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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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CRM Services, LLC

v.

Georgia Holding, LLC

Appeal from Jefferson Circuit Court
(CV-16-902073)

MENDHEIM, Justice.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(E), Ala. R. App. P.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, and
Stewart, JJ., concur.

Mitchell, J., dissents.

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MITCHELL, Justice (dissenting).

While I acknowledge that the Alabama General Contractors Practice Act, § 34-8-1 et seq., Ala. Code 1975 ("the AGCPA"), can have severe consequences for those who perform general contracting work without a license, it is not clear that the work at issue in this case was, in fact, general contracting work. Despite being presented with evidence raising an issue of material fact, the trial court did not allow the parties to litigate that issue. Instead, the trial court found dispositive a single item of evidence that does not resolve the issue at the heart of this dispute. Because I believe the trial court was wrong to enter a summary judgment, I respectfully dissent.

Background

On October 26, 2015, the Birmingham Building Trade Towers ("the Towers"), which was owned by Georgia Holding, LLC, suffered fire damage. The following day, Georgia Holding entered into an agreement with CRM Services, LLC ("CRM"), under which CRM agreed to perform, according to CRM, "mitigation and preservation services ... to prevent the spread of mold and other microbials" ("the M&P agreement").

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According to CRM, it also provided "asbestos abatement services" for Georgia Holding under what it claims was a separate agreement ("the purported asbestos agreement"). When Georgia Holding failed to pay in full for CRM's services, CRM filed a verified claim of lien ("the verified lien") upon the Towers in the amount of \$1,817,655.45 for the "mitigation/construction/renovation/ restoration" of the Towers and improvements, "including ... structural drying, daily moisture monitoring, and asbestos abatement."

Less than five months later, CRM sued Georgia Holding to recover payment under the M&P agreement.¹ CRM attached the verified lien to its complaint. CRM states in its complaint that it is not seeking recovery for the work it performed under the purported asbestos agreement. Georgia Holding, on the other hand, denies the existence of the purported asbestos agreement and contends that all of CRM's work was general contracting work performed under a single agreement.

Only 13 days after answering CRM's complaint, Georgia Holding moved for a summary judgment. It argued that the M&P

¹CRM brought claims of breach of contract and unjust enrichment. It also brought a claim seeking to enforce its lien against Georgia Holding but has since abandoned that claim.

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agreement was void as a matter of law because it was a contract for general contracting work as defined by the AGCPA and CRM was not licensed as a general contractor in Alabama. Given the short period between the close of the pleadings and Georgia Holding's filing of its motion for a summary judgment, the parties' summary-judgment briefing was conducted without the benefit of discovery. Although written discovery requests had been propounded, no responses were ever served; nor were any depositions taken. The evidence before the trial court included an affidavit from CRM's chief executive officer attesting that its asbestos-abatement work was performed under a separate contract than the M&P agreement and that CRM did not agree to perform any construction work when it entered into the M&P agreement. Nevertheless, the trial court found dispositive the scope of work described by CRM in its verified lien. The trial court, without apparent context for the verified lien or the statements made in that document, concluded in a one-page order that "[t]his sworn statement by [CRM] characterizing the scope of its work is clearly governed by Ala. Code [1975,] § 34-8-1 et seq. ... and no attempts by [CRM] to now re-characterize the scope of work can avail." It

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accordingly entered a summary judgment for Georgia Holding as to CRM's claims.

Discussion

According to the AGCPA, "one engages in the business of general contracting in the State of Alabama" by undertaking, in relevant part, "to construct or superintend or engage in the construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building ... where the cost of the undertaking is fifty thousand dollars or more." § 34-8-1(a), Ala. Code 1975. We have long held that contracts for general contracting work with an unlicensed general contractor are void as a matter of public policy. See, e.g., Architectural Graphics & Constr. Servs., Inc. v. Pitman, 417 So. 2d 574, 576 (Ala. 1982); Hawkins v. League, 398 So. 2d 232, 235 (Ala. 1981); Tucker v. Walker, 308 So. 2d 245, 247 (Ala. 1975). Thus, one who performs general contracting work without a license may not recover for that work. Further, we will not enforce contracts made in an effort to evade the AGCPA. See, e.g., Cochran v. Ozark Country Club, Inc., 339 So. 2d 1023, 1024 (Ala. 1976).

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To prevail on a nonlicensure defense, as Georgia Holding attempts to do here, a defendant must prove: 1) that the contractor was unlicensed; 2) that the contracted work was the type of work covered by the AGCPA; and 3) that the cost of the work was at least \$50,000. Tucker, 308 So. 2d at 247; Central Alabama Home Health Servs. v. Eubank, 790 So. 2d 258, 260 & n.3 (Ala. Civ. App. 2000).² Because CRM concedes that it is not licensed to perform general contracting work in Alabama and that the cost of the work at issue exceeds \$50,000, Georgia Holding would be entitled to a summary judgment on its nonlicensure defense if it is determined as a matter of law that the contracted work was the type of work covered by the AGCPA.

To resolve this issue, it is necessary to examine several important questions that are in dispute. First, it must be determined whether there was one contract or two contracts. If all of CRM's work, including its general contracting work, was performed under only one contract, the M&P agreement, that

²Summary judgment is appropriate only when, in viewing the evidence in the light most favorable to the nonmoving party, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), Ala. R. Civ. P. See, e.g., Ex parte City of Muscle Shoals, 257 So. 3d 850, 854 (Ala. 2018).

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contract would not be enforced and Georgia Holding would be entitled to a summary judgment. In the alternative, regardless of whether the purported asbestos agreement exists, Georgia Holding would be entitled to a summary judgment if it were determined that the work performed under the M&P agreement fell within the scope of the AGCPA. Finally, in the further alternative, Georgia Holding would be entitled to a summary judgment if it were determined as a matter of law that CRM entered into the M&P agreement in an effort to evade the AGCPA.

It does not appear that the trial court engaged in any of this analysis. Instead, based solely and strictly on a statement in the verified lien -- which describes a wide range of work activity that is not contextualized anywhere in the document or by undisputed evidence elsewhere in the record -- the trial court entered a summary judgment for Georgia Holding. But the verified lien does not foreclose the possibility that the work it describes was performed, as CRM claims, under two separate contracts. Nor does the verified lien address whether the work performed under the M&P agreement falls within the scope of the AGCPA. Finally, the

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verified lien sheds no light on whether CRM entered into the M&P agreement in an effort to circumvent the AGCPA. Because the only item of evidence upon which the trial court relied does not resolve any of the underlying factual questions that are necessary to determine whether the work at issue falls under the AGCPA, I believe the trial court erred in entering a summary judgment for Georgia Holding.

Conclusion

Because the only evidence relied upon by the trial court does not resolve the issue at the heart of this dispute, I would reverse the summary judgment and remand the case. I therefore respectfully dissent.