope and its contents in the United States mail:

Appellant: J. Nathaniel Pierce
Morton & Gettys, LLC
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This 30th day of July, 2020.



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July 29, 2020

VIA OVERNIGHT MAIL
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29210

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SC Court of Appeals

Re: J.A. Seagraves d/b/a J.A. Seagraves City Wide Paving v. North Regional III, LLC
Appellate Number: 2019-001143
Our File No. 11723.00

Dear Sir/Madam:

Enclosed please find the original and one copy of the Brief of Respondent and Certificate of Service on behalf of the Respondent, North Regional III, LLC.

Please file the original and return a file stamped copy in the self-addressed stamped envelope provided for your convenience.

Please do not hesitate to contact our office with any questions.

Very Truly Yours,
THE MCINTOSH LAW FIRM, P.C.


CHRISTOPHER P. GELWICKS
Attorney at Law

CPG/kma

Enclosures: Brief of Respondent, Certificate of Service, and Self-Addressed Stamped Envelope

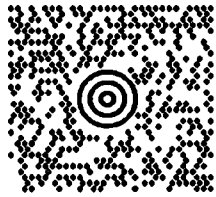
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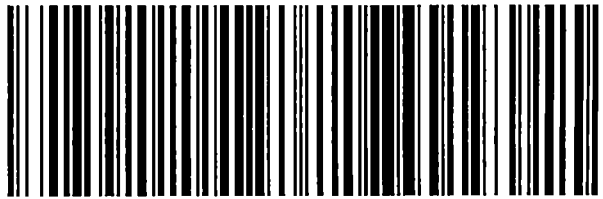
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Shipping Total

Shipping Fees

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UPS Next Day Air	\$25.60
Fuel Surcharge	\$1.20

Additional Option Fees

Carbon Neutral	\$0.20
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Delivery Confirmation	\$6.35

Subtotals

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Additional Option Fees	\$6.55
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