STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY Tony T. Good, Plaintiff, v. Tomekia Means and United States Department of Agriculture, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT C/A No.: 2017-CP-36-00598 **ORDER GRANTING JUDGMENT FOR DEFENDANTS**

21223.2

The plaintiff, Tony T. Good, brought this action to collect an amount he alleged he was owed by the defendant, Tomekia Means, as a result of Mr. Good having provided labor and services to improve Ms. Means's home. Ms. Means denied owing any amount to Mr. Good. This matter was heard by the Court at a bench trial on April 21, 2021. Present for the trial was the plaintiff, Tony T. Good, his attorney, Kyle Parker, the defendant, Tomekia Means, and her attorney, Dean Hayes. The parties had previously agreed that the defendant, United States Department of Agriculture, and its attorney, George Conits, did not need to attend the trial, as its mortgage lien position was protected. Prior to trial, the parties also stipulated as to the exhibits to be entered into evidence at trial. The parties also agreed to dispense with the actual publication of the deposition excerpts on the record so that the Court could review the depositions at its convenience. After hearing the testimony, reviewing the documents submitted, and listening to the arguments, I find, conclude, and order as follows:

FINDINGS OF FACT

In 2009, the defendant, Tomekia Means ("Means"), contracted with Pennyworth Homes for Pennyworth Homes to build a home ("Home") for Means at 342 Leaman Avenue, Whitmire, South Carolina 29178. Pennyworth Homes began work on the Home but stopped work in 2010 and did not complete the Home. Means sued Pennyworth Homes and obtained a judgment against Pennyworth Homes in 2013. Means thereafter began talking with the plaintiff, Tony T. Good ("Good"), who is a contractor, about completing the partially-built Home, and Means also applied for a loan from the defendant, United States Department of Agriculture ("USDA"), to fund the completion of the Home. Means's loan application with the USDA was approved, and the result was that the USDA approved a loan of $74,000 to Means to fund completion of the Home. A construction contract ("Contract") was signed in December 2015 by Good and Means whereby certain work was going to be completed on the Home at a cost of $74,000. The cost of $74,000 to complete the Home was based on a quote provided by Good. Good admits that he signed the Contract stating he was going to provide $74,000 in labor and supplies for the work to be completed on the home, but he states that he wasn't going to all of the work. However, Good admits that, after the Contract was signed, he pulled the original work permit for the construction to the Home for the amount of $42,000, and he admits this permit was for work he was doing to the Home.

A dispute thereafter arose between Means and Good, as Means contends she was dissatisfied with the pace and the quality of work being performed on the Home by Good. At the time of the dispute, Good had received payment of $36,800 from the USDA for work completed on the Home, but Good never received the final draw of $37,200 which he contends he was due under the terms of the Contract. Since Means disputed the pace and quality of Good's work,

Means would not approve Good receiving the final draw, so the USDA did not disburse it to Good, and the USDA reduced the principal of the note signed by Means accordingly.

At the time the Contract was entered into by Good and Means in December 2015, Good had a general contractor's building license ("License"), number G197096, under the name of "Good Building" with a classification of "BD1" from the South Carolina Department of Labor, Licensing and Regulation ("LLR"). Under the "BD1" classification at that time, Good was licensed as a builder for construction jobs up to the amount of $30,000. Good was fined $1,000.00 by LLR for performing work on the Home that exceeded Good's contractor's license classification.

DISCUSSION

Good has set forth several causes of action in his amended complaint in this case. Good has asserted specific performance against both Means and the USDA requesting that the final draw of $37,200 be paid by the USDA to Good. Good has also set forth causes of action against Means for breach of contract, unjust enrichment, negligent misrepresentation/constructive fraud, fraud in the inducement, and equitable lien. All of these causes of action relate to Good providing labor and services as a general contractor for the improvement of the Home. Ms. Means, in her answer to Good's amended complaint, specifically alleged, among other defenses, that S.C. Code Section 40-11-370(C) barred Good from maintaining this action. Although Means' answer alleged that Good's work on the Home was "substandard," Means did not set forth a counterclaim against Good.

Good admits that he provided the quote for $74,000 to provide labor and materials for the Home and that he voluntarily signed the Contract. Although Good contends that he was not going to do all of the work under the Contract, he admitted both in his deposition and at trial that he pulled the original work permit for the construction to the Home for the amount of $42,000, and

he admits this permit was for work he was doing to the Home. It is undisputed that Good was doing "general construction" on the Home and that he was a "general contractor." *See* S.C. Code Sections 40-11-20(8) ("General construction" means the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property."); and 40-11-20(9) ("General contractor" means any entity which performs or supervises or offers to perform general construction."). There is no question that, while doing the work on the Home, Good exceeded the dollar amount of $30,000 on his contractor's license with LLR. As a matter of fact, LLR fined Good $1,000 for exceeding the amount of his license by performing work on the Home.

In *C-Sculptures, LLC v. Brown,* 403 S.C. 53, 742 S.E.2d 359 (2013) the South Carolina Supreme Court decided the very issue involved in this case: whether a contractor who is licensed by LLR but exceeds his license amount may maintain an action to enforce a contract. In *C-Sculptures*, the contract price was in excess of $800,000, but the contractor, C-Sculptures, LLC, had a license that limited it to construction contracts that did not exceed $100,000. *C-Sculptures,* 403 S.C. at 55, 742 S.E.2d at 360. A dispute arose between C-Sculptures and the Browns, for whom the construction was being done, and the arbitrator deciding the dispute decided in favor of C-Sculptures. *Id.* The arbitrator's award was thereafter affirmed by both the circuit court and the court of appeals. *Id.*

The South Carolina Supreme Court granted a writ of certiorari and held the arbitrator "manifestly disregarded the law in declining to dismiss the action" filed by C-Sculptures. *Id.* at 360-61. The Court stated that "the plain language of section 40-11-370(C) is clear, defined, explicit, and unquestionably applicable, yet the arbitrator simply chose to ignore it." *Id.* The Court stated that it was undisputed that C-Sculptures was "general contractor" that performed

"general construction" within the meaning of S.C. Code Section 40-11-20(8) and (9). *Id.* The Court then quoted S.C. Code Section 40-11-30, which states "No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for general contracting . . . *without a license issued in accordance with this chapter."* *Id.* (emphasis in original).

Finally, the Court cited S.C. Code Section 40-11-370. Section 40-11-370(A) states: "It is unlawful to use the term "licensed contractor" or to perform or offer to perform general or mechanical construction without first obtaining a license as required by this chapter." *Id.* Section 40-11-370(C) states that 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." *Id.* (emphasis in original). The Court stated that "[t]he term 'valid' is clear and unambiguous, and leaves no room for statutory construction." *Id.* Since C-Sculptures did not have the appropriate license for the contract, the Court held C-Sculptures could not bring the action to enforce the contract. *Id.* C-Sculptures attempted "to avoid the door-closing effect of section 40-11-370(C) by claiming it was merely 'under-licensed,'" but the Court again stated that the word "valid" was without ambiguity and held C-Sculptures did not have a valid license. *Id.*

The *C-Sculptures* case is on point with the present case. Although Good disputes that he was to perform the full $74,000 of work to be completed under the terms of the Contract, he admits that he was personally going to perform work in the amount of $42,000. It is undisputed that Good was only licensed by LLR for contracts up to the amount of $30,000, therefore, since Good did not have a valid license for the Contract, Section 40-11-370(C) bars Good from bringing this action.

Good asserts that Section 40-11-370 may be waived, and this is, to an extent, true. Section 40-11-370 is an affirmative defense, and like any affirmative defense, it may be waived by the failure to assert the defense in a responsive pleading. *See C-Sculptures,* 403 S.C. at 57-58, 742 S.E.2d at 361-62 (discussing cases where the defendant failed to plead Section 40-11-370 as a defense); *Earthscapes Unlimited Inc. v. Ulbrich,* 390 S.C. 609, 703 S.E.2d 221 (2010) (40-11-370 is affirmative defense and the failure to plead an affirmative defense is deemed a waiver of the right to asset it); *Madren v. Bradford,* 378 S.C. 187, 661 S.E.2d (Ct. App. 2008) (statutory prohibition is in the nature of an affirmative defense and should be pled); and *Costa and Sons Constr. Co, Inc. v. Long,* 306 S.C. 465, 412 S.E.2d 450 (Ct. App. 1991) (statute does not involve subject matter jurisdiction and may be waived by failing to assert it in responsive pleading).

In the present case, Means, both in her answer to the original complaint and in her answer to the amended complaint, clearly did plead Section 40-11-370 as a defense, therefore, she has not waived the statutory protection.

Good argues that Means knew that Good did not have a valid license for the work on the Home and that since Means had this knowledge, Means is estopped or has waived her right to the protection of S.C. Code Section 40-11-370. First, Means denies having this knowledge. Second, even if Means did have this knowledge, the South Carolina Court of Appeals has specifically held that a homeowner's knowledge that a contractor did not have a valid license would not prevent the application of the statute. In *Wagner v. Graham,* 296 S.C. 1, 370 S.E.2d 95 (Ct. App. 1988), the Court, faced with this argument, stated:

> The law of estoppel is simply inapplicable to the facts of this case. Assuming, without so deciding, that it might be found by the preponderance of the evidence that the Homeowner was at the time of the agreement aware of the fact that the Contractor did not have a valid license, it would be of no comfort to the Contractor. The statute, as enacted by the Legislature, is for the benefit of the public. If one might avoid the impact of the statute by applying the law of estoppel, one could, by

> a similar reasoning, avoid the act by agreement between the Contractor and Homeowner. Clearly this would not be allowed.

Wagner, 296 S.C. at 3, 370 S.E.2d at 96.

The application of Section 40-11-370 is clear and unambiguous. The South Carolina Supreme Court has held that a contractor who was unlicensed at the time the contract was entered into but obtained a license prior to the home being completed was barred from enforcing the contract. *Duckworth v. Cameron,* 270 S.C. 647, 244 S.E.2d 217 (1978). In *Roberta, Inc. v. Trust,* 274 S.C. 53, 260 S.E.2d 818 (1979), the contractor tried to argue that, either on a theory of contract, quantum meruit, or unjust enrichment, a prior version of the statute "should not be so construed as to bar recovery by an unlicensed builder for amounts paid to third parties for labor and materials used in construction, at least, to the extent that the landowner was benefitted." *Roberta,* 274 S.C. at 54, 260 S.E.2d at 818. "In other words, [contractor] argues that the statute should be construed to prevent any benefit or profit to the unlicensed builder, but should not bar recovery for labor and materials used in the construction from which the unlicensed builder received no profit and from which the landowner received a benefit." *Id.* at 818. The Court stated that it found "no basis in the statute for this construction" and denied recovery by the contractor. *Id.* at 818-19.

In the present case, I conclude Good did not have a valid license to enter into the Contract with Means, and for this reason, Good is barred, by both law and equity, from maintaining this action.

ORDERS

IT IS ORDERED that the plaintiff, Tony T. Good, be and hereby is denied judgment as to all causes of action set forth by him against the defendants, Tomekia Means and the United States Department of Agriculture, as Tony T. Good is barred from maintaining this action pursuant to S.C. Code Section 40-11-370(C).

IT IS FURTHER ORDERED that this matter be and hereby is dismissed with prejudice.

IT IS SO ORDERED!

(Signature Page to Follow)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-36-00598

Tony T. Good,	Tomekia Means and United States Department of Agriculture,
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Dean A. Hayes, SC Bar No. 66066	**Attorney for:** ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ 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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2021 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2021 to attorneys of record or to parties (when appearing pro se) as follows:

Dean A. Hayes, SC Bar No. 66066
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Newberry Common Pleas

Case Caption: Tony T Good VS Tomekia Means , defendant, et al

Case Number: 2017CP3600598

Type: Order/Judgment and Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH