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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-285

Filed: 4 December 2018

Washington County, No. 17 CVS 127

BALDWIN HOMES, Inc. d/b/a, SERVPRO OF BATH, Plaintiff,

v.

KHAI QUOC LE, Defendant.

Appeal by Plaintiff from order entered 23 October 2017 by Judge Cy A. Grant, Sr., in Washington County Superior Court. Heard in the Court of Appeals 19 September 2018.

The Law Offices of Oliver & Cheek, PLLC, by George M. Oliver and Ciara L. Rogers, for the Plaintiff-Appellant.

Evan Lewis for the Defendant-Appellee.

DILLON, Judge.

Plaintiff Baldwin Homes, Inc., appeals from the trial court's order granting Defendant Khai Quoc Le's motion for judgment on the pleadings. Plaintiff argues that the pleadings did not conclusively establish that it needed a general contractor's license to be compensated for the work it performed on Defendant's property. After reviewing the pleadings, we reverse.

I. Background

In October 2016, flood waters resulting from Hurricane Matthew damaged a shopping center (the "Property") owned by Defendant in Plymouth. Defendant entered into a contract with Plaintiff to perform "mediation" and "reconstruction" work on the Property (the "Contract"). Between October and December of 2016, Plaintiff performed its duties under the Contract. Plaintiff did not hold a North Carolina general contractor's license. Plaintiff requested that Defendant pay for services rendered under the Contract, but Defendant refused.

In April 2017, Plaintiff filed a claim of lien against the Property and also instituted this action for breach of the Contract. Plaintiff later filed a *lis pendens* on the Property, as well.

In October 2017, following a hearing on the matter, the trial court entered judgment on the pleadings against Plaintiff with respect to any payment demanded for "reconstruction" services. The trial court denied Defendant's motion with respect to payment owed for damage "mediation" services. The trial court also discharged Plaintiff's claim of lien on the Property, as well as its *lis pendens*.

Plaintiff timely appealed.

II. Analysis

A. Appellate Review

We first acknowledge that the appeal before us is interlocutory. That is, all claims as to all parties have not been resolved, and further action by the trial court is necessary to "settle and determine the entire controversy." *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950). Typically, an interlocutory appeal is not ripe for review. *Travco Hotels v. Piedmont Nat. Gas Co.,* 332 N.C. 288, 291, 420 S.E.2d 426, 428 (1992). However, we can review an interlocutory order where (1) the trial court has certified it for immediate review or (2) the order affects a substantial right which warrants review. *Sharpe v. Worland*, 351 N.C. 159, 162-63, 522 S.E.2d 577, 579 (1999).

The order before us is indeed interlocutory. Plaintiff still has claims pending in the trial court. The trial court did not certify its order for review. Plaintiff contends, though, that the trial court's order affects his right to avoid a second trial on the same issues. We agree.

Our Supreme Court has recognized a party's substantial right to avoid multiple trials on the same issues and factual circumstances. *Green v. Duke Power Co.*, 305 N.C. 603, 608, 290 S.E.2d 593, 596 (1982) ("[T]he possibility of undergoing a second trial affects a substantial right only when the same issues are present in both trials, creating the possibility that a party will be prejudiced by different juries in separate trials rendering inconsistent verdicts on the same factual issue."). The trial court dismissed Plaintiff's claims representing reconstruction services but not its claims

representing remediation services. We foresee that all of the work performed by Plaintiff will need to put on as evidence to allow a jury to determine which work constituted remediation services and the value of those services apart from the reconstruction services. If after a trial on the remediation services we reverse the trial court's judgment on the pleadings with respect to the reconstruction services, there will need to be a second trial. That jury would have to make its own determination as to which of Plaintiff's work constituted reconstruction services. There is a substantial risk that the second jury will not fully agree with the first jury in making this determination. We therefore conclude that the interlocutory order affects a substantial right, and we now review the merits of the appeal at this stage.

B. Judgment on the Pleadings

Plaintiff challenges the trial court's partial grant of Defendant's motion for judgment on the pleadings. We review an order granting a motion for judgment on the pleadings *de novo*, to determine, in the light most favorable to the nonmoving party, whether, after reviewing the pleadings, there remains a material issue of fact and whether facts sufficient to state a cause of action have been alleged. *Tully v. City of Wilmington*, 370 N.C. 527, 532, 810 S.E.2d 208, 213 (2018).

Plaintiff contends that the trial court erred in determining that some of the work it performed under the Contract required a general contractor's license. Plaintiff admitted in a pleading that it "was not licensed as a general contractor

during the period" in which it performed work under the Contract. Therefore, the issues before us are, first, whether a general contractor's license was required for the work done under the Contract, and, second, if a license was required, how much of the work performed by Plaintiff under the Contract required a license?

If a person or corporation undertakes to complete the "construction" of a building, "[existing] improvement or structure," "where the cost of the undertaking is thirty thousand dollars ($30,000) or more," that person or corporation is considered a "general contractor" in North Carolina and must be properly licensed as such. N.C. Gen. Stat. § 87-1 (2015); N.C. Gen. Stat. § 87-10. "[A] general contractor who enters a construction contract [where the cost is over $30,000] without a valid license may not recover on the contract," *Baker Const. Co. v. Phillips*, 333 N.C. 441, 444, 426 S.E.2d 679, 681 (1993), and may not recover based on *quantum meruit*. *Brown Builders v. Johnson*, 240 N.C. App. 8, 10, 769 S.E.2d 653, 656 (2015).

Plaintiff argues that no general contractor's license was required for his work on the Property because the Contract, in fact, involved multiple smaller contractual agreements. The Property is a commercial building with separate units, and Plaintiff contends that he did not bill more than $30,000 for work performed in any of the respective units. We disagree.

The pleadings show that the Contract is a single contractual agreement to perform work on a single building. The General Assembly states that the $30,000

limit applies to any "undertaking" to "construct[]" any improvement or structure." N.C. Gen. Stat. § 87-1. Though not binding, our Administrative Code instructs that, "[i]f a project consists of the construction or alteration of one or more buildings . . ., all structures and units on the same parcel of land shall be considered as a single project." 21 N.C. Admin. Code 12.0211 (2015). We have reasoned that, where a job may include multiple phases of work, the "value of a single project" amounts to the cost of the putative contractor's entire "undertaking." *Hodgson Const., Inc., v. Howard*, 187 N.C. App. 408, 413-14, 654 S.E.2d 7, 11-12 (2007) (finding that the value of building a house included the cost of multiple contracts for an assortment of work). We conclude that the Contract at issue to perform work on a single structure, notwithstanding that the building is broken up into separate units, constitutes a single "undertaking."

Further, the pleadings before the trial court showed that Plaintiff performed work to each of the eight units on the Property, totaling $352,630.73. Taking Plaintiff's evidence of its expenditures as true, the total cost to Defendant certainly exceeds the $30,000 threshold set by our General Statutes for the requirement of a general contractor's license.

However, the pleadings do not describe *the exact nature* of the work Plaintiff performed under the Contract, merely separating the work as either "reconstruction" work or "mitigation" work. Plaintiff pleaded a total of $139,854.58 in "reconstruction"

work and $212,776.15 in "mitigation" work. It is unclear from the pleadings whether the work performed under the Contract is the type of work contemplated by Section 87-1. While it is hard to imagine that, of the $352,630.73 in costs, less than $30,000 corresponds to work that Section 87-1 considers "the construction of . . . any improvement," the pleadings simply do not reveal the type of work done. For instance, the construction of a new wall is probably covered under Section 87-1 as the construction of an improvement, while the repair of an existing wall might not be covered.[1]

Our case law supports the notion that what qualifies as "construction" and/or "improvement" under Section 87-1 depends on the totality of the factual circumstances in a given case. It is not enough to say that Plaintiff's work was "reconstruction" or "mitigation," as the parties' own definitions are not guaranteed to reflect the nature of the work performed. The pleadings, when taken in the light most favorable to Plaintiff, show that the value of Plaintiff's undertaking far exceeds the $30,000 threshold for North Carolina's general contractor's license requirement. However, the pleadings do not conclusively show the details of the work actually

[1] Our case law is not clear as to what types of "repair" work are covered under Section 87-1. For instance, in repairing an existing building, a contractor may construct new walls, floors, etc., which certainly would be "the construction of an[] improvement" covered under Section 87-1. However, the cases do not provide black letter rules for determining whether the mere repair of an existing wall or other improvement is considered "the construction of an[] improvement" covered under Section 87-1. Rather, the determination is made upon a factual inquiry into the specifics of the case's circumstances. *See Vogel v. Reed Supply*, 277 N.C. 119, 132, 177 S.E.2d 273, 281-82 (1970) (stating that an "improvement" presupposes an existing structure and includes "the performance of construction work").

performed under the Contract. We hold that judgment in favor of neither party is appropriate at this time, and therefore reverse the trial court's partial judgment on the pleadings.

C. Discharge of Claim of Lien

Plaintiff also appeals the discharge of its claim of lien against the Property under Chapter 44A of our General Statutes. Because we reverse the trial court's partial judgment on the pleadings, we necessarily reverse its discharge of Plaintiff's claim of lien, as well.

D. Conclusion

We hold that the trial court erred in partially granting Defendant's motion for judgment on the pleadings by prematurely separating Plaintiff's work as irrecoverable and potentially recoverable. The pleadings are insufficient to show the nature of the work performed by Plaintiff in order to determine whether a general contractor's license was required. We also hold that the trial court improperly discharged Plaintiff's claim of lien. There remains the possibility that at least some of Plaintiff's work did not require a general contractor's license, and such work would support a valid claim of lien.

REVERSED.

Judges ELMORE and DAVIS concur.

Report per Rule 30(e).