RECEIVED
Apr 12 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2016-CP-10-01833
Appellate Case No. 2021-001055

Andrew and Kimberly McIntire,

Appellants,

v.

Seaquest Development Company, Inc.; Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a Casteen Custom Cabinets; Quality Cedar Products, Inc. of Michigan d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co. Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; and New South Construction Supply, LLC,

Defendants.

and

Seaquest Development Company, Inc.,

Third-Party Plaintiff/Appellant,

v.

Architectural Products of Charleston, LLC, and Sealtight of South Carolina, LLC,

Third-Party Defendants,

Of which Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a

Casteen Custom Cabinets; Quality Cedar Products, Inc. of Michigan d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co. Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; New South Construction Supply, LLC; Architectural Products of Charleston, LLC; and Sealtight of South Carolina, LLC, are

Respondents.

INITIAL REPLY BRIEF OF APPELLANT SEAQUEST DEVELOPMENT COMPANY, INC.

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Edward D. Buckley, Jr. (SC Bar No. 994)
Jason A. Daigle (SC Bar No. 73308)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Appellant
Seaquest Development Company, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Seaquest makes the following points in reply to Respondents' brief.[1]

ARGUMENT IN REPLY

1. Seaquest again adopts the McIntires' arguments by reference.

In its principal brief, pursuant to Rule 208(b)(6), SCACR (providing that "[i]n cases involving more than one appellant . . . any party may adopt by reference all or any part of the brief of another"), except insofar as they are inconsistent with or otherwise prejudicial to its position or interests, Seaquest adopted all of the McIntires' arguments by reference. (Seaquest's Br. pp. 7–8.) To be clear, this goes not only for the McIntires' arguments in their principal brief but also for the McIntires' arguments in their reply brief.

2. This Court's disposition of the prior appeal did not deprive the trial court of jurisdiction to recognize that Respondents remain parties to the case.

According to Respondents, "[t]his Court's mandate after the first appeal was to 'remand the case for arbitration'"[2] and, since "[t]his mandate cannot be applied to [Respondents] because no arbitration agreement exists between them and either

---

[1] Shorthand references already defined in Seaquest's principal brief are continued in this reply brief (e.g., "Seaquest" is general contractor Seaquest Development Company, Inc.; the "McIntires" are homeowners Andrew and Kimberly McIntire; the "Other Defendants" refers, collectively, to the other defendants that the McIntires sued besides Seaquest; the "Third-Party Defendants" refers, collectively, to Architectural Products of Charleston, LLC, and Sealtight of South Carolina, LLC; and "Respondents" refers, collectively, to the Other Defendants and the Third-Party Defendants).

[2] (Respondents' Br. p. 13.)

[the McIntires or Seaquest],"[3] "[t]he trial court thus lacked jurisdiction to reinstate [Respondents] as parties to this case." (Respondents' Br. p. 15.) Respectfully, Respondents are mistaken.

As an initial matter, Respondents mischaracterize the motion for clarification as seeking to "reinstate" Respondents as parties to the case. The motion for clarification did not seek to *reinstate* Respondents as parties; rather, it asked the trial court to advise, in the wake of the McIntires' appeal of Chief Justice Toal's order and this Court's reversal of the same, whether Respondents *remain* parties.

Respondents' argument is essentially that, when the case came back down to the trial court at the conclusion of the prior appeal, this Court had so limited the trial court's jurisdiction that it (the trial court) could do one thing and one thing only: submit the case to arbitration. Thus, according to Respondents, since they could not be compelled to arbitration—and, again, the one and only thing the trial court could do is compel arbitration—the effect of this Court's mandate ("to 'remand the case for arbitration'"[4]) was to make them untouchable, to place them out of the trial court's reach, jurisdictionally speaking. Respondents misapprehend both the law and the logic of this Court's decision in the prior appeal.

---

[3] (*Id.*)

[4] (Respondents' Br. p. 13.)

As Respondents themselves acknowledge, "'[a]fter the remittitur is sent down from an appellate court, the trial court acquires jurisdiction to enforce the judgment *and take* <u>*any action*</u> *consistent with* the appellate court ruling.'" (Respondents' Br. p. 13 (quoting *Ackerman v. McMillan*, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (emphasis added)).) There is no inconsistency between this Court's disposition of the prior appeal and Respondents remaining parties to the case.

Obviously, what this Court meant by "reverse and remand the case for arbitration" was "reverse and remand the case for arbitration [between the McIntires and Seaquest]." (*See* 12/31/19 Opinion ("In this residential construction defect case, . . . the McIntires . . . appeal from the trial court's denial of their motion to compel arbitration with general contractor . . . Seaquest . . . . The McIntires argue the trial court erred in (1) not ordering the dispute to arbitration when the parties' contract contained a valid arbitration clause; (2) addressing issues of statute of limitations, right to cure, and waiver when the court's sole jurisdiction was to decide the question of arbitrability; and (3) dismissing the case for failure to comply with the . . . Right to Cure Act . . . . We reverse and remand the case for arbitration [between the McIntires and Seaquest].") (internal footnote omitted).) By its plain language, what this Court reversed in the prior appeal was the trial court's denial of the McIntires' motion to compel Seaquest to arbitration,

the Court finding that the trial court should have simply granted the McIntires' motion to compel arbitration and should not have proceeded further to address Seaquest's motion regarding the Right to Cure Act.[5] (12/31/19 Opinion.)

To be sure, this means that, on remand, the trial court has to grant the McIntires' motion to compel Seaquest to arbitration. But it does not mean that the trial court is stripped of jurisdiction to recognize where this leaves Respondents. For the trial court to compel arbitration between the McIntires and Seaquest and announce that the case is stayed as to Respondents is entirely consistent with this Court's disposition of the prior appeal.

3. Respondents' reliance on the *Spanish Wells* case is misplaced.

Respondents cite *Spanish Wells Property Owners Association, Inc. v. Board of Adjustment of the Town of Hilton Head*, 295 S.C. 67, 367 S.E.2d 160 (1988), for the proposition that, "[a]lthough Seaquest may not have been aggrieved by the dismissal of the case,[6] Seaquest *is* aggrieved by the continuation of the

---

[5] Again, to be clear, the Court did not find that the trial court's analysis of the Right to Cure Act was erroneous. (12/31/19 Opinion p. 6 ("The McIntires argue the trial court erred in addressing the issues of statute of limitations, Right to Cure Act, and waiver when the court's sole jurisdiction was to decide the question of arbitrability. The McIntires also argue the trial court erred in dismissing the case for failure to comply with the Right to Cure Act. Because we already determined the trial court erred in finding the McIntires waived their arbitration right and remand for arbitration, we need not address these issues.").) And Seaquest is free to raise the Right to Cure issue in arbitration.

[6] Seaquest would note here Respondents' concession that it was not aggrieved by the trial court's ruling.

McIntires' claims against it after the claims against [Respondents] were dismissed,"[7] and "Seaquest could . . . have brought to this Court's attention during the first appeal that [Respondents] were necessary parties that were not joined." (*Id.*)

In *Spanish Wells*, our Supreme Court "h[e]ld that a development permittee is a necessary party to an appeal of its permit." 295 S.C. at 69, 367 S.E.2d at 161; *see also id.* at 68, 367 S.E.2d at 161 ("The sole question we address here is whether a permittee is a necessary party to an action to revoke a development permit."). Accordingly, the Court found that the trial court had correctly dismissed an appeal of a development permit where the *appellant* had failed to include the permittee as a party to the appeal.

Nothing in *Spanish Wells* supports Respondents' effort to impose a burden on the *respondent* to an appeal (here, Seaquest in the prior appeal) to ensure that any other party is joined to the appeal.

CONCLUSION

For the foregoing reasons, together with the reasons already set forth in its principal brief, Seaquest asks this Honorable Court to reverse the trial court's ruling on the motion for clarification and confirm that Seaquest's claims remain pending against Respondents.

---

[7] (Respondents' Br. p. 23 (emphasis in original).)

Respectfully submitted,

CLEMENT RIVERS, LLP

By: s/Russell G. Hines

Stephen L. Brown (SC Bar No. 66468)
Edward D. Buckley, Jr. (SC Bar No. 994)
Jason A. Daigle (SC Bar No. 73308)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488
sbrown@ycrlaw.com
ebuckley@ycrlaw.com
jdaigle@ycrlaw.com
rhines@ycrlaw.com

Attorneys for Appellant
Seaquest Development Company, Inc.

Charleston, South Carolina

April 11, 2022

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2016-CP-10-01833
Appellate Case No. 2021-001055

Andrew and Kimberly McIntire,

Appellants,

v.

Seaquest Development Company, Inc.; Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a Casteen Custom Cabinets; Quality Cedar Products, Inc. of Michigan d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co. Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; and New South Construction Supply, LLC,

Defendants.

and

Seaquest Development Company, Inc.,

Third-Party Plaintiff/Appellant,

v.

Architectural Products of Charleston, LLC, and Sealtight of South Carolina, LLC,

Third-Party Defendants,

Of which Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a

Casteen Custom Cabinets; Quality Cedar Products, Inc. of Michigan d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co. Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; New South Construction Supply, LLC; Architectural Products of Charleston, LLC; and Sealtight of South Carolina, LLC, are

Respondents.

PROOF OF SERVICE

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Edward D. Buckley, Jr. (SC Bar No. 994)
Jason A. Daigle (SC Bar No. 73308)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Appellant
Seaquest Development Company, Inc.

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellant Seaquest Development Company, Inc., hereby certify that the **INITIAL REPLY BRIEF OF APPELLANT SEAQUEST DEVELOPMENT COMPANY, INC.** in the above-captioned case was served on all parties to this matter (who have appeared in the action) on April 11, 2022, by emailing (see attached) a copy of the same to their respective counsel of record:

William W. Watkins, Jr., Esquire
WALL TEMPLETON & HALDRUP, PA
trey.watkins@walltempleton.com

-and-

John J. Dodds, IV, Esquire
YARBOROUGH APPLEGATE, LLC
john@yarboroughapplegate.com

Attorneys for Jerry Comer d/b/a Jerry's Tile &Marble

Danielle F. Payne, Esquire
MCANGUS GOUDELOCK & COURIE, LLC
danielle.payne@mgclaw.com

Attorney for Red Bay Constructors

Shelley S. Montague, Esquire
GALLIVAN, WHITE & BOYD, PA
smontague@gwblawfirm.com

Attorney for Benzenberg Custom Cabinets, Inc.

Erin D. Dean, Esquire
Stacey P. Canaday, Esquire
TUPPER, GRIMSLEY, DEAN, & CANADAY, PA
erindean@tgdcpa.com
staceycanaday@tgdcpa.com

Attorneys for Jonathan Marshall Construction

Suzanne C. Ulmer, Esquire
KERNODLE COLEMAN
sulmer@kernodlelaw.com

Attorney for Carolina Pest Solutions, Inc.

James H. Elliott, Jr., Esquire
RICHARDSON PLOWDEN & ROBINSON, PA
jelliott@richardsonplowden.com

-and-

Samia H. Albenberg, Esquire
RICHARDSON PLOWDEN & ROBINSON, PA
samhanafi@gmail.com

-and-

Brent M. Boyd, Esquire
MURPHY & GRANTLAND, PA
bboyd@murphygrantland.com

Attorneys for New South Construction Supply, LLC

Shanna M. Stephens, Esquire
ANDERSON REYNOLDS & STEPHENS, LLC
sstephens@arslawsc.com

-and-

Preston B. Dawkins, Jr., Esquire
AIKEN BRIDGES ELLIOTT TYLER & SALEEBY, PA
pbd@aikenbridges.com

Attorneys for Coastal Plumbing & Gas, LLC

John E. Rogers, II, Esquire
THE WARD LAW FIRM, PA
jrogers@wardfirm.com

Attorney for Southcoast Exteriors, Inc.

D. Summers Clarke, II, Esquire
K. Michael Barfield, Esquire
BARNWELL WHALEY PATTERSON & HELMS, LLC
sclarke@barnwell-whaley.com
mbarfield@barnwell-whaley.com

Attorneys for Foam Insulation Co., Inc.

Albert A. Lacour, III, Esquire
CLAWSON & STAUBES, LLC
alacour@clawsonandstaubes.com

Attorney for Lowcountry Fireplaces, Inc.

Amanda K. Dudgeon, Esquire
J. Matthew Johnson, Esquire
CHANDLER & DUDGEON LLC
mandi@chandlerdudgeon.com
matt@chandlerdudgeon.com

Attorneys for Sealtight of South Carolina, LLC

Jaan G. Rannik, Esquire
EPTING & RANNIK, LLC
jgr@epting-law.com

Attorney for Andrew and Kimberly McIntire

Respectfully submitted,

CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)

Attorneys for Appellant
Seaquest Development Company, Inc.

Charleston, South Carolina

April 11, 2022

From:	Hines, Russell
To:	Jaan Rannik; Brown, Stephen L.; Buckley, Edward D. (Ed); Daigle, Jason; smontague@gwblawfirm.com; sulmer@kernodlelaw.com; sstephens@arslawsc.com; pbd@aikenbridges.com; trey.watkins@walltempleton.com; john.dodds@walltempleton.com; sclarke@barnwell-whaley.com; Dean, Erin; staceycanaday@tgdcpa.com; alacour@clawsonandstaubes.com; jelliott@richardsonplowden.com; samhanafi@gmail.com; bboyd@murphygrantland.com; Bell, Pollyana (Polly); danielle.payne@mgclaw.com; jrogers@wardfirm.com; Jean-Charles, Alice; mjones@gwblawfirm.com; kgarvin@kernodlelaw.com; receptionist1@arslawsc.com; bdg@aikenbridges.com; sandra.schultz@walltempleton.com; jsegell@barnwell-whaley.com; edde-filings@tgdcpa.com; morganreeves@tgdcpa.com; "shatch@clawsonandstaubes.com"; mmayden@richardsonplowden.com; samia@letssimplify.com; bawilson@murphygrantland.com; lisa.carducci@mgclaw.com; ssantana@wardfirm.com; Justman, Aimee; mbarfield@barnwell-whaley.com; Amanda K. Dudgeon; matt@chandlerdudgeon.com; "Angela Gross"; "john@yarboroughapplegate.com"
Subject:	McIntire v. Seaquest (2021-001055) -- Seaquests" Initial Reply Brief
Date:	Monday, April 11, 2022 11:55:19 PM
Attachments:	image003.png McIntire v. Seaquest (2021-001055) -- Seaquest"s Initial Reply Br.pdf

---

Attached in the above-reference case is the **Initial Reply Brief of Appellant Seaquest Development Company, Inc.**

Russell G. Hines
CLEMENT RIVERS, LLP
www.ycrlaw.com
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
Phone: (843) 720-5488
Fax: (843) 579-1327
Email: rhines@ycrlaw.com

CLEMENT RIVERS, LLP
25 Calhoun Street • Suite 400 • Charleston, SC 29401
ycrlaw.com