REL: December 4, 2020

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190473

Russell B. Robertson and Amanda V. Robertson

v.

Anthony Lynn Duncan and Lonnie O. Duncan

Appeal from Walker Circuit Court
(CV-18-900292)

EDWARDS, Judge.

Russell B. Robertson, who is an attorney, and Amanda V. Robertson appeal from a judgment entered by the Walker Circuit Court ("the trial

court") (1) in favor of Lonnie O. Duncan and against the Robertsons on Lonnie's breach-of-contract claims and (2) in favor of Lonnie and his brother, Anthony Lynn Duncan ("Lynn"), on the Robertsons' claims of slander of title and of violation of the Alabama Litigation Accountability Act ("the ALAA"), Ala. Code 1975, § 12-19-270 et seq. Lynn has not filed a brief on appeal.

The Robertsons are married. Their house in Walker County ("the home") was damaged by fire on the morning of May 4, 2017, after which they met with the Duncans regarding the repair of that fire damage. Each of the Duncans had been in the homebuilding business for over 30 years. The parties agree that the initial meeting eventually resulted in an oral agreement regarding fire-damage repairs, which have been performed and paid for to the extent that the parties did not otherwise agree to modify the work to be performed. The Robertsons also apparently had an agreement with HJJ, Inc., d/b/a Servpro of Walker County ("Servpro"), for Servpro to perform work on the home in preparation for the work they discussed with the Duncans.

The Robertsons and the Duncans disagree over whether the agreement regarding the fire-damage-repair work was made with Lynn (the Robertsons' position at trial), with Lonnie (the Duncans' position at trial), or with both of the Duncans (the trial court's conclusion following trial). Also, the Robertsons and the Duncans disagree regarding whether the Robertsons owed $15,145 for additional repair work that was not included within the $102,410 cost estimate provided for the fire-damage-repair work. See discussion, infra. It is undisputed that Amanda requested that Lonnie perform the specific items of additional repair work at issue, that Lonnie performed that additional repair work, and that Lonnie paid for all the supplies and materials for the additional repair work. The Robertsons disputed, however, that their agreement for the additional repair work was with Lonnie, who was a licensed homebuilder under Ala. Code 1975, § 34-14A-1 et seq. ("the Homebuilders Licensing Act"), at all times pertinent to the present case, and they disputed that they owed more than the $102,410 estimated cost of the fire-damage-repair work. Essentially, the Robertsons contended that $102,410 represented a cap for all the work that was performed by the Duncans

because that amount was purportedly all the fire-insurance proceeds that were available to the Robertsons. The Robertsons also contended that any agreement they had was with Lynn, who had retired from homebuilding in 2013 and was a not a licensed homebuilder at any time pertinent to the present case.

On July 26, 2018, the Duncans filed a complaint in the trial court against the Robertsons. The complaint alleged claims of breach of contract, quantum meruit, unjust enrichment, and enforcement of a lien pursuant to Ala. Code 1975, § 35-11-210,[1] the latter being based on a

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[1]Section 35-11-210 provides, in pertinent part:

> "Every mechanic, person, firm, or corporation who shall do or perform any work, or labor upon, or furnish any material, fixture, waste disposal services and equipment, or machinery for any building or improvement on land, or for repairing, altering, or beautifying the same, under or by virtue of any contract with the owner or proprietor thereof, or his or her agent, ... contractor, or subcontractor, upon complying with the provisions of [§ 35-11-210 through § 35-11-234], shall have a lien therefor on such building or improvements and on the land on which the same is situated, to the extent in ownership of all the right, title, and interest therein of the owner or proprietor ...; or, if employees of the contractor or persons furnishing material to him or her, the lien shall extend only to the amount of any unpaid balance due the contractor by the

recorded "Mechanic's Lien" ("the lien document"), a copy of which the Duncans attached as an exhibit to their complaint. See Ala. Code 1975, § 35-11-213. The Duncans sought a judgment for $15,145,[2] plus interest and costs, the enforcement of their purported lien, and, if the lien remained unsatisfied, the condemnation and sale of the home to satisfy the lien. The Duncans' complaint referenced Lonnie and Lynn collectively as plaintiffs regarding the alleged claims. The complaint made no reference to any employment relationship, any other principal-agent relationship, or any contractor-subcontractor relationship between Lonnie and Lynn.

Regarding the Duncans' claims for enforcement of the lien, it is undisputed that the lien document had been executed and filed by Lynn

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> owner or proprietor, and the employees and materialmen shall also have a lien on the unpaid balance."

[2]Based on evidence received by the trial court, the cost for the additional repair work was $25,245. However, after certain items of work were removed from the proposed fire-damage-repair work with the Robertsons' consent, and after a credit was applied for payments already made by the Robertsons, $15,145 remained as the purported outstanding balance for the additional repair work.

in the Walker Probate Court on February 15, 2018.[3] The lien document provided a legal description and street address for the home and specifically stated, among other information, that Lynn was the "lien claimant" and that

> "the [l]ien [c]laimant entered into a builder's contract, with the [Robertsons] to repair damage caused by a fire on said [home] for the original total sum of $102,410.00.[sic] And later for additional improvements to the [home] at the request of the [Robertsons] in the amount of $15,145.00, for a total sum of $117,555.00, which became due and payable upon completion of the requested build and/or project services."

The lien document referenced an alleged balance owed of $15,145, but it made no reference to Lonnie or to any relationship between Lonnie and Lynn. Nevertheless, at trial, the Duncans testified that Lynn was acting on behalf of Lonnie and at Lonnie's instruction when Lynn prepared and filed the lien document. See discussion, infra. Also, on July 27, 2018, the Duncans filed a notice of lis pendens referencing their pending action against the Robertsons.

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[3]The lien document mistakenly described the Robertsons as "Russell B[.] Robinson and Amanda Robinson." However, Ala. Code 1975, § 35-11-213, states that "no error in the amount of the demand or in the name of the owner or proprietor[] shall affect the lien."

The Robertsons filed an answer to the Duncans' complaint and a counterclaim against the Duncans. The Robertsons' answer denied most of the material allegations of the compliant and alleged various affirmative defenses to the Duncans' claims, including the statute of limitations. As to the alleged work performed by the Duncans, the Robertsons admitted that they had entered into an agreement with Lynn to perform repair work for $102,410, but they denied that they had entered into any agreement with Lonnie or for the additional repair work for $15,145. The Robertsons' counterclaim included claims of breach of contract against Lynn based on his purported failure to complete the repair work as required under their fire-damage-repair agreement (essentially, his failure to complete punch-list items); of slander of title by each of the Duncans based on the filing of the lien document and the filing of the notice of lis pendens, which allegedly had caused a sale of the home scheduled for late August 2018 to fall through; and of violation of the ALAA by each of the Duncans. The Robertsons also requested a judgment declaring the parties' rights in the home pursuant to Ala. Code 1975, § 6-

6-222. The Duncans filed a reply generally denying the allegations of the Robertsons' counterclaim and alleging various affirmative defenses.

On May 29, 2019, the Robertsons filed a motion for a summary judgment seeking a judgment in their favor on the Duncans' claims and a partial summary judgment in their favor with respect to their declaratory-judgment, slander-of-title, and ALAA counterclaims. Regarding Lynn's claims, the Robertsons argued, in part, that his claims were due to be denied because he was not a licensed homebuilder. See Ala. Code 1975, § 34-14A-14(d). On June 25, 2019, the Duncans filed their response to the Robertsons' motion for a summary judgment. In part, the Duncans conceded that Lynn was unlicensed, but they argued that he had worked part-time for Lonnie since 2013, that the Robertsons' agreement regarding the fire-damage-repair work and their alleged agreement regarding additional repair work were with Lonnie, and that the Robertsons were aware that Lynn was working for Lonnie when they made those agreements.[4]

[4]The Robertsons pointed out at the beginning of trial that the Duncans first mentioned that Lynn worked for Lonnie in their response

On June 27, 2019, the trial court held a hearing on the Robertsons' motion for a summary judgment, indicated that it would likely grant the Robertsons' motion for a summary judgment as to Lynn's claims, and thereafter held ore tenus proceedings on Lonnie's claims and the Robertsons' counterclaims. On September 25, 2019, the trial court entered a judgment adjudicating the Duncans' and the Robertsons' respective claims ("the September 2019 judgment"). The September 2019 judgment granted the Robertsons' motion for a summary judgment as to Lynn's claims but denied their motion for a summary judgment as to Lonnie's claims. Those rulings were based on findings that the "[Duncans] entered into [a] contract to repair the Robertsons' home, which was damaged by fire, as a homebuilder as defined by" the Homebuilders

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to the Robertsons' summary-judgment motion. The Robertsons did not object to the Duncans' testimony on that issue at trial, however, or otherwise argue that Lonnie and Lynn had impermissibly amended their complaint under Rule 15, Ala. R. Civ. P. Likewise, the Robertsons make no such argument on appeal. See Rule 28(a)(10), Ala. R. Civ. P.; Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994). Instead, at trial, the Robertsons requested that the court consider the timing of the Duncans' assertion that Lynn worked for Lonnie in assessing whether the Duncans' testimony should be believed.

Licensing Act, that Lonnie was licensed under the Homebuilders Licensing Act, that Lynn was not licensed under the Homebuilders Licensing Act, and that "said contract to repair the home ... was for an amount greater than $10,000." The trial court specifically cited Ala. Code 1975, former § 34-14A-2(10), which defined "residential home builder" when the Duncans performed their work on the home and commenced their action; that statute, in pertinent part, defined "residential home builder" as

> "[o]ne who constructs a residence or structure for sale or who, for a fixed price, commission, fee, or wage, undertakes or offers to undertake the construction or superintending of the construction, or who manages, supervises, assists, or provides consultation to a homeowner regarding the construction or superintending of the construction, of any residence or structure which is not over three floors in height ..., or the repair, improvement, or reimprovement thereof, to be used by another as a residence when the cost of the undertaking exceeds ten thousand dollars ($10,000)."[5]

[5]Former § 34-14A-2(10) was amended and eventually renumbered as § 34-14A-2(12), and those amendments became effective after the Duncans performed their work on the home and after they commenced their action. See Act No. 2019-418, Ala. Acts 2019; Act. No. 2018-143, Ala. Acts 2018. The quoted portion of former § 34-14A-2(10) is essentially unchanged in § 34-14A-2(12).

The trial court also referenced Ala. Code 1975, § 34-14A-5(a)(1), which states that "[a]ll residential home builders shall be required to be licensed by the Home Builders Licensure Board annually," and the trial court concluded that Lynn was barred from maintaining any action against the Robertsons, citing Ala. Code 1975, § 34-14A-14(d), which states: "A residential home builder, who does not have the license required, shall not bring or maintain any action to enforce the provisions of any contract for residential home building which he or she entered into in violation" of the Homebuilders Licensing Act. See also King v. Riedl, 58 So. 3d 190, 195 (Ala. Civ. App. 2010) (stating that an unlicensed homebuilder "cannot use other [non-contract] theories of recovery to circumvent § 34–14A–14").

Regarding Lonnie's claims and the Robertsons' counterclaims, the September 2019 judgment stated that the Robertsons had "hired the Duncans to repair their home, which was damaged by fire"; "[t]hat an invoice dated July 1, 2017, for the work was prepared and submitted to the Robertsons"; that, "[s]ubsequent to said invoice ... Amanda ..., on behalf of herself and [Russell], made several requests for additional work to be done by Lonnie ... for which he would be paid"; and "[t]hat

subsequent to the July 1, 2017 invoice, Lonnie ... and ... Amanda ..., acting on behalf of herself and [Russell], contracted for work to be done in addition to that listed on said invoice." The trial court cited C.F. Halstead Contractor, Inc. v. Dirt, Inc., 294 Ala. 644, 648, 320 So. 2d 657, 660 (1975), and Bonie v. Griffin, 252 Ala. 299, 40 So. 2d 872 (1949), which discuss the oral modification of a construction contract when the evidence supports the conclusion that the parties agreed that additional services would be performed for additional compensation. In other words, the trial court determined that, after submission of what it called the July 1, 2017, invoice -- which was a fire-damage-repair estimate of $102,410 that the Duncans prepared for submission to the Robertsons' fire-insurance company and that included specific entries for the various items of the fire-damage-repair work that were to be performed -- an agreement was made with only Lonnie regarding the additional repair work. As to that agreement with Lonnie, the September 2019 judgment stated that "Lonnie ... submitted an edited invoice, prepared by Lynn ... at the request of ... Lonnie ..., to the [Robertsons] for the additional[-repair] work ...," reflecting a balance owed of $15,145, after adjustment for items removed

from the fire-damage-repair work by mutual consent and the application of payments made for the fire-damage-repair work. See note 2, supra. The September 2019 judgment awarded Lonnie $15,145 based on the agreement for additional repair work, denied Lonnie's additional claims, and denied the Robertsons' claims. As to the latter, the September 2019 judgment stated, in part, that the Robertsons' ALAA claims were denied because the Duncans' claims "were not groundless in fact[] nor in law."

On October 24, 2019, the Robertsons filed a postjudgment motion and a memorandum in support of that motion. The Robertsons requested that the trial court vacate the September 2019 judgment and either enter a judgment in their favor and against both of the Duncans on the Duncans' breach-of-contract claims and in the Robertsons' favor on their claims or that the trial court grant the Robertsons a new trial. In the memorandum submitted in support of their postjudgment motion, the Robertsons also argued that the trial court had erroneously determined that "the '[Duncans]' entered into a contract with the [Robertsons]" and that "'the [Robertsons] hired the Duncans to repair their home.'" (Emphasis in original.) The Robertsons' memorandum continued:

> "In fact, [the Robertsons] entered into an agreement with Lynn ... to repair their home. The 'contract', which was actually an unsigned document describing the scope of work to be performed, and the price for it, was on the letterhead of Lynn .... Lynn ... filed the [lien document] against the ... home, stating that he was the party who contracted with the [Robertsons]. The name of Lonnie ... appears nowhere on the contract document. The name of Lonnie ... appears nowhere on the [lien document]."

We note that what the Robertsons referred to as "the contract" or the unsigned document is the July 1, 2017, estimate describing the items of work and prices for the fire-damage repairs; that estimate was on an invoice form of "Anthony Lynn Duncan Builders" and included Lynn's contact information, the significance of which, or lack thereof, is discussed, infra. The memorandum further stated: "Even assuming arguendo, however, that ... Lonnie ... had a contract with [the Robertsons], there are numerous issues raised by the [September 2019 judgment]." The memorandum then continued by arguing that any contract with Lonnie would have been capped at $102,410 and that the Robertsons had not agreed to pay an additional $15,145. Further, the memorandum stated:

> "[The Duncans] especially and particularly failed to present evidence of any contract to pay additional sums by ... Russell .... The evidence was clear that ... Russell ... stated

> that the $102,410 was all that he had available. [Neither of the Duncans] testified that ... Russell ... took part in the discussions concerning the elimination of some parts of the [fire-damage-repair] work, and the inclusion of different items of work. [The Robertsons] submit that neither of them breached any contract, but if the same did occur, it absolutely did not occur on the part of ... Russell ....
>
> "[The Robertsons] are entitled to an amended and altered judgment granting judgment in their favor on the claim of ... Lonnie ... for breach of contract."

The memorandum then discussed arguments regarding the denial of the Robertsons' claims and requested that the trial court require the Duncans to remove the lien and notice of lis pendens that remained of record in the Walker Probate Court.

Based on certain language included in a supplemental submission the Robertsons filed in support of their postjudgment motion on December 23, 2019, a hearing on the Robertsons' postjudgment motion apparently was held on December 9, 2019. According to that supplemental submission, the trial court directed the Robertsons to further address arguments regarding removal of the lien and the notice of lis pendens, which the Robertsons did. The Robertsons' postjudgment motion was

denied by operation of law on January 22, 2020. On March 4, 2020, the Robertsons timely filed a notice of appeal to this court.[6]

The ore tenus rule governs our review of the trial court's factual determinations in the present case, and we must presume that those findings of fact are correct. We will not disturb a judgment based on such findings unless they are unsupported by the evidence and, thus, clearly erroneous. See, e.g., Allsopp v. Bolding, 86 So. 3d 952, 958 (Ala. 2011). This court is not permitted to reweigh the evidence or to consider whether, in our opinion, substantial evidence would support a different factual determination. See, e.g., Joseph v. MTS Inv. Corp., 964 So. 2d 642, 651 (Ala. 2006); Ex parte Staggs, 825 So. 2d 820, 822 (Ala. 2001). We cannot substitute our judgment regarding factual matters for that of the trial court, which is in a unique position to assess the demeanor and credibility of witnesses. See, e.g. Allsopp, 86 So. 3d at 958; Ex parte J.E., 1 So. 3d 1002, 1008 (Ala. 2008); Joseph, supra; see also Rule 52(a), Ala. R. Civ. P.

[6]The Robertsons sought damages in excess of $50,000. However, the amount of the recovery in this case is within the jurisdictional limits of this court. See Ala. Code 1975, § 12-3-10.

("Where the court makes findings of fact based upon determinations of credibility drawn from its observation of witnesses, those findings shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."). "We will review the trial court's conclusions of law and its application of the law to the underlying facts de novo." Allsopp, 86 So. 3d at 958–59.

The Robertsons first argue that the evidence does not support the trial court's determinations that they entered into any agreement with Lonnie rather than Lynn, that the Robertsons owed Lonnie $15,145 for the additional repair work, or that Amanda was Russell's agent for purposes of any agreement with Lonnie regarding such additional repair work. The Robertsons begin their argument that they had no agreement with Lonnie, however, by contending that the September 2019 judgment

> "conflates and confuses the facts concerning the identity of the parties herein. The confusion is evident in the language of the [September 2019] judgment, which first states that:
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> > " '[the Duncans] entered into contract to repair the Robertsons' home, which was damaged by a fire, as

> a homebuilder as defined by Section 34-14A-2(10) of the Alabama Code 1975.'
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> "The [September 2019] judgment goes on to find as follows:
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> " 'that the [Robertsons] hired the Duncans to repair their home, which was damaged by fire.'
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> "This finding suggests that two (2) individuals may somehow form one (1) collective entity, known as ... 'the Duncans.' At no point in this litigation has there been any evidence, much less substantial evidence, that ... Lynn ... and Lonnie ... have formed a collective entity, such as a corporation, limited liability company, or even a joint venture. Therefore, there is no justification or correctness in treating the two (2) separate, individual plaintiffs as one (1) unitary entity for purposes of analyzing the issues in this case."

(Robertsons' brief at 12; citations to the record omitted.) After discussing their position on various items of testimony or evidence, the Robertsons continue:

> "Clearly, then, there is insufficient evidence to find that the [Duncans] were some unitary entity, or that actions or omissions of one [of the Duncans] could be credited to the other, or credited to a quasi-entity consisting of both [of the Duncans]. No such entity exists, despite the ability of the [Duncans] to have created such an entity had they elected to do so. They did not elect to do so, and it was plain and palpable error for the trial court to do so on their behalf in [the September 2019 judgment]. Each plaintiff is a separate individual whose claims must succeed on their individual

> merits. See, e.g., Cottrell v. National Collegiate Athletic Ass'n, 975 So. 2d 306 (Ala. 2007) (separately analyzing defamation claims of each plaintiff, and separately analyzing each plaintiff's status as a 'limited public figure').
>
> "The trial court erred in considering the [Duncans] as one unitary entity and permitting their individual partial claims (each of which undisputedly lacked essential elements) to supplement one another to make one entire claim against the [Robertsons], and then granting [the Duncans] relief under that consolidated unitary claim."

We agree with the Robertsons that the trial court concluded that "the Duncans" had entered into an agreement with the Robertsons regarding the fire-damage-repair work. We disagree with the Robertsons that that finding is unsupported by the evidence in light of the conflicting testimony regarding the May 2017 meeting between the Robertsons and Lonnie and Lynn, which apparently involved all the parties but no discussion of the relationship between Lonnie and Lynn;[7] the testimony

[7]According to his testimony, Russell assumed that Lonnie worked for Lynn. Lynn testified that he never represented to the Robertsons that he and Lonnie were "contracting" with Lynn; Lonnie and Lynn testified that Lynn worked for Lonnie, see discussion and note 8, infra; and the trial court was required to determine from the testimony and the evidence what the relationship between Lonnie and Lynn was under the law, to the extent necessary to decide the case. See Charles J. Arndt, Inc. v. City of Birmingham, 547 So. 2d 397, 400 (Ala. 1989) ("As between the parties

themselves, the relationship of joint venturers is a matter of intent. As to third persons, it is generally the rule that the legal rather than the actual intent of the parties controls."); see also Acstar Ins. Co. v. American Mech. Contractors, Inc., 621 So. 2d 1227, 1232 (Ala. 1993) (" '[I]t is well recognized in all areas of the law, that a subjective intent on the part of the actor will not alter the relationship or duties created by an otherwise objectively indicated intent.' In re Lane, 742 F.2d 1311, 1316 (11th Cir.1984)."); cf. Lilley v. Gonzales, 417 So. 2d 161, 163 (Ala. 1982) ("[T]he law of contracts is premised upon an objective rather than a subjective manifestation of intent approach."). See generally 1 Richard A. Lord, Williston on Contracts § 3:5 (4th ed. 2007) ("[T]he law of contracts is concerned with the parties' objective intent, rather than their hidden, secret or subjective intent. The courts examine the parties' objective manifestations of intent to determine whether they intended to enter into a contractual obligation, and it is the parties' objective manifestations of intent that will determine whether a contract has in fact been formed. Thus, when the courts speak of the contractual intent of the parties, they are referring to an intent that is determined objectively, by considering what a reasonable person in the parties' position would conclude given the surrounding circumstances." (footnotes omitted)).

Regarding the Robertsons' contention that the fire-damage-repair agreement was with Lynn but not with Lonnie, as noted above there is no evidence indicating that Lynn or Lonnie expressly represented to the Robertsons that Lonnie worked for Lynn, and the Robertsons asserted no fraud claim against Lynn or Lonnie. Thus, the Robertsons' belief regarding with whom they were contracting appears to have been a unilateral mistake of fact that may or may not have affected the formation of the fire-damage-repair agreement or the Robertsons' defense against Lonnie's breach-of-contract claim. See Mitchell v. Cobb, 270 Ala. 346, 350, 118 So. 2d 918, 922 (1960); 28 Richard A. Lord, Williston on Contracts § 70:158 (4th ed. 2003). We will not address those issues, however, because the Robertsons' argument requires us to assume that the trial court might

and evidence regarding the parties' subsequent communications and interactions; and the inferences that the trial court could have properly drawn from the foregoing testimony and evidence. Likewise we note that, although the September 2019 judgment is silent regarding the nature of the legal relationship between the Duncans for purposes of the fire-damage-repair agreement, at trial the Duncans testified that Lynn had worked part-time for Lonnie since Lynn retired in 2013; actually, Lonnie affirmed that "Lynn [had] been employed for [him]" and added that Lynn "said he was going to retire [in 2013] and just do it part-time and said he's just helping me." Lynn testified that Lonnie paid him for his work and that he received "a 1099 from Lonnie for working every year." Lynn stated that his "1099" for the work for the Robertsons was "probably in my filing cabinet at home." See 33 Am. Jur. 2d Federal Taxation § 1907

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have made an error of law by concluding that the fire-damage-repair agreement was with the Duncans jointly without the Robertsons providing any developed legal argument regarding the issues surrounding the formation of a contract that potentially involves multiple obligors, including such basic matters as who bears the burden of proof to disclose any relationship as between multiple potential obligors. See discussion, including nn. 9-12, infra; see also Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994).

(2020) (noting that employers report employee wages and taxes withheld on Form W-2, but report "amounts paid to independent contractors" on Form 1099).[8]

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[8]In Lonnie's brief, he suggests that Lynn was his employee. However, the September 2019 judgment and the evidence do not support that contention because the trial court concluded that the fire-damage-repair agreement was with the Duncans, not Lonnie only; Lynn's testimony supports the conclusion that he was an independent contractor; and Lonnie presented no unambiguous testimony indicating that Lynn was his employee, as a legal matter, rather than an independent contractor he "employed" for certain work. See Black's Law Dictionary 662 (11th ed. 2019) ("[E]mploy" is a verb meaning "[t]o make use of," "[t]o hire," or "[t]o use as an agent or substitute in transacting business."). Also Lonnie's suggestion is in tension with Ala. Code 1975, § 34-14A-6(1), of the Homebuilders Licensing Act because an employee of a licensee may "not hold himself of herself out for hire or engage in contracting, except as such employee of a licensee," and there is no evidence indicating that Lynn disclosed to the Robertsons that he was acting as an employee of Lonnie. Further, when the trial court determined that Lynn acted at Lonnie's direction (i.e., as Lonnie's agent) in conjunction with the preparation of the edited October 2017 invoice which was submitted to the Robertsons for Lonnie's additional repair work, see discussion, infra, the trial court did not state that Lynn was Lonnie's employee, only that that invoice was "prepared by Lynn ... at the request of ... Lonnie." Not all principal-agent relationships are employer-employee relationships. We find the trial court's silence regarding the issue whether Lynn was Lonnie's employee of particular note in light of the Duncans' testimony at trial and the trial court's finding that the fire-damage-repair agreement was with the Duncans.

We acknowledge that the language used in the September 2019 judgment is somewhat ambiguous regarding the legal relationship between "the Duncans" as to the fire-damage-repair agreement. The Robertsons, however, have cited no legal authority in support of their position that two persons may not jointly enter into an agreement to perform work without becoming, at a minimum, a joint venture or other "unitary entity";[9] nor do the Robertsons cite any legal authority that

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[9]The trial court may have concluded that the Duncans had an agreement with the Robertsons but did not constitute a single entity, i.e., that the Duncans remained independent contractors for purposes of making the fire-damage repairs. See Albina Engine & Mach. Works, Inc. v. Abel, 305 F.2d 77 (10th Cir. 1962). See generally 12 Richard A. Lord, Williston on Contracts § 36:1 et seq. (4th ed. 2012) (discussing issues regarding joint, several, and joint and several liability as between two or more obligors). We will not consider whether the trial court might have erred in that regard, however, because the Robertsons have developed no legal argument regarding this issue. They have merely asserted, without citation to legal authority, that it is not possible for two persons to enter into an agreement with a third party without having formed a "collective entity." See Rule 28(a)(10), Ala. R. Civ. P.; Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994).

Further, we note that the Homebuilders Licensing Act does not require a license for all residential-construction work. See Ala. Code 1975, § 34-14A-2(12) (formerly § 34-14A-2(10), cited by the trial court) (providing that a "residential home builder" does not include residential construction that costs, as an undertaking, $10,000 or less); § 34-14A-6

would support the conclusion that, as a matter of law, the Duncans could not properly have been considered to be engaged in a joint venture for purposes of the fire-damage-repair agreement.[10] See authorities cited in

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(describing various exemptions from the application of the Homebuilders Licensing Act). Thus, Lynn may legitimately be engaged in some residential-construction work as an unlicensed independent contractor. See generally Dabbs v. Four Tees, Inc., 36 So. 3d 542, 554 (Ala. Civ. App. 2008) (discussing issues that arise in determining the "cost of the undertaking" as to a particular contractor). However, because the trial court concluded that Lynn was precluded from enforcing any agreement because he was unlicensed, and because that determination is unchallenged, we must presume that Lynn was required to be licensed to the extent he had any agreement with the Robertsons. Nevertheless, the Robertsons again make no argument regarding whether a single agreement with two independent contractors, one of whom is licensed and one of whom is unlicensed, might not be enforced by the licensed contractor, at least to the extent of his or her work, under the Homebuilders Licensing Act, and thus we will not address that issue. See Rule 28(a)(10), Ala. R. Civ. P.; Dykes v. Lane Trucking, Inc., 652 So. 2d at 251.

[10]

> "The elements of a joint venture have been held to be: a contribution by the parties of money, property, effort, knowledge, skill, or other assets to a common undertaking; a joint property interest in the subject matter of the venture and a right to mutual control or management of the enterprise; expectation of profits; a right to participate in the profits; and usually, a limitation of the objective to a single undertaking or ad hoc enterprise. While every element is not necessarily present in every case, it is generally agreed that in order to constitute a joint venture, there must be a community of

note 7, supra. In other words, the Robertsons seek to have this court address an argument regarding the evidentiary support for the form of the legal relationship between Lonnie and Lynn without providing any legal authority and without developing any legal argument regarding what

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> interest and a right to joint control. ... Thus, in order to avoid a [judgment as a matter of law] on this issue, [a party] must show evidence supporting the existence of these two elements."

Moore v. Merchants & Planters Bank, 434 So. 2d 751, 753 (Ala. 1983). See generally 46 Am. Jur. 2d Joint Ventures § 15 (2017) ("As a general rule, a joint venture is established where two or more persons jointly undertake a specific business enterprise for profit with each having an equal voice in the control and management of the enterprise, although one may entrust performance to the other. However, there is authority to the effect that a joint venture may exist although the parties have unequal control of the operations." (Footnotes omitted)).

The foregoing should not be read as addressing the issue whether a joint venture between the Duncans existed or whether that is what the trial court determined; nor do we address whether such a joint venture would have required a separate license under the Homebuilders Licensing Act. The Robertsons do not develop any legal argument on those issues or cite any authority regarding those issues. See Rule 28(a)(10), Ala. R. Civ. P.; Dykes v. Lane Trucking, Inc., 652 So. 2d at 251. Instead, the Robertsons have posited their opinion that the evidence would not support any finding that a joint venture existed without discussing any law pertinent to the determination whether a joint venture existed.

forms of legal relationships might exist between two obligors.[11] "[I]t is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument." Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994); see also Rule 28(a)(10), Ala. R. App. P. Further, the Robertsons' argument appears to be an attempt to distract our attention from the merits of Lonnie's breach-of-contract claim, which the trial court determined was based on an agreement made only with Lonnie regarding additional repair work and that was entered into subsequent to the fire-damage-repair agreement with "the Duncans."[12] Based on the foregoing, we will not further consider

[11]The September 2019 judgment clearly states that the fire-damage-repair agreement was with "the Duncans," and the Robertsons did not argue in their postjudgment motion or in the memorandum in support thereof, and they have not developed any legal argument on appeal, that the trial court might have erred by considering the pleadings to have been amended to conform to the testimony and evidence presented at trial regarding the Duncans' relationship for purposes of the fire-damage-repair agreement. See notes 7 and 8, supra; Rule 15, Ala. R. Civ. P.

[12]The trial court concluded that the agreement with Lonnie was a modification of the fire-damage-repair agreement with "the Duncans." However, the Robertsons did not argue to the trial court that it would be an error of law to conclude that the modification of the fire-damage-repair

the Robertsons' argument that the evidence did not support the trial court's determination that the Duncans had an agreement with the Robertsons regarding the fire-damage-repair work.

We next consider the issue whether substantial evidence supported the trial court's conclusions that the Robertsons had an agreement with Lonnie regarding the additional repair work, that such agreement required the payment of an additional $15,145 to Lonnie, and that Amanda was Russell's agent for purposes of the agreement with Lonnie. In addressing those issues, some discussion of the initial meeting between the parties and the interactions between the parties is required. Lynn's testimony on direct examination by his trial counsel included the following colloquy:

> "Q: What is your memory of that [May 2017] meeting?
>
> "A: The first meeting we had was the day of her house fire. [Amanda] had called earlier and me and Lonnie went to their house and there wasn't anybody there and walked

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agreement could include an agreement only with Lonnie for additional repair work. They likewise make no such argument on appeal. See Rule 28(a)(10), Ala. R. Civ. P.; Dykes v. Lane Trucking, Inc., 652 So. 2d at 251. Thus we will not address that issue.

through the house that same day, but it was late in the evening time. The second time we met, me and Lonnie both met with both of them, [Russell] and [Amanda], and walked through their house looking and just checking things out on the house.

"Q: At that point in time was there any discussion about the repair work or wanting to accomplish some sort of agreement that you guys do the repair work?

"A: Yes. There were. She asked and [Russell] asked -- because Servpro was starting with work in the house that they didn't have electricity and they had to have electricity to be able to do the work they needed, and she and [Russell] asked me and Lonnie at that time to put up a temporary service pole for the power company to hook the electricity to and we did that that next day.

"....

"Q: So do you dispute [Amanda's] testimony that she had no knowledge of Lonnie and --

"A: I -- I do.

"Q: -- down the road? All right. At any point in time did you represent to [Amanda] that Lonnie was not involved in this, that she was contracting --

"A: No.

"Q: -- with you?

"A: Never.

> "Q: At any point in time did you make that representation to [Russell]?
>
> "A: No.
>
> "Q: In terms of who was doing most of the communicating on this project, who -- and I know [Amanda] was doing most of the communicating on behalf of the homeowners, but who between the two of you was she communicating with for the most part?
>
> "A: Lonnie.
>
> "Q: Lonnie. When a particular item of work was to be discussed or changed, did she relay that information to you?
>
> "A: No. She did Lonnie and then sometimes Lonnie would ask me about it, you know, and confirm, you know, telling me what she'd asked."

Amanda admitted that she communicated with Lonnie and that he was present in the home nearly every day after the fire-damage repairs began. Amanda also testified that she was very pleased with the Duncans' work on her home, although she later testified that she was not satisfied with the work because "stuff that's happened," "they didn't finish." As noted above, the Robertsons filed breach-of-contract claims against the Duncans. However, the trial court entered a judgment in favor of the Duncans on

those claims, and the Robertsons have not appealed the judgment as to those claims.

According to Lonnie, when he and Lynn met with the Robertsons, "[t]hey wanted us to hurry up and get started. Servpro was fixing to start or was in there at the time." Lonnie added that the Robertsons agreed that "we would perform the work and get them back in their house" but that "[i]t was the end of May, first of June before we could get in there because Servpro was tearing everything out ...." According to Lonnie, he and Lynn performed limited work in June 2017, and, before the Duncans began the bulk of the fire-damage-repair work, the Robertsons' insurance company requested a written estimate regarding the fire-damage repairs. Lonnie introduced into evidence a copy of the July 1, 2017, estimate that was provided to the Robertsons in response to the fire-insurance company's request. The July 1, 2017, estimate was on an invoice form titled "Anthony Lynn Duncan Builders" and included Lynn's contact information. Lonnie testified, however, that he was involved in the preparation of the July 1, 2017, estimate and that he and Lynn "got together before [Lynn] presented it" to the Robertsons. Lynn testified that

there was no significance to the use of his invoice form when making submissions to the Robertsons, and, more importantly, he stated that the July 1, 2017, estimate was on his invoice form because Lonnie "didn't have his invoice book with him and he asked me to do it so I did." We also note that the evidence supports the conclusion that the Robertsons were presented with invoices on forms for both Lonnie Duncan Builders and Anthony Lynn Duncan Builders for the fire-damage-repair work.

Regarding the invoicing for the additional repair work that was performed by Lonnie, Lonnie testified that he submitted an invoice to the Robertsons in early October 2017 and that, after Amanda expressed some concerns, he asked Lynn to assist with that matter. Lynn testified:

> "Lonnie left the bill with the extras and then I think [Amanda] and [Russell] -- or I think [Amanda] discussed a few things with Lonnie. Lonnie come to me and said he couldn't ever get a response from them to where he could get paid. So at that time I did call [Amanda] and she said she doesn't understand the bill. So after I looked at the bill, I seen where the total started off different than what I felt like it should have where [Amanda] and [Russell] could understand the bill. So Lonnie asked me to rewrite it, the bill, to where [Amanda] and [Russell] could actually understand it to how everything worked on the bill, so I did."

Lynn further stated:

> "It was -- I think Lonnie's bill was done on like the 12th of October, and at this time it had to be the 1st of November. It's a -- two or three weeks later. And then when I called [Amanda] to ask her about discussing it, at that time she told me she couldn't meet with me and at that time she -- when I asked her to meet to go over the bill, she said she didn't want to talk to Lonnie to discuss the bill, to not bring Lonnie, but she would meet with me. And so I asked her what day we could and she said it'd be about three weeks. And I said, 'Three weeks?' I said, 'Why three weeks? It's already been two or three weeks. Lonnie needs to get paid.' And then at that time she said -- I think [Russell] was going out of town for a week and when he got back he had to catch up on his work. And I said, '[Amanda], you moved in your house' -- speaking for Lonnie, 'you moved in your house two weeks before the deadline to get your house done. You packed the house full of all your furniture for us to have to work around to finish -- to get your house done. We've worked 12, 14 hours a day to get you into your house where you'll live comfortable with your family. You can't give me 15 minutes of your time for Lonnie for three more weeks?' She said no.
>
> "So we waited three weeks. And then I had to call back and she put it off another week and it was put off twice after that. So it was probably two more weeks after that. And then finally, I met with [Russell] and [Amanda] at [Russell's] office, them requesting that Lonnie didn't come the whole time. At that point we went over the bill. Everything was fine. [Russell] assured me that he would get with his insurance company on Monday morning and get a -- get a check to where Lonnie could get paid and that's how it was left."

Lonnie introduced into evidence a series of text messages between him and Amanda regarding the work on the home. The text messages

began in July 2017 and continued through the next few months. Lonnie testified that he communicated with Amanda primarily through text messages, one of which included a picture of an invoice form titled "Lonnie Duncan Builders." According to Lonnie, some of the text messages referred to work that was not included in the original fire-damage-repair estimate, such as placing shiplap siding on various walls, replacing the basement ceiling, replacing certain lighting and plumbing fixtures, and other items. Entries for those items also appear on the edited invoice that Lynn gave the Robertsons at Lonnie's request in October 2017.

Lonnie testified that he had been present "90 percent of the time" when repair work was being performed on the home and that he had used Lynn to perform tile work and certain other work and to help clarify matters with the Robertsons when there were any misunderstandings. According to Lonnie, he ordered all the supplies and wrote all the checks to pay the bills for the supplies, although he admitted that he had used Lynn's accounts with various suppliers. Lynn likewise testified that Lonnie had paid the suppliers. According to Lonnie, Amanda did most of the communicating with him on behalf of the Robertsons and made

payments to him on their behalf. Amanda admitted that she had communicated with Lonnie via the text messages that Lonnie had introduced into evidence, and, when asked on direct examination by the Duncans' counsel whether she "dispute[d she was] asking him to do other further things," Amanda responded: "I was asking him to do work, yes ...." The colloquy with Amanda continued:

> "Q: Okay. And you don't dispute that he was telling you when he would respond to something that was extra, that this is an extra item, this is going to cost more?
>
> "A: Yeah. I mean -- I would say that's fair. Yeah. I mean, I -- yeah.
>
> "....
>
> "Q: All right. I just want it to be clear that -- on the record that you were asking for this work and he was telling you this is going to cost more and you said -- on some of these, you said, 'I'll pay it. I know. I'll pay. I want back in my house'?
>
> "A: Right. We had a certain amount that I was taking money out at home and I thought that we were still in that amount and I was like, Yeah, I'll write the check. This is how much we've got left and -- yeah. If it costs more and we -- the money is there, I thought we were doing fine so yeah, I was going by that."

Some of the text messages also support the conclusion that Amanda was aware that the insurance-company funds might not be available to pay for some of the items of additional repair work that she had requested Lonnie to perform.

During direct examination by the Duncans' counsel, Amanda testified as follows:

> "Q: But you don't dispute that you asked Lonnie to do additional work, do you? Stuff that was not included in your original -- as you put it -- contract?
>
> "A: I did ask him to do stuff, yes.
>
> "Q: That was in addition to what the original agreement had been; isn't that true?
>
> "A: Yes.
>
> "Q: Okay. And he did it; right?
>
> "A: Yes. Yes.
>
> "Q: All right. And he left an invoice for $15,145 in October of 2017; right?
>
> "A: Yes.
>
> "Q: Has that invoice been paid?
>
> "A: No."

Russell likewise admitted that Amanda requested Lonnie to perform the additional repair work, that Lonnie informed Amanda that the requested additional repair work would increase costs, that Russell did not "think we expected anything for free," and that Amanda responded to Lonnie by stating she would pay for the additional repair work, although Russell added: "I mean, to the extent that we had the money from the insurance company ...."

Regarding Lonnie Duncan Builders, Amanda stated in an interrogatory that, before she received the October 2017 invoice from Lonnie, she did not know Lonnie "had a business Lonnie Duncan Builders." However, during direct examination by the Duncans' counsel she admitted that one of the text messages between her and Lonnie had included "the ... form with the term 'Lonnie Duncan Builders.' " Amanda testified that she did not "recall that particular text." Also, Amanda had "liked" photographs of Lonnie's work that he had placed on a social-media page for Lonnie Duncan Builders. Amanda admitted that she had put posts on the social-media page for Lonnie Duncan Builders and that Lonnie "took pictures and I -- he started the page right when he did my

house and took pictures of my house to promote his business or whatever."

The colloquy with Amanda continued:

> "Q: All right. So you're not disputing that you're on his business [social-media] page liking his work that's going on in your house?
>
> "A: Yes.
>
> "Q: At a time when you said in your affidavit you didn't know it was Lonnie Duncan Builders; right?
>
> "A: Right."

The testimony and evidence presented at trial support the conclusions that Lonnie was primarily responsible for the fire-damage-repair work and all the additional repair work; that Amanda interacted with each of the Duncans at various times after they entered into the fire-damage-repair agreement, but mainly with Lonnie; that all but one progress payment for the fire-damage-repair work was made by the Robertsons to Lonnie; that a $40,000 progress payment for the fire-damage-repair work was made to Lynn in July 2017 because Lonnie was not available; that Lynn "took the check ... and wrote Lonnie a check" for

$40,000;[13] that Amanda requested that Lonnie perform the additional repair work, which involved repairs that were not included in the agreement for the fire-damage-repair work; that the Robertsons paid Lonnie for $10,100 ($25,245 - $15,145 = $10,100, see note 2, supra) of the additional repair work, without objection; and that Amanda approved the additional repair work knowing that fire-insurance proceeds might not be available to pay for that work and that the Robertsons would be responsible for payment for that work. We find it unnecessary to further discuss the testimony and evidence in support of the trial court's determinations that an agreement was entered into with only Lonnie regarding the additional repair work and that he was to be paid for that

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[13]According to Lynn, Lonnie also directed him to submit an invoice to Amanda for certain tile work that Servpro had refused to perform, which was an item of work Lynn performed on the home. Lynn stated that Lonnie "asked me to do the [tile] work for him and when he got through, he said, well, just go ahead and bill [Amanda] for it" and to "just get [Amanda] to write you a check." Lynn further testified that Amanda

> "was there, come in and looked and said how great it was. And I asked her could she go ahead and pay me for the tile work and she wrote me a check. At that point I think it was 5,000 and a few dollars. That was to tear-out her shower that her insurance didn't pay to start with ...."

work, regardless of whether fire-insurance proceeds were available. The testimony and evidence on those issues was in conflict, and this court cannot substitute our judgment for that of the trial court, even if we might have decided the factual issue differently than the trial court. See, e.g., Allsopp, Joseph, and Staggs, supra.

Likewise, regarding the Robertsons argument that the evidence did not support the trial court's determination that Amanda had acted as Russell's agent regarding the agreement with Lonnie for the additional repair work, the testimony and evidence presented at trial regarding Russell's busy legal practice, his limited direct involvement between the May 2017 meeting and the completion of the fire-damage-repair work and the additional repair work, Amanda's interactions with Lonnie and how changes were discussed and made regarding the fire-damage-repair work, Lonnie's affirmances that Amanda did "most of the communicating with [him] of behalf of the Robertsons" and "made payments [to him] on behalf of the Robertsons," the fact the Russell did not object to the payment of

$10,100 for the additional repair work that Amanda authorized,[14] and the inferences that the trial court could have drawn from the foregoing, support the conclusion that Lonnie could have reasonably concluded that Amanda had the authority to act jointly on behalf of herself and Russell regarding Lonnie's work on the home. See, e.g., Malmberg v. American Honda Motor Co., 644 So. 2d 888, 891 (Ala. 1994) (discussing agency based on apparent authority, which is generally a question of fact). See generally 12 Richard A. Lord, Williston on Contracts § 35:17 (4th ed. 2012) ("[W]henever an agent is knowingly permitted by another to act in business matters in the principal's name, or apparently on its behalf, apparent authority binds the principal, even though no actual authority was given.").

[14]The trial court was not required to believe Russell's testimony that he had expressly informed the Duncans that he would not make any payment for repair work costing more than any available fire-insurance proceeds or that the parties' mutual expressions regarding the availability of fire-insurance proceeds to pay for certain items of repair work mandated an inference that the parties had agreed that the amount of the fire-insurance proceeds was a payment cap.

Based on the foregoing, we cannot conclude that the trial court erred regarding the determinations that the Robertsons had an agreement with Lonnie regarding the additional repair work, that such agreement required the Robertsons to pay Lonnie an additional $15,145 for that work, or that Amanda was Russell's agent for purposes of such agreement.

The Robertsons next argue that the trial court erred, as a matter of law, by denying their slander-of-title claims. According to the Robertsons, the filing of the lien document and the notice of lis pendens caused, among other things, a July 14, 2018, contract to sell the home for $375,000 to fall through. In the September 2019 judgment, the trial court stated that it "f[ound] no ... slander of title by the Duncans." Slander of title is governed by Ala. Code 1975, § 6-5-211, which states that "[t]he owner of any estate in lands may commence an action for libelous or slanderous words falsely and maliciously impugning his title."

> " 'The elements of a slander of title action are:
>
> > " ' "(1) Ownership of the property by plaintiff; (2) falsity of the words published; (3) malice of defendant in publishing the false statements; (4) publication to some person other than

> the owner; (5) the publication must be in disparagement of plaintiff's property or the title thereof; and (6) that special damages were the proximate result of such publication (setting them out in detail)." '
>
> "Merchants Nat'l Bank of Mobile v. Steiner, 404 So. 2d 14, 21 (Ala. 1981) (quoting Womack v. McDonald, 219 Ala. 75, 76–77, 121 So. 57, 59 (1929))."

Folmar v. Empire Fire & Marine Ins. Co., 856 So. 2d 807, 809 (Ala. 2003).

Filing a lien may constitute a false statement, but "[w]hatever be the statement, ... in order for it to form the basis of a right of action it must have been made, not only falsely, but maliciously. These elements are the very gist of the action, without both of which it does not exist." Coffman v. Henderson, 9 Ala. App. 553, 557, 63 So. 808, 809 (1913); see also Folmar, 856 So. 2d at 809.

Section 35-11-213, Ala. Code 1975, provides:

> "It shall be the duty of every person entitled to [a] lien [for labor or materials furnished] to file in the office of the judge of probate of the county in which the property upon which the lien is sought to be established is situated, a statement in writing, verified by the oath of the person claiming the lien, or of some other person having knowledge of the facts, containing the amount of the demand secured by the lien, after all just credits have been given, a description of the

> property on which the lien is claimed in such a manner that same may be located or identified, a description by house number, name of street, and name of city or town being a sufficient description where the property is located in a city or town, and the name of the owner or proprietor thereof; but no error in the amount of the demand or in the name of the owner or proprietor, shall affect the lien."

(Emphasis added.)

The Robertsons argue that the filing of the lien document and the filing of the notice of lis pendens constituted slander of title. Regarding the lien document that Lynn filed in February 2018, Lonnie testified that he had asked Lynn to prepare and file a lien document after they discussed the Robertsons' failure to pay Lonnie for the remainder of the additional repair work. Lynn also testified that he prepared and filed the lien document at Lonnie's request. Lynn stated that he had never prepared such a form before, that he obtained a form off of the Internet, and that he had a friend help him prepare the lien document from that form. Lynn also testified that he made a mistake by not indicating that the lien document was being filed on behalf of Lonnie. There was no testimony indicating that Lonnie reviewed the form before Lynn filed it

or was otherwise aware of the content of the lien document before it was filed.

The trial court denied Lonnie's claim to enforce his purported lien against the Robertsons, thus indicating that it believed some problem existed with that claim. However, the trial court also denied the Robertsons' claims against Lonnie alleging slander of title and asserted under the ALAA. Based on the trial court's approval of Lonnie's claim of breach of contract, the denial of the Robertsons' ALAA claim against Lonnie, and the pleadings and the arguments presented at trial regarding the lien, we presume that the trial court denied Lonnie's claim to enforce the lien either because of Lynn's failure to indicate in the lien document that he was filing the lien document on Lonnie's behalf, an issue that we do not address and which the trial court could have attributed to a mistake by Lynn,[15] or because the Robertsons raised the statute of

[15]The Robertsons and the Duncans have directed us to no authority regarding whether the law applicable to an undisclosed principal applies or does not apply to the filing of a lien. See, e.g., Overton v. Harrison, 207 Ala. 590, 591, 93 So. 564, 565 (1922). See generally 12 Richard A. Lord, Williston on Contracts § 35:50 (4th ed. 2012).

limitation as a defense to the enforcement of the lien. See Ala. Code 1975, § 35-11-221 (stating that an action to enforce a lien must be filed "within six months after the maturity of the entire indebtedness secured thereby"). Regardless of the reason for denying Lonnie's claim to enforce the lien, however, that denial, accompanied by the denial of the Robertsons' ALAA claim against Lonnie, indicates that the trial court concluded that Lonnie did not act wrongfully regarding the filing of the lien document or by filing his claim to enforce his purported lien. Specifically, the testimony and evidence, and the inferences the trial court was free to draw therefrom, would support the conclusion that Lonnie had a lien for the unpaid amount of the additional repair work, that a lien document was filed at his direction that purported to perfect that lien but that included a mistake, and that he thereafter belatedly asserted a claim against the Robertsons to enforce his purported lien. The fact that Lonnie's lien potentially was subject to certain defenses -- one involving an issue regarding whether Lynn's mistake was fatal to the viability of Lonnie's lien and one involving the statute of limitations, either of which might be waived -- did not require the trial court to conclude that Lonnie

acted with malice with respect to filing the lien document. As the supreme court has stated:

> "If a bona fide suit is filed on a colorable claim to property, no malice can be inferred from failure of the action. 'Even though false, if the defendant had probable cause for believing the statement, there can in law be no malice; and, though the fact that there was a want of probable cause for believing the statement is evidence of malice, it is not conclusive of its existence, nor its legal equivalent.' Coffman v. Henderson, 9 Ala. App. 553, 63 So. 808 (1913)."

Merchants Nat'l Bank of Mobile v. Steiner, 404 So. 2d 14, 21 (Ala. 1981).

Regarding Lonnie's filing of the notice of lis pendens, the law provides that,

> "[w]hen any civil action or proceeding shall be brought in any court to enforce any lien upon ... any land, ... the person ... commencing such action ... shall file with the judge of probate of each county where the land or any part thereof is situated a notice containing the names of all of the parties to the action or proceeding, ... a description of the real estate and a brief statement of the nature of the lien, writ, application, or action sought to be enforced."

Ala. Code 1975, § 35-4-131(a). Because Lonnie filed a claim against the Robertsons to enforce the lien, he was required to file a notice of lis pendens, and any wrong he may have committed would either be attributable to the filing the lien document, which we have already

addressed, or to the commencement of the action to enforce the purported lien, not to the filing of the notice of lis pendens. Steiner, 404 So. 2d at 21 ("The mandatory nature of [§ 35-4-131(a)] requires that any wrong committed by Steiner would have to be in filing his suit, not in filing the lis pendens notice.").

The Robertsons argue that Steiner allows for the possibility that the filing of a notice of lis pendens itself may support a cause of action alleging slander of title. Although that might be true as an abstract proposition, a careful reading of Steiner indicates that the initial inquiry must be whether the underlying claim on which the notice of lis pendens is based is a "colorable claim." 404 So. 2d at 21. In other words, it is the filing of the underlying claim to some interest in the property at issue that must be wrongful. 404 So. 2d at 21. That conclusion is further buttressed by the fact that slander of title requires "that the malice and the publication of the statement cannot be separated. The act against which a slander-of-title action is taken must have been false and malicious when it was performed." Folmar, 856 So. 2d at 809. In the present case, Lonnie filed his claim to enforce a lien that ultimately lacked merit, and he

thereafter filed the notice of lis pendens as required by § 35-4-131(a). The trial court was not required to conclude that Lonnie's claim to enforce the lien were filed with malice, however, and testimony and evidence presented at trial support the conclusions that Lonnie did not act with malice when he filed his claim to enforce the lien and, subsequently, the notice of lis pendens. See Coffman, 9 Ala. App. at 558, 63 So. at 810 (holding that, when a mechanic's lien that reflects a false claim is "asserted by the defendant in good faith, an action will not lie against him for damages; otherwise every failure to maintain a title or lien claimed to or upon property, or every error of judgment or mistake made in the assertion of such claim, or suit brought to enforce it, however honestly and sincerely done, would subject a party to suit and mulct him in damages"). Based on the foregoing, we cannot conclude that the trial court erred by denying the Robertsons' slander-of-title claim against Lonnie.

Regarding the Robertsons' slander-of-title claim against Lynn, the trial court likewise could have concluded that Lynn did not act with malice when he filed the lien document and made the mistake of not indicating that he was filing it on behalf of Lonnie. As for Lynn joining in

the notice of lis pendens, the trial court also could have concluded that Lynn did not act with malice in joining in that document, particularly in light of the ambiguous character of his and Lonnie's relationship as a legal matter, or that Lynn had caused no " ' "special damages [as] the proximate result of such publication," ' " Folmar, 856 So. 2d at 809 (quoting other cases), because the notice of lis pendens was not otherwise wrongly filed by Lonnie, i.e., the notice of lis pendens would have been of record even without Lynn's joining it. Thus, we cannot conclude that the trial court erred by denying the Robertsons' slander-of-title claim against Lynn.[16]

The Robertsons next argue that the trial court erred by denying their ALAA claims. The September 2019 judgment stated that the Robertsons' ALAA claims were denied because the Duncans' claims "were

[16]We do not address the Duncans' arguments that the filing of the lien document and the notice of lis pendens purportedly caused no special damages to the Robertsons because the Robertsons allegedly entered into the sales agreement for the home with knowledge of the lien document and because Servpro had filed a lien for $69,504.10 against the home on August 9, 2018, before the scheduled closing on the sale of the home, and that lien remained unpaid at trial.

not groundless in fact[] nor in law." Section 12-19-272(a), Ala. Code 1975, of the ALAA states:

> "Except as otherwise provided in [the ALAA], in any civil action commenced or appealed in any court of record in this state, the court shall award, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorneys' fees and costs against any attorney or party, or both, who has brought a civil action, or asserted a claim therein, or interposed a defense, that a court determines to be without substantial justification, either in whole or part."

Section 12-19-171(1), Ala. Code 1975, of the ALAA states that

> "[t]he phrase 'without substantial justification' ... means that such action, claim, defense or appeal (including any motion) is frivolous, groundless in fact or in law, or vexatious, or interposed for any improper purpose, including without limitation, to cause unnecessary delay or needless increase in the cost of litigation, as determined by the court."[17]

The Robertsons' argument as to the denial of their ALAA claim against Lonnie is without merit. Lonnie successfully prosecuted his breach-of-contract claim against the Robertsons, and his alternative claims (quantum meruit and unjust enrichment) were denied as a result

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[17]An "action" includes "[a]ny suit, counterclaim, crossclaim or third party claim filed at law or in equity, including any claim therein asserted by one or more parties or against one or more parties in a multi-party action or suit, or an appeal thereof." Ala. Code 1975, § 12-19-171(3).

of the success of his breach-of-contract claim. Also, Lonnie's claim for enforcement of the lien, while not ultimately meritorious because of the defenses asserted by the Robertsons, was not groundless in fact or in law, as discussed above. Thus, we reject the Robertsons' argument regarding the denial of their ALAA claim against Lonnie.

As to the Robertsons' ALAA claim against Lynn, we agree with the Robertsons that the trial court erred by concluding that Lynn's claims were not groundless in law. Whether an action or claim is "groundless in law" is a question of law and subject to de novo review. See Ex parte Loma Alta Prop. Owners Ass'n, Inc., 52 So. 3d 518, 523-24 (Ala. 2010); Schweiger v. Town of Hurtsboro, 68 So. 3d 181, 186 (Ala. Civ. App. 2011). In the Duncans' complaint, Lynn alleged that he had claims against the Robertsons. The assertion that Lynn worked for Lonnie was not disclosed and asserted until after the Robertsons prepared and filed a motion for a summary judgment, and two days later Lynn abandoned his individual-

capacity claims at trial.[18] Thus, Lynn's claims required the Robertsons to expend resources to defend against those claims in preparation for trial.

Also, the outstanding balance that was the subject of the Duncans' complaint was based on an additional-repair agreement made with Lonnie, not with Lynn. Lynn's own testimony supports that conclusion. Even assuming that Lynn had believed that the Robertsons had an agreement with him regarding the additional repairs, however, Lynn was an unlicensed homebuilder and such a person "shall not bring or maintain any action to enforce the provisions of any contract for residential home building which he or she entered into in violation" of the ALAA. § 34-14A-14(d); see also King, supra. Although Lynn obviously was a necessary witness in the case for purposes of Lonnie's establishing his claims, we cannot ignore the fact that Lynn filed and only belatedly abandoned his own claims.

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[18]Section 12-19-272(d), Ala. Code 1975, of the ALAA states that "[n]o attorneys' fees or costs shall be assessed if a voluntary dismissal is filed as to any action, claim or defense within 90 days after filing, or during any reasonable extension granted by the court, for good cause shown, on motion filed prior to the expiration of said 90 day period." The colloquy at the beginning of trial reflects that Lynn offered to voluntarily dismiss his claims, but he had not complied with § 12-19-272(d).

Section 34-14A-14(d) and the precedents addressing the prohibition on an unlicensed homebuilder's commencing an action are clear. See, e.g., Williams v. Hill, 17 So. 3d 229, 233 (Ala. Civ. App. 2009). Lynn made no attempt to argue that the Homebuilders Licensing Act should not apply to him, that some exception might exist to warrant a reconsideration of our precedents, or that he was entitled to some leniency regarding his failure to timely correct his mistake in asserting claims against the Robertsons.[19] Thus, we are compelled to conclude that Lynn's claims were groundless in law and that they were filed without substantial justification. See Ex parte Loma Alta Prop. Owners Ass'n, Inc., 52 So. 3d at 524. Accordingly, the trial court erred by denying the Robertsons' ALAA claim against Lynn on that basis. See Joe v. Joe, 891 So. 2d 879

[19]The supreme court has stated that care must be taken when determining whether a claim is groundless in law in order to avoid unnecessarily chilling attorney creativity in making good-faith arguments for changes in pertinent law. See Morrow v. Gibson, 827 So. 2d 756, 763 (Ala. 2002). The record contains no evidence that would support the conclusion that Lynn intended to pursue such arguments when he filed his complaint or what good-faith bases might be asserted in challenging the precedents discussing the law applicable to claims filed by an unlicensed homebuilder.

(Ala. Civ. App. 2004) (reversing the summary dismissal of a claim under the ALAA when the underlying claim had been pursued without substantial justification, as a matter of law).[20]

Because the trial court determined that Lynn's claims were not groundless in law, the trial court never exercised its discretion to determine the attorney fees that should be awarded to the Robertsons on their ALAA claim against Lynn. See Ala. Code 1975, § 12-19-273 ("In determining the amount of an award of costs or attorneys' fees, the court shall exercise its sound discretion."); Tidwell v. Waldrop, 554 So. 2d 1009, 1010 (Ala. 1989). That discretion must be exercised after the consideration of the nonexclusive list of factors described in § 12-19-273. Therefore, we reverse the September 2019 judgment as to the denial of the Robertsons' ALAA claim against Lynn and remand the case for the trial

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[20]We cannot conclude that the denial of the Robertsons' ALAA claim against Lynn was harmless error. See Rule 45, Ala. R. App. P. (harmless-error rule). The Robertsons were required to prepare a defense against Lynn's claims that was distinct from the defenses they asserted as to Lonnie's claims, and, even if that had not been the case, "an award under the ALAA is designed as a sanction to discourage lawsuits that are groundless in law ...." Mahoney v. Loma Alta Prop. Owners Ass'n, Inc., 72 So. 3d 649, 655 (Ala. Civ. App. 2011).

court to award "reasonable attorneys' fees and costs," § 12-19-272(b), to the Robertsons as to the filing of Lynn's claims. The trial court must include in its judgment a statement of the reasons supporting the award in light of the factors discussed in § 12-19-273 and any other factors the trial court might consider. See Mahoney v. Loma Alta Prop. Owners Ass'n, Inc., 72 So. 3d 649, 654 (Ala. Civ. App. 2011) (stating that a trial court must state the reasons supporting its attorney-fee award under the ALAA).

Based on the foregoing, the September 2019 judgment is affirmed except to the extent that it denied the Robertsons' ALAA claim against Lynn. As to that claim, the September 2019 judgment is reversed, and the case is remanded to the trial court for proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Thompson, P.J., and Hanson, J., concur.

Moore, J., concurs in the result, without writing.

Donaldson, J., concurs in part and dissents in part, with writing.

DONALDSON, Judge, concurring in part and dissenting in part.

I concur with the main opinion in all respects except that portion reversing the denial of the claim of Russell B. Robertson and Amanda V. Robertson against Anthony Lynn Duncan under the Alabama Litigation Accountability Act, Ala. Code 1975, § 12-19-270 et seq. I dissent as to that portion of the opinion.