

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 EVARISTA JUAN LORENZO,)
)
 Plaintiff,)
)
 v.)
)
 PORT CITY ELEVATOR, INC., ALAN)
 TOPPER D/B/A ALL)
 CONSTRUCTION, 2020 CUSTOM)
 CONTRACTORS A/K/A 2020)
 CUSTOM CONTRACTORS, LLC,)
 CITADEL SITE MANAGEMENT,)
 LLC, DVBT CONSTRUCTION A/K/A)
 DVBT CONSTRUCTION, LLC,)
 DVBT MULTISERVICES, LLC,)
 BEVERLY CONSTRUCTION)
 GROUP, LLC, BEVERLY HOMES,)
 LLC, BEVERLY HOMEBUILDERS,)
 LLC, STRAND PAINT)
 CONTRACTORS, LLC, DEPAZ)
 PAINTING LLC, ENHANCED)
 HEATING & AIR CONDITIONING,)
 LLC, CARLTON PENDER, AND)
 JOAN PENDER)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

Docket No.: 2018-CP-22-824

**ORDER DISMISSING DEFENDANT
BEVERLY HOMES, LLC FROM
THIS LAWSUIT**

RECEIVED
 MAR 25 2021
 SC Court of Appeals

On December 4, 2020, this Court held a hearing on Defendant Beverly Homes, LLC's Motion to Dismiss. Based upon the review of the record, the submitted memoranda, and the arguments of counsel, this Court grants the motion.¹

Before filing the lawsuit, Plaintiff filed a claim for her injuries with the South Carolina Worker's Compensation Commission, and she has continued to pursue

¹ The Court notes that all of the exhibits listed in this Order have been filed previously with the Court as part of the motions and memoranda filed, and this Order makes reference to those exhibits as discussed.

that claim for several years. Plaintiff added Beverly Construction Group, LLC, Beverly Homes, LLC, and Beverly Homebuilders, LLC as defendants to the Second Amended Complaint filed January 15, 2020. Meanwhile, throughout this tort litigation filed with the Court of Common Pleas, Plaintiff has maintained that Beverly Homes, LLC was a general contractor for the construction of the Pender home where she suffered her injuries. Plaintiff has made this assertion against Beverly Homes, LLC in written discovery responses, her architect/contractor expert's deposition testimony, and numerous memoranda and arguments made to the court. Beverly Homes, LLC "denie[d] it had any involvement with the project or construction described in the Complaint. See Defendant Beverly Homes, LLC's Answer to Second Amended Complaint ¶ 4. Beverly Homes, LLC is not a contractor and has never been licensed to perform contracting work.

In this litigation, Plaintiff has made numerous arguments in support of her claim that Beverly Homes, LLC was a general contractor:

A. In response to Beverly Homes, LLC's summary judgment motion, Plaintiff's March 23, 2020 memorandum argued:

- "Plaintiff was working at a construction site at or near 39 Gasparilla Circle, Murrells Inlet, South Carolina where Defendants were also performing work."
- "Plaintiff alleges personal injury against Defendants as a result of her fall down an unmarked and open elevator shaft that was created and/or was under the control of Defendants."
- "The [Second Amended Complaint]" enumerated causes of action against Defendants including negligence in the creation, maintenance, and/or allowance of a dangerous condition on the premises."
- "It is clear that Defendant Beverly Homes LLC had a duty of care to Plaintiff since Beverly Homes LLC had control over the subject premises and control over the hiring of specific subcontractors performing work at the property."

- “Specifically, there are questions as to the control and ownership of the premises, Defendant Beverly Homes, LLC’s role and obligations on the subject construction site, the maintenance and inspections of the subject site, and if subcontractors selected and paid by Defendant Beverly Homes LLC contributed to Plaintiff’s fall.”
- “... [I]t is clear that the subcontractors believed that Beverly Homes had hired them and was responsible for payment of the services provided at the [Pender] home.”
- “The evidence shows that Beverly Homes hired specific subcontractors to work at the subject premises which indicates Beverly Homes LLC had control over the property and work being performed at the property.”
- Beverly Homes, LLC requested temporary electrical services from Santee Cooper and included a “Residential Service Extension” listing Beverly Homes as the “Home Builder” on the application.
- Various subcontractors sent invoices to Beverly Homes for work done at the Pender residence.

Plaintiff’s Memorandum in Opposition to Defendant Beverly Homes, LLC’s Motion for Summary Judgment, pages 1,6 (emphasis added).

B. Plaintiff’s June 19, 2020 reply memorandum continued to assert that Beverly Homes, LLC was a general contractor for the Pender house. In that memorandum, Plaintiff claimed:

- “... [I]t is clear that Defendant Beverly Homes LLC hired subcontractors to perform work at the subject property including Aaron Horne of 2020 Custom Contractors and entered into subcontracts for work to be performed at the subject property which demonstrates the control Defendant Beverly Homes LLC had over the subcontractors performing the work at the subject premises which lead to the subject incident. We intend to prove that Defendant Beverly Homes LLC selected and hired incompetent subcontractors to perform the construction work at the subject premises and failed to adequately supervise and ensure the property safety measures and training of the subcontractors it hired.”

- “When one general contractor hires a subcontractor to perform work, that general contractor remains responsible for the subcontractor’s work and has control over the subcontractor it hired even if another general contractor or homeowner ultimately pays the subcontractor’s invoice for the work performed.” (emphasis added).

Plaintiff’s Memorandum in Opposition to Defendant Beverly Homes, LLC’s Motion for Reconsideration filed June 19, 2020, pages 4-5.

C. Plaintiff’s expert (Robin Roberts) also echoed Plaintiff’s claims that Beverly Homes was a general contractor for the construction of the Pender residence. In his deposition, he stated:

- Beverly Construction Group, LLC and Beverly Homes, LLC were “co-prime contractors” for the construction of the Pender residence.
- “In general, as being co-prime contractors, this whole thing is their creation.”
- “So I think those things make[] them a co-prime contractor on the site; whether they intended to or not, that is what happened. Then they would have the same obligations as any other contractor or subcontractor on the site.”

Deposition of Robin Roberts (September 16, 2020), page 162, lines 14-5; page 164, lines 3-4; page 182, lines 7-10; page 162, lines 14-18.

Roberts also opined his belief that Beverly Homes, LLC may have liability as an “employer” under the Occupational Safety and Health Administration (OSHA) rules. Id., page 179, line 23-page 184, line 4. Further, Roberts said every one of his opinions about Beverly Homes, LLC in this litigation were based on his belief that Beverly Homes behaved as a contractor on the Pender home and was a “co-prime contractor” with Beverly Construction Group, LLC. Id., page 175, line 12-page 178, line 23.

D. At the December 4, 2020 hearing, Plaintiff conceded that she had claimed Beverly Homes was a general contractor for the Pender house.

E. Plaintiff's December 9, 2020 supplemental memorandum argued, among other things,:

- "The 'Builder Warrantee' proves that Beverly Homes LLC had some control over the premises because it states '[t]his Limited Warranty Agreement is extended by Beverly Homes, LLC, of Myrtle Beach, SC, the Builder, to Carlton & Joan Pender, the Purchaser, who is the original Buyer of the property at: Lot 4 Belle Vue....The Builder Warrantee lists 'Beverly Homes, LLC' in the heading on the first page and at the bottom of each page where it signed and initialed on June 17, 2016, by Beverly Homes LLC as the builder of this property to the buyers."²

Plaintiff's Supplemental Memorandum in Opposition to Defendant Beverly Homes, LLC's Rule 12(b)(1) Motion to Dismiss, pages 3-4.

DISCUSSION

On September 11, 2020, the court granted Beverly Construction Group, LLC's Motion to Dismiss and concluded Beverly Construction Group "is a statutory employer of the Plaintiff and, therefore, Plaintiff's recovery against this Defendant is limited to the Workers' Compensation Act." Order filed September 11, 2020.³ Beverly Homes' current motion stated it was entitled to a dismissal based on the same arguments made by Beverly Construction Group, LLC because of Plaintiff's repeated contentions in written discovery responses, depositions, motions, and memoranda that Beverly Homes, LLC was a general contractor for the construction of the Pender residence.

The existence or absence of an employment relationship is a jurisdictional fact, and, thus, a question of law. Nelson v. Yellow Cab Co., 349 S.C. 589, 564 S.E.2d 110 (2002). South Carolina policy holds to resolve jurisdictional doubts in

² The inclusion of Beverly Homes, LLC as the builder on the "Builder Warrantee" was a clerical mistake as testified to by Randy Beverly and was incorrectly included by an office staff member in the Residential Construction Contract between the Penders and Beverly Construction Group, LLC. Deposition of Randy Beverly, page 72, line 6-page 73, line 6; page 113, line 18-page 117, line 5. Further support for the conclusion of the clerical mistake is evidenced by the fact Randy Beverly of Beverly Construction Group, LLC signed the warranty document.

³ Beverly Homes, LLC's motion to dismiss did not get scheduled for the September 11, 2020 date when the clerk of court scheduled the hearing on Beverly Construction Group, LLC's Motion to Dismiss.

favor of the inclusion of employers and employees under the Act. Edens, 359 S.C. at 440, 597 S.E.2d at 867.

In Freeman Mech. V. J.W. Bateson Co., 316 S.C. 95, 447 S.E.2d 197 (1994), the South Carolina Supreme Court held that the prime contractor “enjoy[ed] the immunity created by the [South Carolina Workers’ Compensation] Act from common law claims because the prime contractor was potentially liable under the South Carolina Workers’ Compensation Act for injuries to a subcontractor’s employee. In that case, the Court stated:

Under the Workers’ Compensation Act, the prime contractor is liable for workers’ compensation where the sub-contractor’s employee is injured on the job. S.C. Code Ann. § 42-1-410 (1985). The doctrine of “statutory employee” is well developed in South Carolina. The employee of the sub-contractor may look to the prime contractor for workers’ compensation benefits without regard to whether the sub-contractor is covered by a workers’ compensation insurance policy. Where the prime contractor pays for the sub-contractor’s employee’s injuries through the doctrine of “statutory employee,” the prime contractor is entitled to indemnification from the sub-contractor. S.C. Code Ann. § 42-1-440 (1985). Thus, under our workers’ compensation scheme, the sub-contractor is primarily liable and the primary contractor secondarily liable for workers’ compensation benefits to the sub-contractor’s employee.

While the prime contractor is secondarily liable for work-related injuries to the employees of the sub-contractor, the sub-contractor has no such secondary liability for employees of the sub-contractor, the sub-contractor has no such secondary liability for employees of the prime contractor or employees of other sub-contractors on the job....The majority rule is that one who has obligations under the Act enjoys the immunities under the Act.

316 S.C. at 97-98, 447 S.E.2d at 198-199 (case citations omitted).

Plaintiff’s argument that Beverly Homes, LLC was a general contractor means Beverly Construction Group, LLC and Beverly Homes, LLC would be considered statutory employers of Plaintiff. Accordingly, Plaintiff’s recovery against

them would be according to the South Carolina Workers' Compensation Act because the Act applies to direct employees and to statutory employees. Once a worker is properly classified as a statutory employee, the sole remedy for work-related injuries is to seek relief under the Workers' Compensation Act, and the employee may not maintain a negligence action against the statutory employer. Edens v. Bellini, 359 S.C. 433, 597 S.E.2d 893 (Ct. App. 2004).

In Edens, the court stated: "If a worker is properly classified as a statutory employee, his sole remedy for work-related injuries is to seek relief under the Workers' Compensation Act. He may not maintain a negligence cause of action against his direct employer or his statutory employer. The exclusivity provision of the Act applies both to 'direct' employees and to those termed 'statutory employees' under § 42-1-400." 359 S.C. at 445, 597 S.E.2d 869. See Freeman Mech. V. J.W. Bateson Co., 316 S.C. 95, 447 S.E.2d 197 (1994) (holding a general contractor "enjoy[ed] the immunity created by the [South Carolina Workers' Compensation] Act from common law claims.").

Other case law also supports dismissal of Beverly Homes, LLC based on Plaintiff's allegations. "The term 'employer' as used in the immunity provision of § 72-121 [now 42-1-540], was clearly intended to include others than the immediate employer. This the Supreme Court of South Carolina has held expressly. We think it must include every person whom the Act makes responsible for compensation." Brittingham v. Williams Sign Erectors, 299 S.C. 259, 384 S.E.2d 319 (Ct. App. 1989) (citing Chavis v. DuPont, 283 F.2d 929 (1960)).

South Carolina courts interpret S.C. Code Ann. §§ 42-1-10 et seq. to provide any general contractor who is potentially liable to pay Worker's Compensation benefits to an injured employee with immunity from tort liability. Freeman Mechanical, supra. Plaintiff's argument that Beverly Homes, LLC was a general contractor results in Plaintiff being considered the statutory employee of Beverly Homes, LLC at the time of the accident.

The Act bars recovery for a worker who is considered to be a statutory employee if:

- (1) The activity is an important part of the general contractor's business or trade;
- (2) The activity is a necessary, essential, and integral part of the general contractor's trade, business, or occupation; or
- (3) The activity is identical to activities previously performed by employees of the general contractor.

Olmstead v. Shakespeare, 354 S.C. 421, 581 S.E.2d 483 (2003); Edens, *supra*. If the activity meets one of these criteria, the worker qualifies as a statutory employee of the general contractor.

In this case, Plaintiff was performing interior painting for the painting subcontractor or that subcontractor's subcontractor at the time of her injury. Interior painting is an activity that is an important part of the business or trade when constructing a new home and is a "necessary, essential, and integral part" of any prime contractor's trade or business. Completion of interior painting of a newly constructed home was part of the construction process for the Pender house and for construction of new homes generally. Deposition of Jonathon Martin, page 40, lines 16-19. Gerald Rion (painting subcontractor) testified that interior painting was "an essential part" and a "very important" element of constructing new residential homes. Deposition of Gerald Rion, page 93, lines 6-16.

Further, painting of the interior walls and trim was a specific element of the "Specifications" for the Pender house and essential to the satisfaction of the contract with the general contractor for the construction of the Pender house. Specifications to Contract, page 4. In addition, the Penders' contract required completion of the interior painting of the home as part of the construction process, with the Penders selecting the paint color. Contract/Specifications. Clearly, the Penders would not have accepted the home or thought the contract fully completed until the interior painting was completed to their satisfaction. In addition, the "Builder Warranties" warranted that the construction-related activities substantially conformed to the Specifications and any change orders. Builder Warrantee, page 1.

Thus, interior painting of the Pender residence was an activity that was "a necessary, essential, and integral part of the general contractor's trade, business, or

occupation” and required work by the contract documents between the general contractor and the Penders. Therefore, based on Plaintiff’s repeated argument that Beverly Homes was a general contractor for the Penders’ home, Beverly Homes is entitled to a dismissal under Rule 12(b)(1), SCRPC.

Plaintiff cannot have it both ways. As Judge Ralph King Anderson once said, “a litigant cannot ‘blow both hot and cold.’” Quinn v. Quinn, 343 S.C. 411, 540 S.E.2d 474 (Ct. App. 2000) (Judge Ralph King Anderson concurring). The doctrine of judicial estoppel prohibits a party that has assumed a particular position in a judicial proceeding from adopting an inconsistent posture in subsequent proceedings. See e.g., Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E.2d 472 (1997).

**AS AN ALTERNATE AND SEPARATE GROUND
TO DISMISS BEVERLY HOMES, LLC⁴**

At the December 4, 2020 hearing and in the subsequent December 9, 2020 supplemental memorandum, Plaintiff pivoted from the “general contractor” argument and moved away from the opinions of her architect/contractor expert Roberts, who said all of his opinions against Beverly Homes were based on his belief that Beverly Homes was a “co-prime contractor” with the now-dismissed Beverly Construction Group. Plaintiff’s second theory is that Beverly Homes, LLC has liability because it “had control over the premises and was negligent.” Plaintiff’s Supplemental Memorandum in Opposition to Defendant Beverly Homes, LLC’s

⁴ A basis for this alternative and separate ruling can also be found under Rule 12(c), SCRPC, and with the procedural rulings in the following cases: Stevens Aviation, Inv. V. DynCorp Int’l, LLC, 407 S.C. 407, 756 S.E.2d 148 (2014) (citing Kassbaum v. Steppenwolf Prods., Inc., 236 F.3d 487, 494 (9th Cir. 2000), which stated “It is generally recognized that a court has the power *sua sponte* to grant summary judgment to a non-movant when there has been a motion but no cross-motion. Cool Fuel, Inc. v. Connett, 685 F.2d 309, 311 (9th Cir. 1982) (When one party moves for summary judgment and at a hearing the record reveals no genuine dispute on a material fact, ‘the overwhelming weight of authority supports the conclusion that ... the court may *sua sponte* grant summary judgment to the non-moving party.’); Reliford v. Mitsubishi Motors Credit of Am., Inc., 2004 S.C. App. Unpub. LEXIS 566 (S.C. Ct. App. 2004) (affirming trial court’s *sua sponte* order granting summary judgment to a non-moving party); Horne v. Beason, 285 S.C. 518, 331 S.E.2d 342 (1985) (affirming trial court’s *sua sponte* order dismissing the mayor and councilmen from a wrongful death case filed against the City and arresting officers). Here, Plaintiff made the arguments on the matters ruled upon at the December 4, 2020 hearing and the December 9, 2020 supplemental memorandum. To the extent needed, this Order is based on the summary judgment standard, Rule 56, SCRPC.

Rule 12(b)(1) Motion to Dismiss, page 3. As part of that argument, Plaintiff alleged that Beverly Homes, LLC “owned” the Pender lot where the house was built. Id., page 4. Plaintiff also argued Beverly Homes, LLC exercised “control” over the Pender lot and construction. After review of those arguments and the record made by Plaintiff on this issue, the Court does not accept Plaintiff’s arguments and finds no dispute of any material fact about these issues from the numerous memoranda and arguments made by Plaintiff in this litigation.

To assert a negligence claim under South Carolina law, a plaintiff must show that (1) defendant owed her a duty of care; (2) defendant breached this duty by a negligent act or omission; (3) defendant’s breach was the proximate cause of her injuries; and (4) she suffered injury or damages. Dorrell v. S.C. DOT, 361 S.C. 312, 605 S.E.2d 12 (2004). An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Bishop v. South Carolina Dep’t of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). Without a duty, no actionable negligence exists. Id. “The existence of a duty owed is a question of law for the courts.” Doe v. Greenville County Sch. Dist., 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007) (citing Doe v. Batson, 345 S.C. 316, 323, 548 S.E.2d 854, 857 (2001)).

South Carolina law recognizes four general classifications of persons who come onto a property: (1) adult trespassers; (2) invitees (invited business guests, such as shopper at a store); (3) licensees (social guests); and (4) children. Sims v. Gilles, 541 S.E.2d 857, 861 (S.C. 2001). Different standards of care apply to each classification. An invitee “is a person who enters onto the property of another at the express or implied invitation of the property owner.” Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 441, 494 S.E.2d 827, 831 (Ct. App. 1997). An invitee is on the owner’s property to benefit the owner and not themselves. Sims v. Gilles, 541 S.E.2d 857 (S.C. Ct. App. 2001). An “invitee” is different than a “licensee” because an “invitee confers a benefit on the landowner.” Sims v. Gilles, 343 S.C. 708, 541 S.E.2d 857 (Ct. App. 2001) (holding that a power company’s meter reader was an invitee when entering the customer’s property).

The property owner owes an invitee “the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty.” Israel v. Carolina Bar-B-Que, Inc., 292 S.C. 282, 289, 356 S.E.2d 123, 128 (Ct. App. 1987). An owner of property is not an insurer of the invitee’s safety. The owner owes an invitee the duty to use reasonable care to discover unreasonably dangerous conditions on the premises and (1) either put the premises in a reasonably safe condition for the use and manner consistent with the purpose of the invitation to come on the property or (2) warn the invitee of the dangers which the owner knew or should have known about. Crocker v. Barr, 397 S.E.2d 665 (S.C. Ct. App. 1990). “Under a premises liability theory, a contractor generally equates to an invitor and assumes the same duties that the landowner has, including the duty to warn of dangers or defects known to him but unknown to others.” Larimore v. Carolina Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000).

BACKGROUND

Beverly Construction Group, LLC and Beverly Homes, LLC are separate and distinct corporations. Beverly Construction Group, LLC is a licensed general contractor. Beverly Construction Group, LLC was the general contractor for the construction of the Pender residence where Plaintiff’s injury occurred, and as admitted that status since Plaintiff sued it. Defendant Beverly Construction Group, LLC’s Notice of Motion and Rule 12(b)(6) Motion to Dismiss in Lieu of Answer, page 2. Carlton Pender also signed an Affidavit confirming that he contracted with Beverly Construction Group, LLC for the construction of the home and Beverly Construction Group, LLC “was responsible of the subject property and coordination of all construction activities...” Affidavit of Carlton Pender, ¶¶ 2-3 (filed March 11, 2020). Interestingly, Plaintiff admitted earlier in this litigation that the Penders “contracted with Beverly Construction Group, LLC to build a residential home on the Penders’ property.” Plaintiff’s Memorandum in Opposition to Defendants’ Carlton Pender and Joan Pender’s Motion to Dismiss filed March 11, 2020, page 2. Forrest Beverly is the managing member for Beverly Construction Group, LLC.

Deposition of Forrest Beverly, page 12, lines 6-8 (Exhibit 2). His sister, Rebecca Beverly, is a minority owner of Beverly Construction Group, LLC. Id., page 13, lines 7-14.

Meanwhile, Beverly Homes, LLC is a real estate acquisition company that sells and develops lots. Deposition of Randy Beverly (December 10, 2020), page 25, line 20-page 26, line 1. Beverly Homes, LLC is owned by Forrest Beverly and his father (Randy Beverly). Deposition of Randy Beverly, page 159, lines 16-19. Beverly Homes, LLC does not have a general contractor's license, has never been a general contractor, has never been a contractor, and has never built a residence. Id., page 33, line 24-page 36, line 5. Of note, Beverly Homes, LLC was not involved in the construction of the Pender home and did not perform any work at the Pender house. Deposition of Randy Beverly, page 34, line 20-page 35, line 6; Deposition of Rebecca Beverly (December 10, 2020), page 28, lines 19-25.

DISCUSSION

Plaintiff's arguments to the Court at the recent hearing and the supplemental memorandum demonstrate a failure of proof on the issues.

- (1) **Plaintiff has offered no proof Beverly Homes, LLC had knowledge of any defect or dangerous condition at the Pender residence.**

Randy Beverly (owner of Beverly Homes, LLC) testified Beverly Homes, LLC (1) did not perform any work at the Pender house; (2) did not go inside the house; (3) did not inspect the house; (4) did not hire any subcontractors for the house; and (5) did not supervise any person or company doing work at the house. Deposition of Randy Beverly, page 35, line 3-page 39, line 17. The following exchanges between Plaintiff's attorney and Randy Beverly are revealing:

Q: Would you agree that Beverly Homes, LLC was not involved with the construction of the Pender Residence?

A: Yes, ma'am.

...

Q: And do you agree with that statement that Defendant [] Beverly Homes, LLC did not perform work at and was not involved with the construction of the Pender Residence?

A: Yes, ma'am.

Id., page 34, line 24-page 35, line 2; page 55, lines 14-18. In sum, Plaintiff did not provide any evidence that Beverly Homes, LLC knew anything about any alleged dangerous condition at the Pender home while it was under construction. Accordingly, Beverly Homes, LLC did not breach any duty. This holding is consistent with the determination in Larimore v. Carolina Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000).

(2) **Beverly Homes, LLC never owned the Pender lot.**

The Penders have owned the lot in question since April 30, 2014 when they purchased it from Conway National Bank for \$83,200.00.

Instrument Book Page
20140003512 2355 1

Prepared without benefit of title examination by:
Moore, Johnson & Sarantil Law Firm, P.A.
PO Box 14737, 12711 Glen's Bay Road
Surfside Beach, South Carolina 29687

20140003512
Filed for Record in
GEORGETOWN SC
NANDA PREWATTE, REGISTER OF DEEDS
04-30-2014 At 02:50:52 pm.
DEED 11.00
STATE TAX 217.10
COUNTY TAX 91.85
Book 2355 Page 1 - 5

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Lot 4 Belle
Vue

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, Conway National Bank, (hereinafter called "Grantor"), for and in consideration of the sum of Eighty-Three Thousand Two Hundred & 00/100s (\$83,200.00) Dollars to it, hand paid at and before the sealing of these presents, in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold and released and by these Presents does hereby grant, bargain, sell and release unto Carlton E. Pender and Joan B. Pender (hereinafter called "Grantee"), for and during their joint lives and upon the death of either of them, then to the survivor of them, their heirs and assigns forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, located in Georgetown County, South Carolina, to-wit:

THIS PROPERTY IS MORE COMMONLY KNOWN AS 38 GASPARILLA DRIVE, (LOT 4, BELLE VUE), MURRELLS INLET, SC 29576 AND IS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

Limited Warranty Deed (Instrument: 201400003512) filed with Georgetown County Register of Deeds. The Penders' purchase occurred approximately three years before construction began on the lot. Further, Georgetown County tax records also show that the Penders have paid the property taxes on the property (and later the property and home) since 2014.

Receipt# 2014 051286 *** REAL ESTATE NOTICE ***
 TMS 41 0106 0361200
 Entered 10/01/2014
 Paid 1/12/2015
 1,466.75 BK 00000
 Name: PENDER CARLTON E
 PENDER JOAN B
 81 WARRIOR WAY
 SHARPSBURG GA 302770000
 District: 410 MURRELS I/GARDEN CTY

Ratio	Acres	Lots	Land Value	# Bld.	Bld. Value	TotValue	TAX EXEMP- TIONS	Total
Res.						121,500		
Farm								
Other	6	1.0	121,500					
Desc	LOT 4 BELLE VUE SLD	428-10						
City-LEVY-County	City Tax	County Tax	WSFD	Serial#	Extra Fees			
	188.3	1,372.71	94.04	012.9		1,466.75		1,466.75
Tax Aftr Exempt		1,372.71	94.04					
Jan Amt	Feb Amt	Mar Amt	Interest:		PAID	1466.75		
Penalty:	Fee:							
Comment:								PAID

The references to Beverly Homes, LLC as the "owner" of the lot as stated in the various documents raised by Plaintiff were clearly and succinctly explained by Randy Beverly. He indicated each entry was "an honest, clerical mistake." See Deposition of Randy Beverly, page 80, lines 8-18; page 87, lines 19-page 89, line 22; page 92, line 10-page 93, line 6. An objective evaluation of the building permit request shows, for example, numerous handwriting and numerous pen colors, which indicate some form document was incorrectly used to input the information for permitting with Georgetown County.⁵ In any event, Beverly Homes, LLC was not the owner of the lot or property as evidenced by the deed between the Penders and Conway National Bank and the receipts showing the Penders paid the property taxes from 2014 to present.

⁵ See page 28 of this Order for the Permit Application.

Of interest, the court notes that Plaintiff also abandoned this argument with one of its more recent filings when she stated “Defendant Beverly Homes LLC was not the owner of the subject property” in response to the current motion. Plaintiff’s Memorandum in Opposition to Defendant Beverly Homes, LLC’s Rule 12(b)(1) Motion to Dismiss (filed September 4, 2020), page 4 (emphasis added). Plaintiff repeated that statement on page 10 of the December 9, 2020 supplemental memorandum.

(3) Plaintiff has not proven the claim that Beverly Homes “had control” of the Pender property or construction.

Plaintiff has not produced any evidence that any owner or employee of Beverly Homes, LLC ever set foot on the Pender lot before or during construction. Plaintiff has also not produced any evidence that Beverly Homes, LLC directed the construction of the Pender home. To the contrary, before Plaintiff sued any Beverly entity in this case, Forrest Beverly (the owner of the general contractor, Beverly Construction, LLC) was deposed by Plaintiff. He testified:

- Beverly Construction Group, LLC was responsible for hiring all of the subcontractors for the construction of the new home at 39 Gasparilla Circle. Deposition of Forrest Beverly, page 16, lines 21-25.
- Beverly Construction Group, LLC hired all of the subcontractors for the construction of the new home at 39 Gasparilla Circle. Id., page 20, lines 6-8.
- Beverly Construction Group, LLC was responsible for coordinating all of the trades and subcontractors involved with the construction of the new home at 39 Gasparilla Circle. Id., page 17, lines 1-4.
- Beverly Construction Group, LLC was responsible for inspecting all of the work performed by the subcontractors involved with the construction of the new home at 39 Gasparilla Circle. Id., page 17, lines 5-8.

- Beverly Construction Group, LLC “would have been the contractor onsite handling the vertical construction of the house.” Id., page 162, lines 17-24.
- Beverly Construction Group, LLC employed Jonathan Martin as the construction supervisor for the project. Id., page 17, lines 13-21.
- Jonathan Martin’s responsibilities for the project at 39 Gasparilla Circle included “coordinat[ing] day-to-day operation of the job, coordinat[ing] subcontractors, and quality control.” Id., page 18, lines 6-10.
- Beverly Construction Group, LLC still employed Jonathan Martin as a construction supervisor on the date of Beverly’s deposition. Id., page 17, line 22-page 18, line 2.
- All invoices from subcontractors should have been addressed to Beverly Construction Group, LLC. Id., page 34, lines 3-20.
- Beverly Construction Group, LLC paid the invoices submitted from subcontractors for the construction of the new home at 39 Gasparilla Circle. Id., page 34, lines 3-22.

Further, an objective analysis of the documents submitted by Plaintiff do not prove Beverly Homes, LLC had “control” of the property or the construction.

A. Plaintiff’s claim that Beverly Homes, LLC contracted with the elevator subcontractor is incorrect.

While true that the proposal submitted from Port City Elevators lists “Elevator for: Beverly Homes, 9007 Highway 544, Myrtle Beach, SC 29588,” the plain face of the Contract document shows “Beverly Construction Group” accepted the contract and Port City sent the “Final Invoice” to Beverly Construction Group.

18. We propose to furnish and erect the elevator installation as outlined in the accompanying proposal for the sum of \$ 19,500.00 (Nineteen Thousand Five Hundred Dollars)

Respectfully submitted,
Port City Elevator, Inc.
By: Seth Newman

ACCEPTANCE:
Firm: Beverly Const. Group
By: [Signature]
Title: Cons. Supt.
Date: 12-6-16

Date: _____
ACCEPTANCE:
By: _____
Homeowner
By: _____
Homeowner
Date: _____

Contract.



3334 US Hwy 421, Suite B
Wilmington, NC 28401


DATE: March 10, 2017
INVOICE# 858
FOR: Pender Final

Bill To:
Beverly Construction Group, LLC
9007 Hwy 544
Myrtle Beach, SC 39588

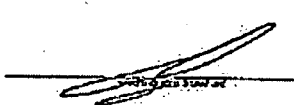
Job Information:
Pender Residence
39 Gasparilla Circle
Murrells Inlet, SC 29576

DESCRIPTION	AMOUNT
Final Invoice for elevator	19,500.00
Added 3 keyed hall calls \$75.00 Ea	225.00
Deposit paid	(9,000.00)

Further, Beverly Construction Group, LLC paid Port City Elevator for the elevator work at the Pender residence, as evidence by the following checks and the deposition testimony from Forrest Beverly:

Beverly Construction Group, LLC 2002 HIGHWAY 54A WHITE BEACH, NC 28388 (813) 226-4022		CNB The Community Bank of North Carolina Member FDIC 67-2217/532	20289
*Eighteen Thousand And 00/100 Dollars		DATE 12/09/16	AMOUNT \$ 18,000.00
PAY TO THE ORDER OF	PORT CITY ELEVATOR, INC. 8334 - B US Hwy 421 N. Wilmington, NC 28401		

Date 12/14/2016 Check 20289 Amount \$18,000.00

Beverly Construction Group, LLC 2002 HIGHWAY 54A WHITE BEACH, NC 28388 (813) 226-4022		CNB The Community Bank of North Carolina Member FDIC 67-2217/532	21483
*Ten Thousand Seven Hundred Twenty-Five And 00/100 Dollars		DATE 03/23/17	AMOUNT \$ 10,725.00
PAY TO THE ORDER OF	PORT CITY ELEVATOR, INC. 8334 - B US Hwy 421 Suite B Wilmington, NC 28401		

Date 3/23/2017 Check 21483 Amount \$10,725.00

Deposition of Forrest Beverly, page 34, lines 3-22. The other cancelled checks submitted in the supplemental memorandum (and provided to Plaintiff) showed Beverly Construction Group paid every subcontractor cited by Plaintiff.

Randy Beverly recently testified that he had no knowledge of the Port City proposal and that no employee of Beverly Homes, LLC had ever spoken to an employee of Port City Elevator. Deposition of Randy Beverly, page 46, lines 9-16; page 86, line 21-page 87, line 3.

- B. Plaintiff's claims that various subcontractors submitted invoices to Beverly Homes, LLC also does not prove Beverly Homes, LLC had "control".

Plaintiff has not offered any subcontract signed by Beverly Homes to support this contention. To the contrary, Beverly Construction Group has produced the cancelled checks showing it paid every subcontractor for the

work to the Pender house. Further, the affidavits of Rebecca Beverly and Randy Beverly filed in this case detailed the following:

... Beverly Homes, LLC did not pay for any permit, work, or material for the Pender residence and did not receive any money from the construction or sale of the Pender house. Affidavit of Rebecca Beverly, ¶ 8. Further, Beverly Construction Group, LLC paid all invoices and bills referenced in Plaintiff's Memorandum in Opposition to Defendant Beverly Homes, LLC's Motion for Summary Judgment that involved the Pender house and that were addressed mistakenly by various subcontractors and vendors to "Beverly Homes." Id., ¶¶ 5, 7. These payments were made by and drawn on accounts in the name of Beverly Construction Group, LLC. Id. Beverly Homes, LLC did not process or have any involvement with the payment of these invoices and bills. Id., ¶6. In addition, the invoice from Carolina Bays Landscaping included in Plaintiff's memorandum did not involve the Pender house. Id., ¶ 9; Affidavit of Randy Beverly, ¶¶ 4-6.

When asked by Plaintiff's attorney why Beverly Homes was listed on a number of invoices from subcontractors, Forrest Beverly replied:

"That's just how some people perceive it. I mean, we don't correct them when it comes in, but all the invoices were paid on Beverly Construction Group. Beverly Homes is actually not even a general contractor. It has different ownership."

Id., page 159, lines 8-15. Forrest Beverly said the subcontractors erred when they made invoices that said "Beverly Homes" or "Beverly Homes, LLC". Id., page 160, lines 17-20. The invoice should have stated "Beverly Construction Group." Id., page 160, lines 21-22.

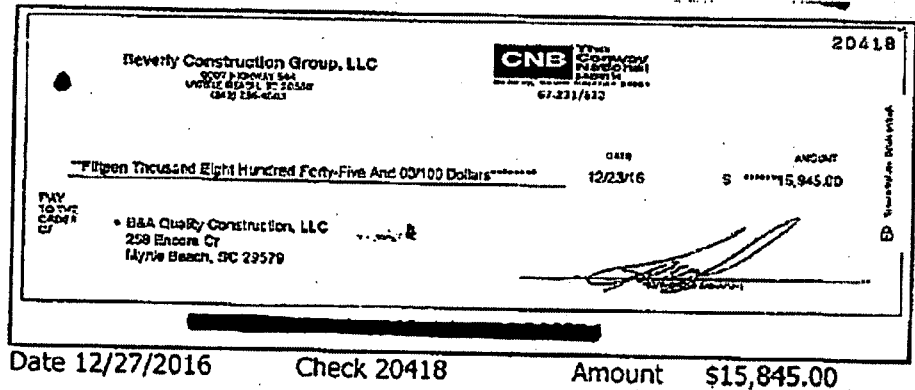
"Obviously, normally our file is not dissected at this kind of level, so we're not worried about getting exact—our people know what they mean and what it needs to be paid from, so they handle it. That's just a situation where a subcontractor, I guess, just assumed it was Beverly Homes for whatever reason.

Beverly Homes—we do market Beverly Homes, you know, and they do development-type stuff, but this is a different scenario than that. They were totally exclusive from each other in this particular case."

Id., page 160, line 23-page 161, line 9. Beverly Homes, LLC does not have any contractor license and is “a land development company.” Id., page 159, lines 20-21. Beverly Construction Group, LLC paid the invoices submitted from subcontractors for the Pender house. Id., page 34, lines 3-22.

As further proof, Randy Beverly testified that he never received the invoice from Chris Langston and did not pay it. Deposition of Randy Beverly, page 93, line 25-page 94, line 18 (but Forrest Beverly received it for Beverly Construction Group, LLC). Randy Beverly also testified he “[did] not know who [subcontractor B&A Quality Construction is.” Id., page 98, lines 1-4. He also had no idea why Strand Engineering invoiced for work at the Pender house, but Beverly Homes never received or paid the invoice. Id., page 98, line 22-page 99, line 16. Further, Randy Beverly testified Beverly Homes has never hired Faith Landscaping, Palmetto Concrete, or Gale Contractor Services for work. Id., page 100, lines 4-17; page 101, line 12-page 103, line 5; page 103, line 18-page 104, line 19.

These cancelled checks show Beverly Construction Group paid the invoices in question:



Date 12/27/2016 Check 20418 Amount \$15,845.00

20751

Beverly Construction Group, LLC
 3007 HIGHWAY 544
 MYRTLE BEACH, SC 29588
 (803) 221-4513

CNB Commercial National Bank of South Carolina
 67-231/532

John J. Mayes

DATE: 01/23/17 AMOUNT: \$ 6,625.00

Six Thousand Six Hundred Twenty-Five And 00/100 Dollars

PAY TO THE ORDER OF: **BBA Quality Construction, LLC**
 258 Encore Cr
 Myrtle Beach, SC 29579

[Signature]

Date 1/23/2017 Check 20751 Amount \$6,625.00

20963

Beverly Construction Group, LLC
 3007 HIGHWAY 544
 MYRTLE BEACH, SC 29588
 (803) 221-4513

CNB Commercial National Bank of South Carolina
 67-231/532

DATE: 02/03/17 AMOUNT: \$ 13,840.00

Thirteen Thousand Eight Hundred Forty And 00/100 Dollars

PAY TO THE ORDER OF: **BBA Quality Construction, LLC**
 258 Encore Cr
 Myrtle Beach, SC 29579

[Signature]

Date 2/6/2017 Check 20963 Amount \$13,840.00

New Director

21021

Beverly Construction Group, LLC
 3007 HIGHWAY 544
 MYRTLE BEACH, SC 29588
 (803) 221-4513

CNB Commercial National Bank of South Carolina
 67-231/532

DATE: 02/10/17 AMOUNT: \$ 8,796.00

Eight Thousand Seven Hundred Ninety-Six And 00/100 Dollars

PAY TO THE ORDER OF: **BBA QUALITY CONSTRUCTION LLO**
 258 ENCORE CIRCLE
 Myrtle Beach, SC 29579

[Signature]

Date 2/14/2017 Check 21021 Amount \$8,796.00

21534

Beverly Construction Group, LLC
 507 HICKORY BLVD
 MYRTLE BEACH, SC 29577
 (843) 228-4143

CNB Check Number
 07-231/532

DATE: 03/27/17 AMOUNT: \$ 11,630.00

**Eleven Thousand Six Hundred Thirty And 00/100 Dollars

PAY TO THE ORDER OF: **B&A Quality Construction, LLC**
 258 Encore Cir
 Myrtle Beach, SC 29579

[Signature]

Date 3/27/2017 Check 21534 Amount \$11,630.00

21617

Beverly Construction Group, LLC
 507 HICKORY BLVD
 MYRTLE BEACH, SC 29577
 (843) 228-4143

CNB Check Number
 07-231/532

DATE: 03/31/17 AMOUNT: \$ 2,451.40

Two Thousand Four Hundred Fifty-One And 40/100 Dollars

PAY TO THE ORDER OF: **B&A Quality Construction, LLC**
 258 Encore Cir
 Myrtle Beach, SC 29579

[Signature]

Date 4/3/2017 Check 21617 Amount \$2,451.40

21994

Beverly Construction Group, LLC
 507 HICKORY BLVD
 MYRTLE BEACH, SC 29577
 (843) 228-4143

CNB Check Number
 07-231/532

DATE: 04/26/17 AMOUNT: \$ 280.00

Two Hundred Eighty And 00/100 Dollars

PAY TO THE ORDER OF: **B&A Quality Construction, LLC**
 258 Encore Cir
 Myrtle Beach, SC 29579

[Signature]

Date 5/3/2017 Check 21994 Amount \$280.00

Beverly Construction Group, LLC
 8297 W. Greenway S.E.
 MYRTLE BEACH, SC 29508
 (843) 215-4463

CNB The Conway Company
 67-231/577

18697

DATE: 8/15/2016

AMOUNT: \$6,150.00

"Sixty-one Hundred Fifty And 00/100 Dollars"

PAY TO THE ORDER OF: GRAND ENGINEERING
 215 LAUREL ST
 CONWAY, SC 29524

Date 8/15/2016 Check 18697 Amount \$6,150.00

Beverly Construction Group, LLC
 8297 W. Greenway S.E.
 MYRTLE BEACH, SC 29508
 (843) 215-4463

CNB The Conway Company
 67-231/533

18998

DATE: 8/26/2016

AMOUNT: \$8,725.00

"Eighty-seven Hundred Twenty-five And 00/100 Dollars"

PAY TO THE ORDER OF: FAITH LANDSCAPING, LLC
 7632 HWY 134
 CONWAY, SC 29527

Date 8/26/2016 Check 18996 Amount \$8,725.00

Beverly Construction Group, LLC
 8297 W. Greenway S.E.
 MYRTLE BEACH, SC 29508
 (843) 215-4463

CNB The Conway Company
 67-231/532

19149

DATE: 9/12/2016

AMOUNT: \$10,076.25

"Ten Thousand Nine Hundred Seventy-six And 25/100 Dollars"

PAY TO THE ORDER OF: PALMETTO CONCRETE LLC
 3594 GOOD LUCK RD
 MYRTLE BEACH, SC 29577

Date 9/12/2016 Check 19149 Amount \$10,076.25

Beverly Construction Group, LLC
 8027 Highway 344
 Myrtle Beach, SC 29528
 (843) 238-4411

CNB The Conway
 National Bank
 67-211/512

19242

DATE: 09/19/16 AMOUNT: 3,128.75

Thirty One Hundred Twenty Eight And 75/100 Dollars

PAY TO THE ORDER OF: PALMETTO CONCRETE LLC
 8504 GOOD LUCK RD
 AYOON, SC 29511

Date 9/19/2016 Check 19242 Amount \$3,128.75

Beverly Construction Group, LLC
 8027 Highway 344
 Myrtle Beach, SC 29528
 (843) 238-4411

CNB The Conway
 National Bank
 67-211/512

20257

DATE: 12/09/16 AMOUNT: 5,727.74

Five Thousand Seven Hundred Twenty Seven And 74/100 Dollars

PAY TO THE ORDER OF: GALE CONTRACTOR SERVICES
 700 CENTURY CIRCLE
 Conway, SC 29526

Date 12/19/2016 Check 20257 Amount \$5,727.74

Beverly Construction Group, LLC
 8027 Highway 344
 Myrtle Beach, SC 29528
 (843) 238-4411

CNB The Conway
 National Bank
 67-211/512

21745

DATE: 04/17/17 AMOUNT: 4,350.04

Four Thousand Three Hundred Fifty And 04/100 Dollars

PAY TO THE ORDER OF: GALE CONTRACTOR SERVICES
 700 CENTURY CIRCLE
 Conway, SC 29526

Date 4/17/2017 Check 21745 Amount \$4,350.04

Beverly Construction Group, LLC
 2027 HIGHWAY 248
 MYRTLE BEACH, SC 29578
 (843) 238-6643


CNB The Community National Bank
 Myrtle Beach, South Carolina 29578
 87-2327/332

19760

DATE: 10/31/16 AMOUNT: 25,603.00

Twenty-Five Thousand Eight Hundred Sixty-Three And 00/100 Dollars

PAY TO THE ORDER OF
 2020 CUSTOM CONTRACTORS
 1087 BURCALE RD
 MYRTLE BEACH, SC 29578



Date 10/31/2016 Check 19760 Amount \$25,863.00

Beverly Construction Group, LLC
 2027 HIGHWAY 248
 MYRTLE BEACH, SC 29578
 (843) 238-6643

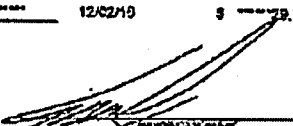
CNB The Community National Bank
 Myrtle Beach, South Carolina 29578
 87-2327/332

20142

DATE: 12/02/16 AMOUNT: 29,702.00

Twenty-Nine Thousand Seven Hundred Two And 00/100 Dollars

PAY TO THE ORDER OF
 2020 CUSTOM CONTRACTORS
 1087 BURCALE RD
 Myrtle Beach, SC 29578



Date 12/5/2016 Check 20142 Amount \$29,702.00

Beverly Construction Group, LLC
 2027 HIGHWAY 248
 MYRTLE BEACH, SC 29578
 (843) 238-6643

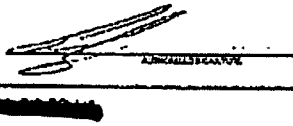
CNB The Community National Bank
 Myrtle Beach, South Carolina 29578
 87-2327/332

21242

DATE: 03/03/17 AMOUNT: 27,171.79

Twenty-Seven Thousand One Hundred Seventy-One And 79/100 Dollars

PAY TO THE ORDER OF
 2020 CUSTOM CONTRACTORS
 1087 BURCALE RD
 Myrtle Beach, SC 29578



Date 3/7/2017 Check 21242 Amount \$27,171.79

Beverly Construction Group, LLC
 4007 HIGHWAY 544
 MYRTLE BEACH, SC 29578
 843-730-4663

CNB The Community Reinvestment Bank
 Member FDIC
 07-231/712

22318

Seven Thousand Ninety Eight And 00/100 Dollars

DATE 05/10/17 AMOUNT \$ 7,098.00

PAY TO THE ORDER OF 2020 CUSTOM CONTRACTORS
 1037 BURCALE RD
 Myrtle Beach, SC 29578

[Signature]

Date 5/22/2017 Check 22318 Amount \$7,098.00

Beverly Construction Group, LLC
 4007 HIGHWAY 544
 MYRTLE BEACH, SC 29578
 843-730-4663

CNB The Community Reinvestment Bank
 Member FDIC
 07-231/712

22980

Seventeen Thousand Seven Hundred Thirty Six And 75/100 Dollars

DATE 07/07/17 AMOUNT \$ 17,736.75

PAY TO THE ORDER OF 2020 CUSTOM CONTRACTORS
 1037 BURCALE RD
 Myrtle Beach, SC 29578

[Signature]

Date 7/10/2017 Check 22980 Amount \$17,736.75

Beverly Construction Group, LLC
 4007 HIGHWAY 544
 MYRTLE BEACH, SC 29578
 843-730-4663

CNB The Community Reinvestment Bank
 Member FDIC
 07-231/711

25917

Twenty Three Thousand Six Hundred Thirteen And 00/100 Dollars

DATE 02/29/18 AMOUNT \$ 23,613.00

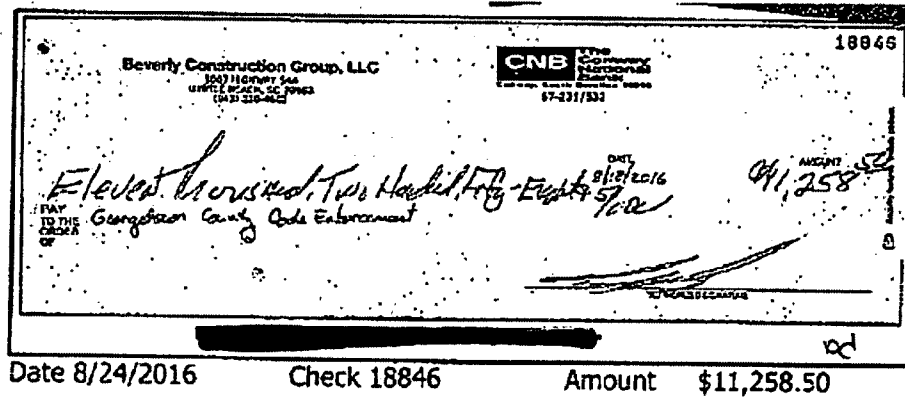
PAY TO THE ORDER OF 2020 CUSTOM CONTRACTORS
 1037 BURCALE RD
 Myrtle Beach, SC 29578

[Signature]

Date 2/12/2018 Check 25917 Amount \$23,613.00

C. Plaintiff argued the computer generated receipt from Georgetown County proved Beverly Homes paid for the building permit; however, the actual evidence in this case proved that allegation incorrect.

Beverly Homes' April 20, 2020 Supplemental Memorandum included the actual cancelled check from Beverly Construction Group, LLC (see below) made payable to Georgetown County for the building permit. Any subsequent receipt from Georgetown County that incorrectly named the payor of the fees for the Pender house building permit would not create any dispute of material fact.



Further, an objective review of the actual permit application showed numerous colored pens and handwriting that unquestionably demonstrate that Beverly Construction Group, LLC used a form document and then made a clerical mistake when it listed Beverly Homes as the "owner." As shown, the deed and tax payments show the Penders owned the lot for approximately three years before construction began. And, the chain of title for the property in question never lists Beverly Homes as the owner of this lot at any point in time. Thus, Beverly Homes, LLC never "owned" the property. Attached is the permit application:

GEORGETOWN COUNTY
 PLANNING & DEVELOPMENT DEPARTMENT
 BUILDING DIVISION

129 Screven Street
 P.O. Drawer 421270
 Georgetown, SC 29442
 (843) 545-3116
 Fax: (843) 545-3296

BUILDING PERMIT APPLICATION

DATE RECEIVED 8/8/2014 PERMIT # 21400

STREET ADDRESS 39 Gasparilla Dr. SUBDIVISION/ SECTION OF COUNTY Belle Vue
 LOT 4 BLOCK _____ TAX MAP # 41-0106-036-12-00
 ZONING DISTRICT PD FLOOD ZONE (AE11) (AE14)
 OWNER'S NAME Beverly Homes
 OWNER'S ADDRESS 9007 Hwy 544 TELEPHONE 843-236-4663
 APPLICANT'S NAME Beverly Construction Group, LLC TELEPHONE 843-236-4663
 CONTRACTOR Forrest Beverly SC LICENSE # M113946
 CONTRACTOR'S ADDRESS 9007 Hwy 544 TELEPHONE 843-236-4663
 ARCHITECT/ENGINEER Strand Engineer
 ARCH/ENG. ADDRESS 223 Laurel St Conway SC 29524 TELEPHONE 843-488-1828
 EMAIL ADDRESS FOR CONTACT PERSON Jonathon@beverlyhomes.com
 PROPOSED USE Residential
 DESCRIBE WORK TO BE DONE New Construction
 VALUE OF CONSTRUCTION 179,250 # OF STORIES _____
 HEATED SQ. FT. 2646 UNHEATED SQ. FT. 3124 TOTAL SQ. FT. 5770
 TYPE OF IMPROVEMENT: NEW CONSTRUCTION ADDITION () REPAIR/REPLACE () DEMOLISH ()
 MOVING () ALTERATION () OTHER ()
 CONSTRUCTION TYPE: FRAME () METAL () WOOD OTHER _____
 BLDG. EXTERIOR: BRICK () BLOCK () STONE () OTHER
 FOR RESIDENTIAL: TOTAL # OF ROOMS 14 # OF BATHS 4 # OF BEDROOMS 3
 HEATING TYPE: HEAT PUMP HOT WATER () CENTRAL AIR CONDITIONING ()
 TYPE OF FUEL: OIL () GAS () ELECTRIC WOOD () COAL () # OF FIRE PLACES _____
 SEWER DISPOSAL: PUBLIC SEPTIC TANK () WATER SUPPLY: PUBLIC WELL ()

SIGNATURE OF CONTRACTOR _____ DATE 8/3/15

FOR OFFICE USE ONLY

FRONT SETBACK: _____
 SIDE SETBACKS: LEFT _____ RIGHT _____
 REAR SETBACK _____
 OVERALL STRUCTURE HEIGHT: _____
 FINISHED FLOOR ELEVATION: _____

D. An objective review of the "Builder Warrantee" provided to the Penders that listed Beverly Homes, LLC as "the builder" shows that the inclusion of Beverly Homes, LLC was a clerical error.

First, Plaintiff admits that the Penders contracted with Beverly Construction Group for the construction of the home, and the applicable construction contract listed Beverly Construction Group as the builder. Randy Beverly testified that he did not know why Beverly Homes was listed. Deposition of Randy Beverly, page 117, lines 2-5. Randy Beverly never signed this document.

E. The initial payments from the Penders made payable to Beverly Homes, LLC was not deposited by Beverly Homes' account.

Randy Beverly said Joan Pender made an "honest mistake" with how she made the checks payable. Deposition of Randy Beverly, page 74, lines 20-25. Randy Beverly said he never received the checks and neither were deposited into Beverly Homes' bank account. Id., page 75, lines 1-11. Rebecca Beverly testified that the Penders mistook the correct entity to make the payment and "many people confuse the names" of the companies. Deposition of Rebecca Beverly, page 35, lines 6-11. She also confirmed that the checks were not deposited into any Beverly Homes, LLC account. Id., page 35, lines 16-19; page 37, lines 13-31.

F. Beverly Homes, LLC had no employees who worked on construction of the Pender house.

Jonathan Martin (project superintendent) testified that he was employed by Beverly Construction Group. Deposition of Jonathan Martin, page 8, lines 1-8 (Exhibit 3). His job was to "manage the construction of the residential homes that Beverly Construction builds." Id., page 9, lines 19-22. Martin testified he managed the construction by Beverly Construction Group, LLC of the Pender house. Id., page 10, lines 17-20; page 25, line 20-page 26, line 2. Further, payroll records provided by Beverly Construction Group, LLC to Plaintiff showed that Beverly Construction Group, LLC paid Martin at all times during the construction of the Pender residence. In addition,

Carlton Pender stated Forrest Beverly and Jonathan Martin were their points of contact for Beverly Construction Group, LLC for the construction. Id., ¶ 3.

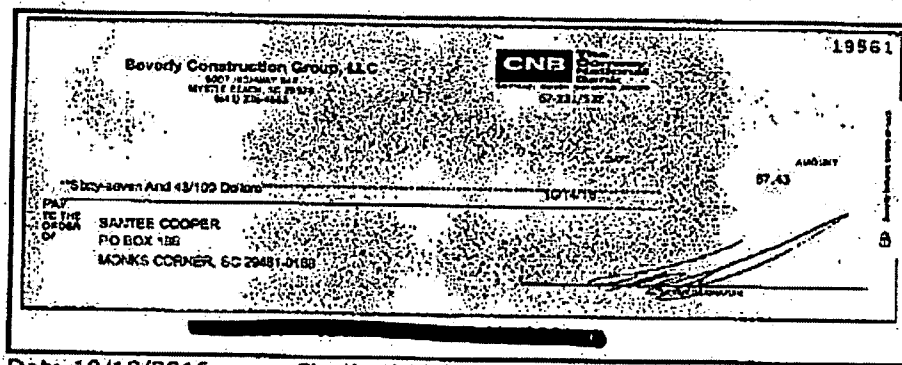
G. Miscellaneous documents involving the electrical service also do not show that Beverly Homes, LLC had "control."

Randy Beverly testified that the few documents submitted for the request for initial electrical service with Beverly Homes was:

"[j]ust an honest, clerical mistake in our office. I mean because like we said I mean you look back I mean you can say with LLR Beverly Homes has never had a – a contractor's license. Never had any license really, but just – I don't recognize the writing, but somebody just made an honest mistake by putting homebuilders as Beverly Homes."

Deposition of Randy Beverly, page 80, lines 8-18. Randy Beverly confirmed that Beverly Homes did not pay the October 3, 2016 or November 30, 2016 invoices from Santee Cooper for electrical service. Id., page 83, lines 12-14; page 84, line 1-15.

Documents show Beverly Construction Group, LLC paid the invoices from Santee Cooper.



Date 10/18/2016 Check 19561 Amount \$67.43

Beverly Construction Group, LLC
 5001 W. HAY BAY
 MYRTLE BEACH, SC 29577
 (843) 331-4488

CNB
 07-231/1538

19940

Three Hundred Thirteen And 68/100 Dollars

DATE 11/16/16 AMOUNT \$ 313.69

PAY TO THE ORDER OF
 SANTEE COOPER
 PO BOX 188
 Moncks Corner, SC 29461-0188

[Signature]

Date 11/16/2016 Check 19940 Amount \$313.69

Beverly Construction Group, LLC
 5001 W. HAY BAY
 MYRTLE BEACH, SC 29577
 (843) 331-4488

CNB
 07-231/1538

20328

Six Hundred Forty-One And 78/100 Dollars

DATE 12/19/16 AMOUNT \$ 641.78

PAY TO THE ORDER OF
 SANTEE COOPER
 PO BOX 188
 Moncks Corner, SC 29461-0188

[Signature]

Date 12/19/2016 Check 20328 Amount \$641.78

Beverly Construction Group, LLC
 5001 W. HAY BAY
 MYRTLE BEACH, SC 29577
 (843) 331-4488

CNB
 07-231/1538

20701

Two Hundred Thirt And 44/100 Dollars

DATE 01/13/17 AMOUNT \$ 203.44

PAY TO THE ORDER OF
 SANTEE COOPER
 PO BOX 188
 Moncks Corner, SC 29461-0188

[Signature]

Date 1/18/2017 Check 20701 Amount \$203.44

Beverly Construction Group, LLC
 202 Highway 144
 Myrtle Beach, SC 29578
 (843) 236-4843

CNB The Community National Bank
 07-231/532

21059

DATE: 02/17/17 AMOUNT: \$ 158.36

One Hundred Fifty-Eight And 33/100 Dollars

PAY TO THE ORDER OF
 SANTEE COOPER
 PO BOX 188
 Moncks Corner, SC 29461-0188

[Signature]

Date 2/17/2017 Check 21059 Amount \$158.36

Beverly Construction Group, LLC
 202 Highway 144
 Myrtle Beach, SC 29578
 (843) 236-4843

CNB The Community National Bank
 07-231/532

21395

DATE: 03/14/17 AMOUNT: \$ 340.79

Three Hundred Forty And 79/100 Dollars

PAY TO THE ORDER OF
 SANTEE COOPER
 PO BOX 188
 Moncks Corner, SC 29461-0188

[Signature]

Date 3/14/2017 Check 21395 Amount \$340.79

Beverly Construction Group, LLC
 202 Highway 144
 Myrtle Beach, SC 29578
 (843) 236-4843

CNB The Community National Bank
 07-231/532

21805

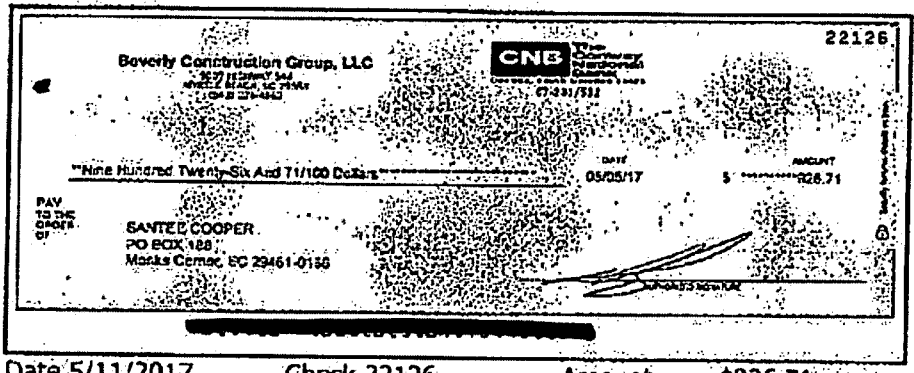
DATE: 04/18/17 AMOUNT: \$ 286.94

Two Hundred Eighty-Six And 94/100 Dollars

PAY TO THE ORDER OF
 SANTEE COOPER
 PO BOX 188
 Moncks Corner, SC 29461-0188

[Signature]

Date 4/18/2017 Check 21805 Amount \$286.94



Date 5/11/2017 Check 22126 Amount \$926.71

CONCLUSION

Clearly, Beverly Homes never owned the lot or the home. And, Plaintiff has not produced any dispute of material fact to support her contention that Beverly Homes exerted any control or was legally in position to take any actions regarding the safety of the site or the elevator on or around the date of Plaintiff's unfortunate accident. Plaintiff's arguments do not show that Beverly Homes, LLC ever set foot on the property or had any control over the site or the subcontractors. Documents submitted by Beverly Construction Group, LLC support the contention by Beverly Construction Group, LLC and Beverly Homes, LLC that Beverly Homes, LLC did not have any involvement with the construction of the Pender house. Thus, Plaintiff does not establish any legal duty owed by Beverly Homes, LLC or any breach of any duty of care. Clark v. Greenville County, 313 S.C. 205, 437 S.E.2d 117 (1993). Plaintiff's pivot away from the "general contractor" argument to the "ownership and control" issue also fails as a matter of law. Accordingly, this Court dismisses Beverly Homes, LLC from this litigation after review of this separate and distinct basis now argued by Plaintiff.

IT IS SO ORDERED.

December _____, 2020
_____, South Carolina

Judge Michael G. Nettles



Georgetown Common Pleas

Case Caption: Evarista Juan Lorenzo VS Port City Elevator Inc , defendant, et al
Case Number: 2018CP2200824
Type: Order/Dismissal

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-01-13 11:50:30 page 34 of 34