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NO. COA01-544

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

TGC DEVELOPMENT, INC.,  
Plaintiff,

v.

Wake County  
No. 99 CVS 3101

AEGEAN LAND COMPANY,  
Defendant.

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TGC DEVELOPMENT, INC.,  
Plaintiff,

v.

Nos. 99 CVS 3102 and 3103

ROCKY MOUNTAIN ENTERPRISES,  
Defendant.

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TGC DEVELOPMENT, INC.,  
Plaintiff,

v.

No. 99 CVD 6579  
(transferred to Superior)

KEY WEST ENTERPRISES,  
Defendant.

Appeal by defendants from judgment entered 21 August 2000 by Judge Stafford G. Bullock in Superior Court, Wake County. Heard in the Court of Appeals 12 March 2002.

*George B. Currin for plaintiff-appellee.*

*Warren, Perry & Anthony, P.L.L.C., by Michael K. Perry and Fred B. Amos, II, for defendant-appellants.*

McGEE, Judge.

TGC Development, Inc. (plaintiff) performs grading services. Between 21 April 1998 and 2 November 1998, plaintiff entered into an oral contract with R. A. Munns (Munns) to perform grading services for Aegean Land Company, Rocky Mountain Enterprises, and Key West Enterprises (collectively defendants). Plaintiff performed the grading work under the direction of Munns, an agent of defendants. Plaintiff did not have a general contracting license when it performed the grading work for defendants. After the completion of the work, plaintiff did not receive complete payment from defendants. Plaintiff filed suit against defendants seeking unpaid monies. The case was heard in a non-jury trial on 12 June 2000. The trial court entered judgment in favor of plaintiff. Defendants appeal from this judgment.

I.

Defendants argue the trial court erred in determining that Munns was a licensed general contractor hired by defendants to employ and supervise subcontractors, including plaintiff, for the construction of various residential projects. Defendants contend Munns was merely a project manager and plaintiff contracted directly with defendants; therefore, defendants contend plaintiff should be considered a general contractor for the purposes of N.C. Gen. Stat. § 87-1. We disagree.

In a non-jury trial, on appeal, the standard of review for this Court "is whether there existed competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment. The trial judge acts

as both judge and jury and resolves any conflicts in the evidence." *G.R. Little Agency, Inc. v. Jennings*, 88 N.C. App. 107, 110, 362 S.E.2d 807, 810 (1987) (citations omitted). In such case, the trial court "is empowered to assign weight to the evidence presented at trial as it deems appropriate." *Id.* at 112, 362 S.E.2d at 811.

The trial court determined that Munns was a general contractor and plaintiff was a subcontractor. Based on these findings, the trial court concluded plaintiff was not prohibited from recovering under N.C.G.S. § 87-1 because plaintiff was not an unlicensed general contractor. The trial court found

4. All grading services performed by Plaintiff for entities, either owned or managed by Sanford Bailey, were under the supervision and management of R. A. Munns.

. . .

12. R. A. Munns hired the Plaintiff on behalf of the Defendants to provide grading services for each residential subdivision owned by defendants.

13. All pricing and estimated quantities for grading services were provided to Plaintiff by R. A. Munns.

. . .

17. R. A. Munns' responsibilities, on behalf of Defendants, included, among other things, review of preliminary engineering plans, obtaining cost estimates from various subcontractors, hiring subcontractors for the project, preparation of construction schedules for the various subcontractors, construction supervision of subcontractors and review and approval of subcontractor's invoices for payment by the Defendants.

18. After the inception of the contracts,

R.A. Munns directed numerous change orders for grading services performed by plaintiff at the residential projects.

. . .

20. All construction activities, including grading, were under the direct supervision and management of R.A. Munns, a licensed general contractor by the State of North Carolina.

. . .

22. With the exception of R. A. Munns, Plaintiff had no direct contact with the Defendants during its performance of grading services for the construction of residential lots.

In general, for the purposes of N.C.G.S. § 87-1, "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." *Helms v. Dawkins*, 32 N.C. App. 453, 456, 232 S.E.2d 710, 712 (1977) (citations omitted), *overruled on other grounds by Sample v. Morgan*, 311 N.C. 717, 319 S.E.2d 607 (1984).

The record in this case shows plaintiff entered into an oral contract with Munns to work on each of the grading projects, and Munns supervised the work performed by plaintiff. The trial court concluded Munns was a general contractor, and plaintiff was a subcontractor. There is evidence in the record to support the findings by the trial court, and these findings support the conclusions of the trial court. We overrule this assignment of error.

Defendants next argue the trial court erred in entering judgment for plaintiff because plaintiff was an unlicensed general contractor and was prohibited from recovering on its contract. We disagree.

In general, an unlicensed general contractor may not recover against an owner for breach of contract. See *Furniture Mart v. Burns*, 31 N.C. App. 626, 230 S.E.2d 609 (1976). However, as discussed above, the trial court determined plaintiff was a subcontractor on the residential projects in question. In *Vogel v. Supply Co. and Supply Co. v. Developers, Inc.*, 277 N.C. 119, 131-33, 177 S.E.2d 273, 280-82 (1970), our Supreme Court determined an unlicensed subcontractor is not subject to the requirements of N.C.G.S. § 87-1 and can recover on a breach of contract claim. Therefore, we overrule this assignment of error.

### III.

Defendants next argue the trial court erred in determining that Munns supervised the work performed by plaintiff. However, as discussed above in Section I, the trial court made several findings of fact which indicate Munns was a supervisor over plaintiff's work. As there is competent evidence in the record to support these findings, these findings are binding on this Court. We overrule this assignment of error.

Defendants' two remaining assignments of error are both premised on a finding that plaintiff was an unlicensed general contractor. Because we have determined plaintiff was a subcontractor and did not need a general contractor's license to

perform the work required by the oral contract with Munns, we overrule these assignments of error.

We affirm the trial court's judgment for plaintiff.

Affirmed.

Judges GREENE and CAMPBELL concur.

Report per Rule 30(e).