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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-370

Filed 7 May 2024

Onslow County, No. 20 CVS 2015

KUSTOM U.S., INC., Plaintiff,

v.

CATHLEEN COLLINS BRYANT, Defendant.

Appeal by Plaintiff from order entered 19 October 2021 by Judge Imelda J. Pate and orders entered 13 December 2021 and 6 July 2022 by Judge Joshua W. Willey, Jr., in Onslow County Superior Court. Heard in the Court of Appeals 10 January 2024.

*Wolfe, Gunst & Hinson, PLLC, by Joshua Hinson and Robert C. Gunst, Jr., for plaintiff-appellee.*

*Cathleen Collins Bryant, pro se, as defendant-appellant.*

MURPHY, Judge.

Plaintiff had legal standing to bring a breach of contract claim against Defendant, which conferred subject matter jurisdiction on the trial court. Defendant failed to respond to Plaintiff's discovery request for six months, despite previously receiving an extension, and the trial court properly sanctioned Defendant by ordering

her to pay Plaintiff's attorney fees in filing its motion to compel discovery and by dismissing Defendant's counterclaim. After Defendant failed to respond to Plaintiff's requests for admissions, the trial court properly deemed the requests admitted and entered summary judgment in favor of Plaintiff. The trial court did not abuse its discretion in denying Defendant's Rule 59 and 60 motions.

### **BACKGROUND**

On 3 August 2020, Plaintiff Kustom, U.S., Inc., filed a complaint against Defendant Cathleen Collins Bryant, which alleged that Defendant failed—despite receiving invoices and demands—to pay the full amount owed to Plaintiff for its “furnishing of services, labor, and/or materials . . . in the performance of emergency restoration and removal work to improve, remediate, restore, and/or repair” Defendant's home. Defendant appeals in the resulting action from the trial court's orders denying Defendant's motions under North Carolina Rules of Civil Procedure 59(a), 60(b), and 19 and from the related orders granting Plaintiff's motion to compel discovery and sanctions; denying Defendant's motion for relief from the order granting Plaintiff's motion to compel discovery and sanctions; and granting Plaintiff's motion to enforce Rule 37 sanctions against Defendant, to deem all requests for admissions as admitted pursuant to Rule 36, and for summary judgment on all claims.

On 25 September 2018, “Defendant and/or [her mother, Ms.] Collins contracted with [Plaintiff]” for demolition and remediation services. At the time that the

contract was formed, Defendant co-owned the subject home with Ms. Collins as joint tenants with a right of survivorship. Defendant did not sign her name to the contract; however, Plaintiff was aware that she was a joint owner of the property and made note of her contact information by writing it on the bottom of the contract.

On 2 November 2018, Plaintiff submitted a claim to Ms. Collins's insurance for the amount of \$42,512.85. Ms. Collins's insurer informed Plaintiff that it would not issue any direct payments to Plaintiff. Pursuant to the 25 September 2018 contract, Ms. Collins was personally liable for any payment less than payment in full by her insurer. Between the months of December 2018 and July 2019, Plaintiff billed and invoiced Ms. Collins for various amounts, ranging from \$28,414.82 to \$42,512.85, through Defendant. On 24 January 2019, Plaintiff filed a *Claim of Lien* against Ms. Collins's real property.<sup>1</sup> However, on 25 July 2019, Ms. Collins and Defendant, through counsel, filed a document purporting to "cancel" the lien for Plaintiff's failure to enforce. It does not appear that Plaintiff ever perfected its *Claim of Lien* and the same was discharged in accordance with N.C.G.S. § 44A-16(a)(3).

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<sup>1</sup> We note that Plaintiff's *Claim of Lien* designated that it entered into a contract with Mary Collins and only appears to designate her real property. To the extent that the *Claim of Lien* could be considered a prior inconsistent pleading for purposes of judicial estoppel, this argument was not specifically raised by Defendant below or in her briefs. Further, we do not view the inclusion of only one property owner and alleged contracting party in the statutory *Claim of Lien* to be "clearly inconsistent" with Plaintiff's pleadings. See, e.g., *In re Will of Shepherd*, 235 N.C. App. 298, 306 (2014) (applying the rule that judicial estoppel applies only when the party's later position is clearly inconsistent with its earlier position); accord *T-WOL Acquisition Co. v. ECDG South, LLC*, 220 N.C. App. 189 (2012).

On 22 July 2019, Plaintiff sent Defendant an email demanding payment from Ms. Collins in the amount of \$35,628.60. On 3 September 2019, Plaintiff filed a complaint against Ms. Collins, seeking to recover “no less than \$35,828.60, plus interest, prejudgment and post judgment, costs, and all attorneys’ fees as allowed at law[.]” On 23 December 2019, Ms. Collins died. Plaintiff did not make a claim against Ms. Collins’s estate, and the complaint against Ms. Collins was dismissed on 19 June 2020.

On 3 August 2020, Plaintiff filed a complaint against Defendant seeking to recover the same amount “as a result of Defendant’s breach of contract and/or third-party beneficiary contract; or, in the alternative, [because] Defendant has been unjustly enriched by the work, labor, materials and services provided by [Plaintiff] . . . .” On 24 September 2020, Defendant, acting *pro se*, filed a *Notice of Removal* in the United States District Court for the Eastern District of North Carolina. However, Defendant subsequently obtained counsel, who filed a joint motion with Plaintiff’s counsel to remand the matter back to Onslow County Superior Court, as the county trial court had not received notice of Defendant’s attempt to remove the matter to federal court. On 6 November 2020, Defendant filed her answer to Plaintiff’s complaint and asserted counterclaims against Plaintiff. On 1 December 2020, the federal district court granted the parties’ joint motion to remand. The county trial court entered a *Discovery Scheduling Order* on 12 April 2021. On 28 April 2021, Defendant’s counsel withdrew from representing Defendant. The trial court granted

Defendant an extension to respond to Plaintiff's request for discovery, extending the deadline until 10 June 2021.

On 23 August 2021, Plaintiff filed a *Motion to Compel Discovery and/or Sanctions and/or Motion for Amended Discovery Scheduling Order, ADR and Trial Date*, stating that Defendant had not yet responded to Plaintiff's first request for discovery. In this motion, Plaintiff requested that the trial court enter an order compelling discovery within 10 days, to issue sanctions against Defendant, or to enter a new discovery scheduling order. On or about 6 October 2021, Plaintiff also issued written requests for admissions to Defendant.

On 19 October 2021, the trial court granted Plaintiff's motion to compel discovery and sanctions and ordered that Defendant respond to Plaintiff's discovery requests within 10 days of the entry of the order. The trial court also ordered that, if Defendant failed to comply with this order, she would be subject to Rule 37 sanctions, including dismissal of her counterclaim and responsibility for paying Plaintiff's attorney fees and costs in pursuing the motion to compel.

Defendant failed to comply with this order and failed to respond to Plaintiff's written requests for admissions. On 29 November 2021, Plaintiff filed a motion to enforce the Rule 37 sanctions, to deem all requests for admissions as admitted pursuant to Rule 36, and to grant summary judgment on all claims. On 13 December 2021, the trial court entered an order dismissing Defendant's counterclaim with prejudice, deeming the requests for admissions as admitted, and entitling Plaintiff to

summary judgment as a matter of law, as well as a final judgment in the amount of \$35,628.60.

On 28 December 2021, Defendant filed numerous documents: a motion to alter or amend the 13 December judgment under Rule 59, a brief in support of the application of the doctrine of judicial estoppel, a brief in support of Defendant's position that Plaintiff failed to join a necessary party, two motions for sanctions against Plaintiff and Plaintiff's attorney, a brief in support of Defendant's motion to alter or amend the 13 December judgment, and a brief in support of Defendant's motion for Rule 26 sanctions. Plaintiff filed its response memorandum on 7 March 2022. On 15 March 2022, Defendant filed her replies, and, on 14 April 2022, Defendant filed a motion for relief from the trial court's 19 October 2021 order granting Plaintiff's motion to compel discovery and for sanctions under Rule 60. Defendant filed a memorandum of law in support of her motion for relief on 27 April 2022.

On 9 June 2022, the trial court denied Defendant's motion for relief from the 19 October order. On 6 July 2022, the trial court denied Defendant's remaining outstanding motions. Defendant appealed.

### **ANALYSIS**

Defendant proposes twelve issues on appeal. In substance, however, Defendant's appeal contains three arguments: (A) that numerous procedural deficiencies deprived the trial court of jurisdiction over this matter; (B) that the trial

court erred by entering summary judgment and sanctions in favor of Plaintiff; and (C) that the trial court abused its discretion by denying Defendant’s Rule 59 motion to amend and Rule 60 motion for relief from this judgment. We review these three arguments below and dismiss Defendant’s remaining arguments.<sup>2</sup>

### **A. Procedural Arguments**

Defendant first argues that Plaintiff lacked standing to bring a breach of contract or *quantum meruit* claim against her. “If a party does not have standing to bring a claim, a court has no subject matter jurisdiction to hear the claim.” *Est. of Apple ex rel. Apple v. Com. Courier Exp., Inc.*, 168 N.C. App. 175, 177, *disc. rev. denied*, 359 N.C. 632 (2005). Defendant also contends that the trial court lacked subject matter jurisdiction because N.C.G.S. §§ 75-50 and 58-70 and the Fair Debt Collection Practices Act (“FDCPA”) prohibit Plaintiff from collecting Ms. Collins’s debts from her relatives or heirs and because Plaintiff was obligated—and failed—to raise a claim against Ms. Collins’s estate for the outstanding balance. On our *de novo* review, we hold that Plaintiff had standing to bring its claims against Defendant, which conferred subject matter jurisdiction on the trial court. *See Cherry v. Wiesner*,

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<sup>2</sup> Defendant raises several unsupported arguments alleging fraud or misconduct by Plaintiff or Plaintiff’s trial counsel. Defendant also contends that the trial court erred by finding that she submitted or attempted to submit evidence which the trial court rejected; that Plaintiff’s requests for admissions were relevant evidence; that Plaintiff invoiced and demanded payment from her; and—as a responsive pleading, admissible evidence, or a judicial admission—that Defendant filed notice of removal. However, Defendant fails to argue how, if true, she was prejudiced by these alleged errors.

245 N.C. App. 339, 345, *disc. rev. denied*, 369 N.C. 33 (2016) (noting that we review issues of standing and subject matter jurisdiction *de novo*).

“As a jurisdictional requirement, standing relates to . . . the right of the party to have the court adjudicate a particular dispute.” *Id.* at 346. “Standing to sue means simply that the party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.” *In re Will of Moore*, 283 N.C. App. 137, 139 (2022) (quoting *Town of Ayden v. Town of Winterville*, 143 N.C. App. 136, 140 (2001)) (marks omitted).

The undisputed facts indicate that, at the time when Plaintiff performed its remediation work, Defendant was a joint owner of the home. In its complaint, Plaintiff asserted that Defendant, as joint owner of the home at the time of services and as sole owner of the home at the time of Plaintiff’s complaint, was personally liable—as a party to the contract, as a beneficiary of a third-party contract, or as a person unjustly enriched by the contract—for the balance owed to Plaintiff for its remediation services. A party need not prove the elements of its case in order to have standing to bring a claim; it must simply have a stake in a justiciable controversy. *See Will of Moore*, 283 N.C. App. at 139. Plaintiff contends, and we agree, that its standing arose from its stake in “hav[ing] its rights determined in August 2020 with respect to a justiciable controversy that [Defendant] owed or withheld money owed to [Plaintiff].” Even if Defendant has partial or complete defenses against Plaintiff’s



recovery, these defenses do not deprive Plaintiff of standing to bring its claims against her, nor do they deprive the trial court of subject matter jurisdiction over the claims.

Defendant next argues that N.C.G.S. § 75-50, *et seq.*, and N.C.G.S. § 58-70, *et seq.*, and the FDCPA, codified at 15 U.S.C. § 1692, *et seq.*, prohibit Plaintiff—whether as a debt collector or collection agency—from collecting the outstanding balance for its remediation services from Defendant, as each statute prohibits the collection of a deceased’s debt from her relative or heir. Even if any of Defendant’s cited authority would prohibit the collection of Ms. Collins’s debt from Defendant, as discussed above, Plaintiff did not attempt to collect Ms. Collins’s debt from Defendant. Instead, Plaintiff’s claims for relief sought to establish and recover under Defendant’s personal liability for the outstanding balance. For the same reason, Defendant’s argument that N.C.G.S. § 28A-19-3(e) prohibits Plaintiff from attempting to recover Ms. Collins’s debts also fails.

Finally, Defendant argues that the trial court’s judgment is “void as a matter of law” because the trial court erroneously determined that Ms. Collins’s estate “[was] a ‘proper’ party, but not a ‘necessary’ party to this Action.” We disagree.

Rule 19 of the North Carolina Rules of Civil Procedure governs the necessary joinder of parties:

(a) Necessary joinder.--Subject to the provisions of Rule 23, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined as plaintiff cannot be obtained he may be made a defendant, the reason therefor being stated in the

complaint; provided, however, *in all cases of joint contracts, a claim may be asserted against all or any number of the persons making such contracts.*

N.C. R. Civ. P. 19 (2023) (emphasis added).

In its 6 July 2022 order, the trial court concluded as follows:

Plaintiff's affirmative claims against Defendant can be determined without the Estate of [Ms. Collins]. Defendant's counterclaims against Plaintiff can be determined without the Estate of Mary Ann Collins. The Estate is not being directed to perform, or not perform, any action as a result of the [o]rder and [j]udgment in this matter. This Action also does not affect a real property right of the Estate of Mary Ann Collins. The [o]rder and [j]udgment cannot be executed against the Estate of Mary Ann Collins.

Plaintiff alleged in part—and sought to recover under the theory—that Defendant was a party to or beneficiary of the contract. The trial court did not err in concluding that Ms. Collins's estate was a proper party, but not a necessary party because, under Rule 19, the claim could—but need not—be asserted against any and all parties to the contract. *Id.*; see also *State ex. rel. Regan v. Wasco, LLC*, 269 N.C. App. 292, 305, *disc. rev. denied*, 374 N.C. 744 (2020) (holding that, “in cases of joint and several liability, the matter can be decided individually against one defendant without implicating the liability of other defendants”; and, therefore, the defendant's argument that another jointly and severally liable entity was a necessary party fails).

## **B. Summary Judgment and Sanctions**

As a preliminary matter, we address Defendant’s argument that the trial court erred in enforcing its 19 October 2021 *Order Granting Plaintiff’s Motion to Compel Discovery and Sanctions*, which directed that, if Defendant failed to serve responses to Plaintiff’s discovery requests within ten days of the order, Defendant’s counterclaim would be dismissed and Defendant would be ordered to pay Plaintiff’s attorney fees and costs in pursuing its motion. “We review the imposition of sanctions *de novo*, but the choice of sanction is reviewable under an abuse of discretion standard.” *Stocum v. Oakley*, 185 N.C. App. 56, 62 (2007), *disc. rev. denied*, 362 N.C. 372 (2008) (quoting *Crutchfield v. Crutchfield*, 132 N.C. App. 193, 195 (1999)).

Rule 37 of the North Carolina Rules of Civil Procedure empowers the trial court to impose sanctions on a party who fails to comply with its order compelling discovery. N.C. R. Civ. P. 37 (2023). Defendant received an extension in April 2021 to respond to discovery by 10 June 2021. When Plaintiff had not received discovery over two months after this deadline, it filed a motion to compel discovery, to impose sanctions on Defendant, or to amend the discovery scheduling order. On or about 6 October 2021, Plaintiff also issued written requests for admissions to Defendant. On 19 October 2021, over four months after Defendant’s extended discovery deadline, the trial court entered its order compelling discovery.

If a party . . . fails to obey an order to provide . . . discovery, . . . a judge of the court in which the action is pending may make such orders in regard to the failure as are just, and among others . . . [a]n order refusing to allow the

disobedient party to support . . . designated claims or defenses . . . .

. . . .

[I]n addition thereto, the court shall require the party failing to obey the order to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

*Id.*

When Plaintiff had still not received Defendant's discovery by 13 December 2021, the trial court sanctioned Defendant pursuant to its statutory authority by dismissing her counterclaim and ordering her to pay Plaintiff's attorney fees for its motion to compel discovery. *Id.* The trial court further ordered that Plaintiff was entitled to summary judgment pursuant to North Carolina Rules of Civil Procedure 36 and 56 and entered final judgment in the matter. N.C. R. Civ. P. 36(a) (2023) ("The matter is admitted unless, within 30 days after service of the request, . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection . . . ."); N.C. R. Civ. P. 56 (2023) ("[Summary] judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law."). Ultimately, Defendant argues this judgment was in error.

We review the trial court’s order granting summary judgment *de novo* to determine whether “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” *Bumpers v. Cmty. Bank of Northern Virginia*, 367 N.C. 81, 87 (2013).

A genuine issue of material fact is one in which

the facts alleged are such as to constitute a legal defense or are of such nature as to affect the result of the action, or if the resolution of the issue is so essential that the party against whom it is resolved may not prevail . . . [A] genuine issue is one which can be maintained by substantial evidence.

*Mace v. Utley*, 275 N.C. App. 93, 98 (2020), *appeal withdrawn*, 379 N.C. 141 (2021) (quoting *Smith v. Smith*, 65 N.C. App. 139, 142 (1938)). “For summary judgment, the movant is held to a strict standard in all cases and all inferences of fact from the proofs proffered at the hearing must be drawn against the movant and in favor of the party opposing the motion.” *Id.* (quoting *Marcus Bros. Textiles, Inc. v. Price Waterhouse, L.L.P.*, 350 N.C. 214, 221-22 (1999)).

To prove breach of contract, a plaintiff must demonstrate “the existence of a contract between [the] plaintiff and [the] defendant, the specific provisions breached, the facts constituting the breach, and the amount of damages resulting to [the] plaintiff from such breach.” *RGK, Inc. v. U.S. Fidelity & Guaranty Co.*, 292 N.C. 668, 675 (1977).

Plaintiff's requests for admissions—which the trial court deemed admitted—  
stated, in pertinent part, as follows:

2. Prior to January 2020, [Defendant] and [Ms. Collins] were joint record owners, with survivorship of [the subject property].

....

4. Prior to January 2020, [Ms. Collins] contracted with [Plaintiff] to furnish emergency services, labor, work and materials for restoration and remediation to [the subject property].

5. Prior to January 2020, [Ms. Collins] was authorized to contract on [Defendant's] behalf with [Plaintiff] for emergency services, labor, work and materials for restoration and remediation to [the subject property].

6. [Plaintiff's] emergency services, labor, work and materials for restoration and remediation to [the subject property] was for the benefit of the real property.

7. [Plaintiff's] emergency services, labor, work and materials for restoration and remediation to [the subject property] was for the benefit of the record owners of the real property.

8. [Plaintiff] performed emergency services, labor, work and materials for restoration and remediation on [the subject property].

9. The total price of the emergency services, labor, work and materials for restoration and remediation performed by [Plaintiff] on [the subject property] was \$35,828.60.

10. North Carolina Farm Bureau issued a homeowners' policy of insurance for [the subject property] to [Defendant] and [Ms. Collins].

....

12. [Defendant] made a claim for [the subject property] to North Carolina Farm Bureau . . . .

13. North Carolina Farm Bureau issued insurance proceeds to [Defendant] . . . .

14. [Plaintiff] was entitled to the insurance proceeds that were issued to [Defendant] . . . .

15. [Defendant] [has] not provide[d] the insurance proceeds that were issued to [Defendant] . . . to [Plaintiff].

16. [Defendant] [has] not paid [Plaintiff] \$35,828.60 for work, materials, services or labor provided to [the subject property].

17. [Plaintiff] is entitled to \$35,828.60 from [Defendant] for work, materials, services or labor provided to [the subject property].

We agree with Plaintiff that, “[e]ven viewing the evidence in a light most favorable to [Defendant], with the evidence in the record on [s]ummary [j]udgment,” the requests for admissions “establish[] the agency between Ms. Collins and [Defendant], and [Defendant’s] ratification at the time of the contracting, thus, subjecting her to turn over received insurance proceeds.”

“Agency is defined as ‘the relationship that arises from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.’” *Berens v. Berens*, 247 N.C. App. 12, 21 (2016) (quoting *Green v. Freeman*, 233 N.C. App. 109, 112 (2014)). The admissions establish that an agency relationship did exist between Ms. Collins and Defendant so as to make Defendant a party to the contract and liable for any breach thereof.

Specifically, the requests for admissions establish that Ms. Collins, being authorized to contract on Defendant's behalf with Plaintiff, did contract with Plaintiff to furnish services which benefit the jointly-owned property as well as the owners of said property.

Furthermore, the admissions establish that Plaintiff performed its contractual obligations, that the total cost due Plaintiff for these services was \$35,828.60, that Defendant received insurance proceeds related to these services, that—despite being contractually obligated to do so—Defendant failed to pay Plaintiff any of these insurance proceeds, and that Plaintiff is entitled to recover \$35,828.60 from Defendant. No genuine issue of material fact that a contract existed between Plaintiff and Defendant, Defendant breached that contract, and Plaintiff is entitled to recover from Defendant for this breach remains, and summary judgment was appropriate on Plaintiff's breach of contract claim.

**C. Order Denying Defendant's Rule 59 and 60 Motions**

Finally, Defendant argues that the trial court erred by denying her motions under Rules 59 and 60. "Motions to amend judgments pursuant to N.C.G.S. § 1A-1, Rule 59 are addressed to the sound discretion of the trial court, and will not be disturbed on appeal absent an abuse of that discretion." *Spivey & Self, Inc. v. Highview Farms, Inc.*, 110 N.C. App. 719, 728, *disc. rev. denied*, 334 N.C. 623 (1993). "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been



the result of a reasoned decision.” *White v. White*, 312 N.C. 770, 777 (1985). We review denial of a Rule 60(b) motion under the same standard. *Kingston v. Lyon Const., Inc.*, 207 N.C. App. 703, 709 (2010) (citing *Davis v. Davis*, 360 N.C. 518, 523 (2006)).

After careful review in light of this deference, and for all of the reasons discussed above, we hold that the trial court’s denial of Defendant’s Rule 59 and 60 motions was not “so arbitrary that it could not have been the result of a reasoned decision.” *White*, 312 N.C. at 777.

### **CONCLUSION**

The trial court did not err by entering summary judgment on Plaintiff’s breach of contract claim, as Defendant’s admissions left no genuine issue of material fact. The trial court did not abuse its discretion by denying Defendant’s Rule 59 and 60 motions where the record reflected this denial was the result of a reasoned decision. The trial court properly sanctioned Defendant pursuant to its statutory authority and did not abuse its discretion in choosing Defendant’s sanctions.

AFFIRMED.

Chief Judge DILLON and Judge CARPENTER concur.

Report per Rule 30(e).