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JUN 16 2021

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

Joseph M. Strickland, Master-in-Equity Judge

Appellate Case No. 2018-001156

Quality Lawn Care and Landscaping, Inc. d/b/a Design South Landscape Co....Appellant,

v.

Coogler Construction Company, Inc.,Respondent.

APPELLANT’S PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Quality Lawn Care and Landscaping, Inc. d/b/a Design South Landscape Co. respectfully moves the Court for rehearing and/or to alter its Unpublished Opinion No. 2021-UP-191 of June 2, 2021, which affirmed the trial court’s findings and conclusions. This appeal arises from a decision in a Master in Equity Court bench trial in Respondent’s favor for damages arising out of an alleged breach of contract and resulting damages from alleged defects in the construction of a retaining wall.

Because the Court’s opinion overlooks important evidence in the record supporting Appellant’s position, Appellant respectfully requests that the Court rehear this matter or alter its opinion to reverse the Master’s findings and conclusions.

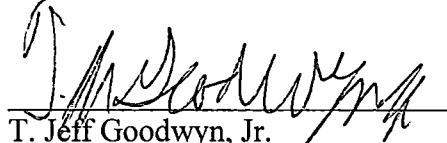
As was well established at trial and agreed to by both parties, Plaintiff was not responsible for staking the location of the wall. Instead, the developer, Edward Rose, hired a surveyor, Henry Walker, to stake the location of the wall. (R. p. 468, ll. 1-8). Respondent also agreed that Plaintiff should not be held to be responsible for any locations errors caused by an improper staking of the layout of the way caused by the surveyor. (R. p. 468, ll. 9-21)

The minor variations of the location of the wall in the non-critical areas in this case were reasonable and expected for these types of segmented retaining walls. The as-built v. design drawing shows just how close the wall was built to the design. (see Trial Exhibit 36, R. p. 878). In addition to sacrificing location for aesthetics, there was other evidence showing that the wall was staked out in the wrong location by the surveyor, Henry Walker. Mr. Walker testified that he used an AutoCAD file with coordinates different than the plans given to Plaintiff. (R. p. 594, l. 2 – p. 596, l. 20). Neither Defendant nor Mr. Walker brought this AutoCAD file to trial. (R. p. 613, l. 5 – p. 614, l. 3). Plaintiff was able to demonstrate at trial how these difference cause location differences compared to the plans Plaintiff was provided. (R. p. 124, l. 11 – p. 126 l. 6).

In addition, the text messages between Joey Coogler and Michael Young showed that the surveyor had a 5 foot set off in the critical corner where the parking lot was being built where there should have been a 3½ foot set off. (R. p. 627 l. 19 – p. 628, l. 11). This 1½ foot difference caused by the surveyor is the difference between the wall allegedly being too close at this critical area and Plaintiff should not be held responsible for this mistake and the Master should not have found Appellant in breach of the contract. For

these reasons, Appellant respectfully requests that the court reconsider its decision and reverse the Master's findings and conclusions with respect to whether Appellant breached the contract.

GOODWYN LAW FIRM, LLC

A handwritten signature in black ink, appearing to read "T. Jeff Goodwyn, Jr.", written over a horizontal line.

T. Jeff Goodwyn, Jr.
2309 Devine Street
Columbia, SC 29205
(803) 251-4517
Attorneys for Appellant

Dated: June 16, 2021

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Joseph M. Strickland, Master-in-Equity Judge

Appellate Case No. 2018-001156

Quality Lawn Care and Landscaping, Inc. d/b/a Design South Landscape Co.....Appellant,

v.

Coogler Construction Company, Inc.....Respondent.

PROOF OF SERVICE

I certify that I have served the **Appellant's Petition for Rehearing** on Edward W. Mullins, II, Esquire, Attorney for the Respondent at the address below by depositing a copy of same in the United States Mail, postage prepaid, on **June 16, 2021**.

Edward W. Mullins, II, Esquire
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110



Mary S. Bush
Paralegal to J. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
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June 16, 2021

GOODWYN LAW FIRM, LLC

T. Jeff Goodwyn, Jr.*
C. David Beale, Jr.*

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*Also Licensed in Georgia

June 16, 2021

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

RE: *Quality Lawn Care and Landscaping, Inc. d/b/a Design South Landscape Co. v. Coogler Construction Company, Inc.*
Appellate Case No.: 2018-001156
Our File No.: 3000-0424

Dear Sir/Madame:

Enclosed for filing please find an original and seven (7) copies of Appellant's Petition for Rehearing, the Proof of Service and filing fee check in the amount of \$50.00 in regards to the above referenced matter. I would appreciate it if you would file same in your office and return a clocked copy with the courier.

By copy of this letter, I am serving a copy of Appellant's Petition for Rehearing upon Thomas E. Dudley, III, Esquire, counsel for the Respondents.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



TJG: T. Jeff Goodwyn, Jr.

TJG/msb
Enclosures

cc: Edward W. Mullins, II, Esquire