

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1150

Filed 2 July 2024

Randolph County, No. 22 CVS 1870

SCOTTY SAINTSING, d/b/a OUTDOOR EXPOSURE, Plaintiff,

v.

EDGAR SHAWN JOHNSON and NATALIE WALKER, Defendants.

Appeal by Plaintiff from an order entered 24 August 2023 by Judge Keith O. Gregory in Randolph County Superior Court. Heard in the Court of Appeals 17 April 2024.

Brinkley Walser Stoner, PLLC, by Matthew C. Lewis and Roy L. McDonald, for Plaintiff-Appellant.

Conner Gwyn Schenck PLLC, by Daniel C. Watts and Paul E. Davis, for Defendants-Appellees.

WOOD, Judge.

Scott Saintsing (“Plaintiff”) appeals the trial court’s partial grant of Defendant’s summary judgment motion. Plaintiff argues he was not required to be licensed as a general contractor for the construction project at issue because Joseph Thomas (“Thomas”) was the general contractor for the project. For the reasons stated

herein, we reverse the judgment of the trial court and remand for further proceedings.

I. Factual and Procedural History

In May 2021, Defendants contacted Plaintiff regarding clearing land and making repairs and improvements to a private farm road. Defendants knew Plaintiff because they previously had hired him to perform other work at a separate property. Defendants allege Plaintiff represents himself as “LICENSED, INSURED AND TRUSTED.”

According to Plaintiff, he was informed the road work was to be performed as part of a larger construction project which included building a private residence for Defendants, building a large, heated, detached garage, and building and installing a swimming pool (the “construction project”). The improved farm road would serve as the driveway for the new residence.

Plaintiff alleges Defendants told him Thomas, a general contractor and president and licensed qualifier of Glenco Construction, LLC (“Glenco”), would oversee and manage the construction project and that Plaintiff would perform his portion of the work under the supervision of Thomas. Plaintiff further alleges he “would not have agreed to furnish labor and material for his assigned portions of the Construction Project” without assurances from Defendants and Thomas that Thomas would be serving as the licensed general contractor on the construction project.

In his complaint, Plaintiff sets forth his contact with Thomas. In May 2021, at Defendants’ request, Plaintiff had a meeting with Defendants and Thomas during

which Defendants introduced Plaintiff to Thomas. Defendants and Thomas told Plaintiff that Thomas would be the general contractor managing the construction project. Thomas “explained to Plaintiff what Plaintiff’s role in the Construction Project would be” and “what labor, materials, and services [Thomas] believed would be required for Plaintiff to complete Plaintiff’s assigned portions of the Construction Project.” Based on Plaintiff’s May meeting with Defendants and Thomas, Plaintiff submitted a quote of approximately \$15,000.00 for the land clearing portion of the project and \$7,500.00 for the farm road improvements, for a total of approximately \$22,500.00. However, Defendants allege Plaintiff’s quote was for clearing at least three acres of land for \$15,000.00 per acre. Plaintiff and Defendants orally agreed to Plaintiff’s quote.

Plaintiff met with Defendants and Thomas a second time in mid-August 2021. During this meeting, Thomas “provided Plaintiff with detailed guidance and directions regarding Plaintiff’s assigned portions of the Construction Project.” This included instructions on “the path that had been marked and staked off to guide Plaintiff’s clearing of the land according to [Thomas’] desired specifications,” changes needed in the path of the farm road and the planned land clearing to accommodate power boxes, light poles, and underground power cables, and the requirement for Plaintiff to repair the private farm road before Thomas could begin his portion of the construction project due to its current condition. Additionally, Thomas mentioned that Plaintiff would need to contact him when the land clearing was finished so that

he could inspect the work and provide advice regarding the required grading for Plaintiff's work on the farm road.

Plaintiff began work on Defendants' land on 10 September 2021. In November 2021, Thomas applied for and obtained building permits for the house, detached garage, and pool he was to build on Defendants' property. Thomas was listed as the general contractor on each permit application. Attached to one of the permit applications was a hand-drawn site map showing the major improvements to be made to the property, including the house, detached garage, and the farm road which was labeled, "Driveway."

On 24 November 2021, Defendants hired Glenco Construction to design and build a single-family home on the property (the "construction contract"). Plaintiff was not a party to the construction contract. Attached to the construction contract was an exhibit containing drawings for the building plans for the detached garage and the residence and for particular rooms within the residence. Also attached to the construction contract was a project spreadsheet listing each individual item of work to be done and its associated cost estimate. According to Thomas, the project spreadsheet was a list of "the items that need to be completed to complete the project," and Plaintiff's portion of the work was necessary to allow Thomas to build the residence. If Plaintiff did not complete his assigned portions or did so inadequately, Thomas would have to finish or correct them. Thomas specified, "referring . . . to the clearing, grading, and road going to the site, yes. We would have to price that and get

our subcontractors to do it to be able to build the house.” In addition to the items assigned to Glenco, the spreadsheet included Plaintiff’s portion of work: lot clearing, rough grading, the driveway, and gravel. These items were listed as being the responsibility of the “Johnsons.”

Plaintiff alleges that a “few weeks” after he began work on his assigned portions of the construction project, Defendants made “frequent and recurring” changes to his scope of the work, including widening the farm road by several feet; raising the elevation of the road in various places; placing new dirt and other forms of foundational support to stabilize the road; and removing old culverts and installing new ones. Each time Defendants requested changes to Plaintiff’s scope of work, Plaintiff informed them of the associated increase in costs due to labor and materials, and Defendants agreed to the price changes. Plaintiff further alleges he met with Thomas regarding Defendants’ requested changes. Thomas would review Plaintiff’s ongoing work, including the changed scope of his work, and would direct “Plaintiff’s grading work for the road improvements and [his] . . . selection and placement of culverts.”

A payment dispute between Plaintiff and Defendants arose. According to Plaintiff, “Defendants began to fall behind on making the agreed to payments to Plaintiff for his labor and materials.” Plaintiff alleges “the total costs of the labor and materials furnished by [him] amounted to \$248,481.60” and that Defendants paid

Plaintiff “in total, approximately \$57,000,” leaving a balance due of \$191,481.60.”¹ On 5 May 2022, Plaintiff ceased working for Defendants due to their delinquent payments.

On 2 June 2022, Plaintiff filed a complaint in which he brought multiple causes of action: breach of contract; enforcement of claim of lien; quantum meruit / unjust enrichment, fraud, negligent misrepresentation, civil conspiracy, and punitive damages. On 11 August 2022, Defendants filed a motion to dismiss pursuant to N.C. R. Civ. P. 12(b)(6), arguing that Plaintiff was barred from compensation because he illegally entered into a contract with Defendants as an unlicensed contractor. In the same motion, Defendants also sought transfer of venue from Davidson County to Randolph County. On 7 September 2022, the trial court denied Defendants’ motion to dismiss and granted their motion to transfer venue to Randolph County Superior Court.

On 22 September 2022, Defendants filed their answer and counterclaim. Defendants again advanced the affirmative defense that Plaintiff was barred from compensation for working as an unlicensed contractor. They also advanced counterclaims of quiet title due to Plaintiff’s liens asserted against Defendant’s property, breach of contract, unfair and deceptive trade practices, and fraud.

¹ Defendants allege that they “paid Plaintiff approximately \$52,000.” They further allege Plaintiff only produced checks showing he paid his subcontractors approximately \$37,800.00.

The parties exchanged discovery including a deposition of Thomas. On 31 May 2023, Plaintiff filed a partial motion for summary judgment on Defendants' affirmative defenses related to Plaintiff's lack of a general contractor's license. On 25 July 2023, Defendants filed a motion for summary judgment on all of Plaintiff's claims.

The trial court held a hearing on the motions during the 31 July 2023 civil session of Randolph County Superior Court. On 24 August 2023, the trial court entered its written order on the parties' motions. The trial court denied Plaintiff's motion for summary judgment and granted Defendant's motion for summary judgment as to Plaintiff's claims for breach of contract, lien enforcement, and quantum meruit / unjust enrichment. Plaintiff informed the trial court of his intent to appeal, and the trial court concluded there was "no just reason for delaying appeal of [the] Order" as to its rulings on Plaintiff's breach of contract and quantum meruit / unjust enrichment claims for relief. The trial court certified the order for immediate appeal "pursuant to the North Carolina Rules of Civil Procedure, including, but not limited to, . . . Rule 62, and the North Carolina Rules of Appellate Procedure."

On 20 September 2023, Plaintiff filed a written notice of appeal.

II. Analysis

A. Appellate Jurisdiction

Although the trial court did not explicitly refer to N.C. R. App. P. 54(b) in its order, it certified its order for immediate appeal pursuant to the North Carolina Rules

of Civil Procedure including but not limited to Rule 62. The trial court used the language of N.C. R. Civ. P. 54 in its conclusion that there was “no just reason for delaying appeal of” its order:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, crossclaim, or third-party claim, or when multiple parties are involved, the court may enter a final judgment as to one or more but fewer than all of the claims or parties *only if there is no just reason for delay and it is so determined in the judgment. Such judgment shall then be subject to review by appeal or as otherwise provided by these rules or other statutes.*

N.C. R. Civ. P. 54(b) (emphasis added). Because the trial court certified its order for immediate appeal, we are satisfied Plaintiff’s appeal is properly before us.

B. Plaintiff’s Lack of a General Contractor’s License

Plaintiff argues the trial court erred in granting partial summary judgment for Defendants because he was not required to have a general contractor’s license. Plaintiff contends Thomas was the general contractor overseeing the entire construction project. Defendants argue the statutory requirement for a contractor to have a license to perform work valued over \$30,000.00 operates as a total bar to Plaintiff recovering any amount owed by them.

“Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows 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.” *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quotation

marks omitted). Upon a motion for summary judgment, the trial court “must view the presented evidence in a light most favorable to the nonmoving party. . . . [I]f there is any question as to the weight of evidence[,] summary judgment should be denied.” *Id.* at 573–74, 699 S.E.2d at 576–77.

Pursuant to Chapter 87 of the General Statutes, a person who contracts to do a construction project costing \$30,000.00 or more must be a licensed general contractor in order to recover from the owner for breach of contract or on the theory of quantum meruit. *Mill-Power Supply Co. v. CVM Assocs.*, 85 N.C. App. 455, 458, 355 S.E.2d 245, 247 (1987); *Spears v. Walker*, 75 N.C. App. 169, 171, 330 S.E.2d 38, 40 (1985). N.C. Gen. Stat. § 87-1 defines general contractor as:

any person or firm or corporation who for a fixed price, commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm, or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any . . . grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars (\$30,000) or more, . . . shall be deemed to be a “general contractor” engaged in the business of general contracting in the State of North Carolina.

N.C. Gen. Stat. § 87-1(a) (2021).² N.C. Gen. Stat. § 87-13 prohibits the unauthorized practice or attempt to practice as an unlicensed general contractor:

Any person, firm, or corporation not being duly authorized who shall contract for or bid upon the construction of any of the projects or works enumerated in G.S. 87-1, without

² The General Assembly raised the limit to \$40,000.00 in 2023. N.C. Gen. Stat. § 87-1(a) (2023).

having first complied with the provisions hereof, or who shall attempt to practice general contracting in the State, except as provided for in this Article, . . . shall be deemed guilty of a Class 2 misdemeanor.

N.C. Gen. Stat. § 87-13.

This Court has stated that a reviewing court may determine whether a contractor acts as a general contractor by looking to the degree of control he or she exercises over the entire project:

Not every person who undertakes to do construction work on a building or project is a general contractor, even though the cost of his undertaking exceeds \$30,000.00. The principal characteristic distinguishing a general contractor from a subcontractor or other party contracting with the owner with respect to a portion of the project, or a mere employee, is the degree of control to be exercised by the contractor over the construction of the entire project.

Mill-Power Supply Co., 85 N.C. App. at 461, 355 S.E.2d at 249 (brackets and ellipsis omitted).

Here, Plaintiff “readily concedes that he is not a licensed general contractor and that the ultimate contract price for [his] Portion of the Project was ultimately well in excess of \$30,000.” Plaintiff alleges that initially, he submitted a quote of approximately \$15,000.00 for the land clearing portion of the project and \$7,500.00 for the farm road improvements, for a total of approximately \$22,500.00. Therefore, he would not have needed a license initially because the contract was for an amount less than \$30,000.00. N.C. Gen. Stat. § 87-1(a). To the contrary, Defendants allege Plaintiff’s quote was for clearing at least three acres of land for \$15,000.00 per acre,

which would be a total of \$45,000.00 and would have required Plaintiff to be licensed from the beginning. The value of the original contract is a factual issue which must be determined by a jury. *Woody v. Vickrey*, 276 N.C. App. 427, 439, 857 S.E.2d 734, 743 (2021). The factual issues in this case are the value of the original contract and, if it was \$30,000.00 or more, whether Thomas worked as the general contractor on one project for which Plaintiff was a subcontractor.

Plaintiff argues that his work on the driveway was only one component of the overall construction project and that Thomas was the general contractor on the project. Therefore, Plaintiff argues, he was not required to be a licensed general contractor. In support of his argument, Plaintiff points out that Thomas stated during his deposition that the project spreadsheet was a list of “the items that need to be completed to complete the project,” and that because the project spreadsheet listed Plaintiff’s portion of the work, Plaintiff’s responsibilities were only one aspect of the construction project for which Thomas was the general contractor. Thomas stated that if the driveway work were left incomplete or done incorrectly, he would have done it himself, indicating it was a necessary part of the project. Thomas admitted he was responsible for coordinating all aspects of the construction project, including the work on the driveway, even if they were not within Glenco’s scope of work as set forth in his contract with Defendants, to ensure that potentially improper work on the driveway did not impact his components of the construction project. Plaintiff also contends he met with Thomas on more than one occasion and that, prior

to Plaintiff beginning work on Defendants' land, Thomas "provided Plaintiff with detailed guidance and directions regarding Plaintiff's assigned portions of the Construction Project."

Defendants admit Thomas was the general contractor for the building of their house but deny that Thomas was the general contractor for Plaintiff's portion of the project. They also deny that Thomas exercised control over Plaintiff's work on their property. In support of their argument, they point out that Thomas stated, "It was told to me that . . . whoever was doing the grading at the time . . . that the Johnsons wanted to take care of that and that was excluded from Glenco's scope of work at the time of the contract." Thomas stated that although he would have ensured the driveway was completed or corrected if Plaintiff left it incomplete or did it improperly, he would have given Defendants a quote for the price of the additional work, indicating the driveway was never within Thomas' original scope of work.

Defendants further argue that Thomas' lack of control over Plaintiff's work on the driveway demonstrates they were different projects. In his deposition, Thomas stated, "there was no conversations, no text messages, no email coordination, nothing between me and [Plaintiff]. I did not know who [Plaintiff] was." Defendants submit that a "summary of construction diary" kept by Thomas which states that Thomas did not meet Plaintiff until 8 February 2022 when he was onsite at Defendant's property and met Defendants' "grading contractor for the first time" is further proof Thomas did not supervise Plaintiff's work. Defendants contend that Plaintiff

“did not produce any text messages, emails, communications, contracts, subcontracts, or any other documentation evidencing any involvement or arrangement of any kind between” Plaintiff and Thomas. According to Thomas, “[t]here was no confusion” that Plaintiff was not one of his subcontractors and that he recently changed Glenco’s policy to prohibit homeowners with whom he works from selecting their own contractors for different portions of a project.

Clearly, Plaintiff and Defendants present different recollections of what transpired during the construction project and very different views regarding whether portions of the construction project were indeed one project. Both parties point to statements Thomas made during his deposition in support of their respective viewpoints. The weight of the evidence is not a question for this Court to decide. A genuine issue of material fact exists regarding whether Plaintiff’s work on the driveway was one portion of the overall construction project for which Thomas was the general contractor and, consequently, whether Plaintiff was required to be licensed as a general contractor. *Mill-Power Supply Co.*, 85 N.C. App. at 462, 355 S.E.2d at 249.

III. Conclusion

Because genuine issues of material fact exist regarding the price of the original contract and whether the clearing of the land and the improvements to the driveway were portions of the construction project for which Thomas was the general contractor, the trial court improperly granted summary judgment in Defendants’

SAINTSING V. JOHNSON

Opinion of the Court

favor. We reverse the trial court's order and remand the matter to the trial court so that the factual issues may proceed to trial.

REVERSED AND REMANDED.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).