

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Sep 25 2020

SC Court of Appeals

APPEAL FROM LANCASTER COUNTY
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

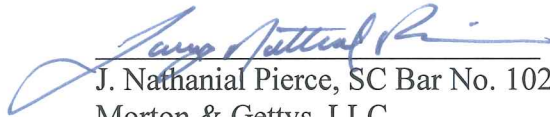
J.A. Seagraves d/b/a J.A. Seagraves City Wide Paving,Appellant,

v.

North Regional III, LLC,Respondent.

RECORD ON APPEAL

September 25, 2020



J. Nathaniel Pierce, SC Bar No. 102803
Morton & Gettys, LLC
P.O. Box 707
Rock Hill, SC 29731
803.366.3388

Attorney for Appellant

Other Counsel of Record:
The McIntosh Law Firm
Christopher Gelwicks, Esquire
P.O. Box 2270
Davidson, NC 28036

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STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Civil Action No. 2018-CP-29-01191

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

Plaintiff,

vs.

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

Defendants.

ORDER GRANTING MOTION TO
DISMISS OF DEFENDANT NORTH
REGIONAL III, LLC

This matter comes before the Court on Defendant North Regional' III, LLC's Motion to Dismiss. A hearing was held on March 4, 2019 before the undersigned. At the hearing, the plaintiff was represented by J. Nathaniel Pierce, Esq., and the Defendant was represented by Brian S. McCoy, Esq. Based on the arguments made, the pleadings, memoranda of law, and the governing law, I find and Order as follows:

1. The Complaint does not allege that the Plaintiff is a contractor licensed in South Carolina. In the Motion to Dismiss, Defendant alleges that Plaintiff is not licensed in South Carolina. At the hearing, upon inquiry from the Court, counsel for the Plaintiff stated that Plaintiff is not a contractor licensed in South Carolina.

2. Under South Carolina law a party cannot bring an action in law or equity if it is not a licensed contractor in South Carolina. S.C. Code §40-11-370, provides:

(C) 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.

3. Accordingly, the Motion to Dismiss is granted, and each of the claims set forth in the Complaint are dismissed.

4. Further, the mechanic's lien is invalid and must be cancelled. South Carolina Code § 29-5-15(A) provides: "To file a 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 document is filed."

5. The mechanic's lien filed by the Plaintiff and recorded in Book MECH 2018 at Page 174 is cancelled and must be cancelled of record.

IT IS SO ORDERED.

Kristi F. Curtis
Circuit Judge
Signature Page to Follow



Lancaster Common Pleas

Case Caption: James A Seagraves , plaintiff, et al VS North Regional Iii Llc ,
defendant, et al
Case Number: 2018CP2901191
Type: Order/Dismissal

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2019-06-10 12:29:47 page 3 of 3

ELECTRONICALLY FILED - 2019 Jun 10 12:47 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2901191

STATE OF SOUTH CAROLINA
COUNTY OF Lancaster
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2901191

James A Seagraves et al
PLAINTIFF(S)

Sharestates Investments Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff's motion to alter or amend the Order of Dismissal is DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/17/2019 .

J.A. Seagraves City Wide Paving
Edgewater Corporate Center Association Inc
J And S Inc
Loan Trust Llc
Sharestates Investments Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Lancaster Common Pleas

Case Caption: James A Seagraves , plaintiff, et al VS North Regional Iii Llc ,
defendant, et al
Case Number: 2018CP2901191
Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2019-06-17 14:54:42 page 3 of 3

ELECTRONICALLY FILED - 2019 Jun 17 3:19 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2901191

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Civil Action No. 2018-CP-29-01191

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

Plaintiff,

vs.

MOTION TO DISMISS OF NORTH
REGIONAL III, LLC

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

Defendants.

Defendant, North Regional III, LLC (hereinafter "Defendant"), pursuant to Rule 12, SCRCP, moves to dismiss the Complaint filed by the Plaintiff, J.A Seagraves d/b/a J.A. Seagraves City Wide Paving, (hereinafter "Plaintiff"), on the following grounds:

1. Upon information and belief, the Plaintiff is not a contractor licensed in South Carolina. The Complaint should be dismissed in its entirety because under South Carolina law a party cannot bring an action in law or equity if it is not a licensed contractor in South Carolina. S.C. Code §40-11-370, provides:

(C) 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.

2. Accordingly, each of the claims set forth in the Complaint, to wit (i) mechanic's lien foreclosure, (ii) breach of contract, and (iii) quantum meruit, must be dismissed.

3. For additional reasons, the mechanic's lien is invalid and must be dismissed or cancelled. On its face, the lien is invalid. South Carolina Code § 29-5-15(A) provides: "To file a 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 document is filed."

4. The mechanic's lien filed by the Plaintiff and attached to the Complaint as Exhibit A is defective on its face because, *inter alia*, it fails to include a license number.

5. North Regional III, LLC may supplement this motion with a memorandum with supporting authorities, and evidence, which are incorporated herein by reference.

WHEREFORE, Defendant prays for dismissal of this action, for the costs of this action and attorneys' fees, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this 15th day of January, 2019.

s/Brian S. McCoy

Brian S. McCoy
McCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
(803) 366-2280

ATTORNEY FOR DEFENDANT
NORTH REGIONAL III, LLC

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

The Honorable Kristi F. Curtis, Circuit Court Judge,

Appellate No. _____

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

v.

North Regional III, LLC, Respondent.

NOTICE OF INTENT TO APPEAL

Appellant appeals the Order of Judgment of the Honorable Kristi F. Curtis, dated June 17, 2019 and filed herein. Plaintiff-Appellant received an electronic copy of the Form-4 Order on Monday, June 17, 2019, making Wednesday, July 17, 2019 the last day for filing the Notice of Intent to Appeal.

Respectfully Submitted,

By: s/J. Nathaniel Pierce
Morton & Gettys, LLC
J. Nathaniel Pierce, S.C. Bar No. 102803
Attorney for Appellant
P.O. Box 707, Rock Hill, SC 29731
T: 803.366.3388; F: 803.366.4044
nate.pierce@mortongettys.com

June 24, 2019
Rock Hill, South Carolina

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. : TRANSCRIPT OF RECORD
 :
 NORTH REGIONAL III, LLC, :
 :
 Defendant. :
-----X

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.
MORTON & GETTYS
Fountain Park Place
331 East Mait Street
Suite 300
Rock Hill, South Carolina 29731

BRIAN MCCOY, ESQ.
MCCOY LAW FIRM, LLC
375 East Main Street
Rock Hill, South Carolina 29730

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

I N D E X

PROCEEDINGS	3
CERTIFICATE OF DELIVERY	10

E X H I B I T S

(NONE OFFERED)

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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

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

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.

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.

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

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?

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, Kymberlee 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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM LANCASTER COUNTY
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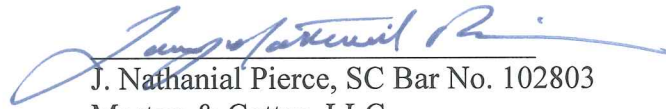
v.

North Regional III, LLC,Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Designation of Matter complies with Rule 210(g), SCACR.

September 25, 2020



J. Nathaniel Pierce, SC Bar No. 102803
Morton & Gettys, LLC
P.O. Box 707
Rock Hill, SC 29731
803.366.3388
Attorney for Appellant