

Rel: October 20, 2023

Notice: This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2022-0910

MSE Building Company, Inc.

v.

The Stewart/Perry Company; Buc-ee's, Ltd.; Buc-ee's Alabama II, LLC; and Philadelphia Indemnity Insurance Company

**Appeal from Jefferson Circuit Court
(CV-20-903422)**

STEWART, Justice.

MSE Building Company, Inc. ("MSE"), the plaintiff below, appeals from a summary judgment entered in favor of The Stewart/Perry

Company ("Stewart/Perry"); Buc-ee's, Ltd., and Buc-ee's Alabama II, LLC (referred to collectively as "Buc-ee's"); and Philadelphia Indemnity Insurance Company ("Philadelphia"), the defendants below, finding, among other things, that MSE's claims against the defendants were unenforceable because MSE had violated § 34-8-1 et seq., Ala. Code 1975, which regulates contractors, by utilizing unlicensed sub-subcontractors in connection with a construction project. For the following reasons, we affirm the judgment in part and reverse the judgment in part.

Background

Buc-ee's hired Stewart/Perry as a general contractor to construct a store in Leeds.¹ Stewart/Perry subcontracted with MSE to perform concrete work on the project. Both Stewart/Perry and MSE were licensed as general contractors under § 34-8-1. MSE contracted with PeopleHR, Express Employment Professionals ("Express"), and J.O.Y. Construction, LLC, for the provision of temporary laborers to supplement its existing employees on the project. The temporary laborers utilized the same

¹It appears that Buc-ee's, Ltd., originally owned the property upon which the store was to be constructed and that it sold that property to Buc-ee's Alabama II, LLC, but that both entities were involved in some capacity in the Leeds project. Accordingly, for ease of reference, "Buc-ee's" is used to refer to both Buc-ee's entities, unless otherwise specified.

timekeeping software as MSE employees, MSE determined the hourly wages it billed Stewart/Perry for the temporary laborers' work, and MSE paid for liability insurance for the temporary laborers.

MSE's specific responsibilities on the project included, among other things, pouring concrete for foundations, slabs, piers, parking, curbs, sidewalks, ramps, and retaining walls. The Stewart/Perry and MSE contract explicitly authorized Stewart/Perry, Buc-ee's, and the project architect to reject MSE's work if it did not conform to the project requirements. That contract also provided: "For matters relating to aesthetic effect, Owner retains the final and absolute decision regarding whether the work by Subcontractor is acceptable and shall be final and binding on Subcontractor."

In July 2020, shortly after MSE had completed a concrete pour for a paved area, Stewart/Perry discovered issues with the concrete paving. On July 31, 2020, Stewart/Perry e-mailed Steve Jones, MSE's president, and informed him that Stewart/Perry had found deficient concrete work, especially with the pavement and curbs, and it advised MSE to remove those areas and to transition its crews from paving to working on the retaining walls. Stewart/Perry attached to the e-mail pictures of the

areas of concern. Jones acknowledged that there were areas that needed to be removed and replaced. According to Stewart/Perry, MSE failed to correct the issues.

On August 10, 2020, Buc-ee's representatives viewed the concrete paving with engineer Scott Ratcliff of Ratcliff Engineering Services, LLC. Ratcliff performed an inspection and provided results to Stewart/Perry indicating that the concrete did not meet the project requirements and specifications. Thereafter, the project architect also advised Stewart/Perry that the concrete work did not meet industry standards for forming, placing, and finishing concrete flatwork and curbs. On August 11, 2020, Buc-ee's e-mailed Stewart/Perry and advised Stewart/Perry that it could terminate MSE from the project. Stewart/Perry did not terminate MSE from the project but, instead, diminished the scope of its work. Stewart/Perry twice attempted to pay a portion of what MSE had billed, but MSE refused to accept the payments because it considered them to be incomplete.

In September 2020, MSE recorded in the Jefferson Probate Court a materialman's lien in the amount of \$1,615,350.40 on the Buc-ee's property related to its allegation of Stewart/Perry's nonpayment.

Stewart/Perry petitioned the Jefferson Probate Court, pursuant to § 35-11-233, Ala. Code 1975, to transfer the lien to a bond in the amount of \$2,019,188 issued to Stewart/Perry as principal by Philadelphia as surety. The Jefferson Probate Court then entered an order transferring the lien on the Buc-ee's property to the bond.

Thereafter, MSE sued Stewart/Perry, Philadelphia, and Buc-ee's in the trial court, asserting against Stewart/Perry only claims alleging breach of contract, violation of the prompt-payment requirements of § 8-29-1 et seq., Ala. Code 1975, unjust enrichment, and quantum meruit; asserting against Stewart/Perry and Buc-ee's claims alleging negligence; and asserting against all the defendants a claim seeking to enforce a materialman's lien pursuant to § 35-11-210, Ala. Code 1975. MSE alleged that it was due \$1,615,350.40, plus interest, costs, and attorney's fees.

Stewart/Perry² and Buc-ee's eventually moved for a summary judgment. Stewart/Perry argued, among other things, that MSE's claims for damages relied, at least in part, on an illegal contract with an unlicensed sub-subcontractor in violation of § 34-8-1 and that, as a result,

²Philadelphia was represented by the same counsel that represented Stewart/Perry, and it joined in Stewart/Perry's filings.

it was barred from recovering any damages. In short, § 34-8-1 requires that certain entities defined as "general contractors" must be licensed by the State Licensing Board for General Contractors. In support of its summary-judgment motion, Stewart/Perry relied on White-Spunner Construction, Inc. v. Construction Completion Co., 103 So. 3d 781 (Ala. 2012), and it submitted the following evidentiary material: deposition testimony from Steve Jones, MSE's president; affidavits from the State Licensing Board for General Contractors showing that PeopleHR, Express, and J.O.Y. Construction were not licensed as "general contractors" under § 34-8-1; the contract between Stewart/Perry and MSE; responses to interrogatories; and invoices MSE had received from PeopleHR, Express, and J.O.Y. Construction for the temporary laborers' wages. In support of its summary-judgment motion, Buc-ee's incorporated the arguments made by Stewart/Perry in its motion, and Buc-ee's argued that MSE's negligence claim against it failed as a matter of law and that its lien claim failed because the lien had been transferred to a bond.

MSE filed a response in opposition to the summary-judgment motions in which it argued that Express and J.O.Y. Construction were

paid less than \$50,000 and, therefore, were not required to be licensed as general contractors under § 34-8-1. MSE further argued that PeopleHR merely provided temporary laborers to MSE and was not a general contractor that performed any portion of the scope of MSE's work. MSE also asserted that, if the trial court determined otherwise, there remained questions of fact regarding the extent of PeopleHR's role on the project and the amount of damages recoverable because of its role on the project. To its response, MSE attached a copy of its contract with Stewart/Perry; a copy of its general contractor's license; deposition testimony from David Harrison, the corporate representative for Stewart/Perry; deposition testimony of Jones in which he testified to the totals paid to its subcontractors on the project; a copy of the PeopleHR staffing agreement; and a copy of the appellant's brief filed in White-Spunner.³

On June 29, 2022, the trial court entered a summary judgment that determined, in pertinent part:

³MSE also attempted to submit an e-mail from the executive director of the State Licensing Board for General Contractors, an affidavit of a member and chairman of the Board, and an affidavit of Jones. Those documents were stricken on Stewart/Perry's motion.

"As background, in 2020, Plaintiff MSE performed concrete work on a construction project in Leeds, Alabama owned by Buc-ee's Alabama II, LLC under a subcontract MSE had with Stewart Perry, and MSE admits that it received at least \$1.3 million for its work. MSE asserts various contract and tort claims against the Defendants in this case.

"Based on the undisputed material facts, all of MSE's claims are barred as a matter of Alabama law because MSE seeks to recover money that is based on, dependent on, and stems from illegal work performed by unlicensed sub-subcontractors. Under Alabama law, any person who performs contracting work for over \$50,000 must be licensed by the Alabama Licensing Board for General Contractors. See Ala. Code § 34-8-1(a). The law defines 'contracting' to include one who 'engages in construction.' *Id.* § 34-1-8(c). Further, MSE performed concrete work that is considered a recognized construction activity by the Alabama Licensing Board for General Contractors. (Ala. Admin. Code § 230-x-1-.27(2)(a)(2)). If a person engaged in contracting fails to obtain a license, then the contractor's work is illegal and the entity that hired the contractor cannot recover against another when that entity's claim relies on, depends on, or stems from that illegal work. See, e.g., White-Spunner Constr., Inc. v. Constr. Completion Co., 103 So. 3d 781 (Ala. 2012). Here, MSE admittedly used at least one unlicensed labor broker to perform construction work over \$50,000 on the project. And it is undisputed that MSE seeks to recover money based on this illegal work. MSE's claims are barred as a matter of Alabama law as a result.

"MSE argues that the Alabama Licensing Board for General Contractors does not consider labor brokers to be contractors requiring a license, and it submitted an email and affidavit purportedly from individuals associated with the Board. The documents consist of personal opinions, neither document discusses the facts before this Court, and neither document purports to be an official pronouncement of the

Board. Defendants moved to strike the email and the affidavit. The Court grants those motions because these exhibits consist of inadmissible evidence. It is the role of the Court to interpret and apply applicable Alabama licensing statutes to the facts of this case. The Court also grants the Defendants' motions to strike the affidavit of MSE's president Steve Jones.

"MSE's claims are also due to be dismissed as a matter of Alabama law for alternative independent reasons as well. See, e.g., Gustin v. Vulcan Termite & Pest Control, Inc., 331 So. 3d 601, 605 (Ala. 2020) (holding that a negligence claim will not lie when it is based on duties that arise from a contract); Rosenthal v. JRHBW Realty Inc., 303 So. 3d 1172, 1187 (Ala. 2020) ('Where there is no duty, there can be no negligence.');

Blackmon v. Renasant Bank, 232 So. 3d 224, 229 n.4 (Ala. 2017) (noting that an unjust-enrichment claim and a breach-of-contract claim are 'mutually exclusive' and citing cases); Brannan & Guy, PC v. City of Montgomery, 828 So. 2d 914, 921 (Ala. 2002) (holding that a quantum meruit claim is not cognizable when an express contract exists between the parties); Sullivan v. Mazak Corp., 805 So. 2d 674 (Ala. 2000) (See, J., concurring) ('A party cannot recover on a claim of unjust enrichment where there is an enforceable express contract between the parties concerning the same subject matter on which the unjust-enrichment claim rests.')."

MSE filed a motion pursuant to Rule 59, Ala. R. Civ. P., to vacate the summary judgment. Buc-ee's and Stewart/Perry filed separate responses opposing MSE's motion. On September 8, 2022, the trial court denied MSE's motion to vacate, and MSE timely filed a notice of appeal to this Court.

Standard of Review

MSE appeals from a summary judgment, which we review de novo, applying the same standard applied by the trial court. We must first determine whether, when viewing the evidence in the light most favorable to MSE, the defendants made a prima facie showing that there existed no genuine issue of material fact and that they were entitled to a judgment as a matter of law. See Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). If the defendants met that burden, then we must determine whether MSE produced "substantial evidence" demonstrating the existence of a genuine issue of material fact. Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004).

Discussion

I.

MSE first challenges the trial court's determination that MSE's claims were barred as a matter of law because MSE had utilized temporary laborers provided by an unlicensed general contractor in violation of § 34-8-1. More particularly, MSE challenges the trial court's finding that PeopleHR was required to be licensed as a general

contractor. A party seeking to nullify a contract based on the nonlicensure of an alleged general contractor must prove: "(1) that the alleged contractor was unlicensed; (2) that the contracted work was of the type covered by the licensure statute; and (3) that the 'cost' of the work was \$[5]0,000 or more." Central Alabama Home Health Servs., Inc. v. Eubank, 790 So. 2d 258, 260 (Ala. Civ. App. 2000)(citing Tucker v. Walker, 293 Ala. 589, 592, 308 So. 2d 245, 247 (1975)). See also Allstate Ins. Co. v. Hugh Cole Builder, Inc., 127 F. Supp. 2d 1235, 1238 (M.D. Ala. 2001)(noting that, in determining whether a person was engaged in work covered by § 34-8-1, "Alabama courts have looked at many factors, such as, the intent of the parties, the amount of control by the person, and the type of work performed by the person").

There is no dispute regarding the first factor -- PeopleHR was not licensed as a general contractor under § 34-8-1. There is, however, a dispute as to whether the contracted work allegedly completed by PeopleHR was the type covered by § 34-8-1 and, thus, whether PeopleHR was required to obtain a general contractor's license. There is also a dispute regarding whether the amount MSE paid to J.O.Y. Construction

exceeded \$50,000 and, thus, whether J.O.Y. Construction was required to have a general contractor's license under § 34-8-1.⁴

MSE contends that People HR and the other labor brokers it used are temporary staffing agencies in the business of providing temporary laborers, which, in this case, supplemented MSE's workforce, and that those entities did not contract to perform construction activities covered under § 34-8-1. There was evidence indicating that the temporary laborers utilized the same timekeeping software as MSE employees, that MSE determined the hourly wages it billed Stewart/Perry for the temporary laborers' work, and that MSE paid for liability insurance for the temporary laborers.⁵

⁴Stewart/Perry asserts that J.O.Y. Construction's invoices exceeded \$50,000 but that, even if the amount J.O.Y. Construction billed is a disputed fact, it is not material because it is undisputed that PeopleHR billed more than \$50,000. However, that fact is material to resolving the question of what portion of work was completed by an allegedly illegal unlicensed contractor versus work performed by the other contractors on the project who were not required to be licensed.

⁵We also recognize that r. 230-X-1-.34, Ala. Admin. Code (State Licensing Bd. for Gen. Contractors), allows a managing employee with an ownership interest or a power of attorney who is also responsible for supervision of a company's management and construction practice to apply for licensure on behalf of the company; each individual employee is not required to be licensed.

As they did in the trial court, the defendants argue that this case is similar to, and controlled by, White-Spunner Construction, Inc. v. Construction Completion Co., 103 So. 3d 781 (Ala. 2012), upon which the trial court relied in determining that MSE's claims were barred by its use of at least one unlicensed contractor on the project.

White-Spunner Construction, Inc., was a licensed general contractor involved in the construction of dormitory buildings at a university. White-Spunner subcontracted with Construction Completion Company ("CCC"), also a licensed general contractor, to provide labor, materials, and services in connection with the framing of the dormitory buildings. CCC then subcontracted with Buena Vista Construction, LLC, which was not licensed in Alabama, to provide CCC with workers on the project. Those workers wore CCC uniforms and were under the control and supervision of CCC while on the job site. Eventually, a dispute arose between White-Spunner and CCC regarding a perceived discrepancy between the actual work completed and the charges billed by CCC to White-Spunner. CCC sued White-Spunner and its surety seeking to recover for the work performed. White-Spunner filed a counterclaim and sought a declaratory judgment regarding the rights of the parties based

on an allegation that the contract between CCC and Buena Vista was illegal. The Mobile Circuit Court entered a summary judgment in favor of CCC, holding, among other things, that Buena Vista was a labor broker that provided temporary employees to CCC, who controlled their activities on the projects in the same way it controlled its own employees, and that, therefore, Buena Vista was not required to have a general contractor's license under § 34-8-1. *White-Spunner* appealed, and a plurality of this Court, in evaluating the plain language of § 34-8-1, determined that the statute contained no "labor broker" exception and that the ultimate issue for resolution was whether Buena Vista engaged in activities that required a license under the statute. The plurality of this Court explained that it was undisputed that the employees Buena Vista provided to CCC were used to frame buildings and to supervise other Buena Vista employees on the project and, "[i]mportantly, ... [that it was] undisputed that Buena Vista employees did not work simply as consultants, equipment installers, or performers of menial labor. Rather, framing is specifically recognized as a construction activity by the Licensing Board for General Contractors." *White-Spunner*, 103 So. 3d at

790 (citing Ala. Admin. Code (State Licensing Bd. for Gen. Contractors), r. 230-X-1-.27).

White-Spunner is distinguishable from the present case because, in that case, there was no dispute as to the role and the extent of the unlicensed contractor's involvement in construction and supervisory activities. Here, there was evidence indicating that the temporary laborers were directed and supervised on the project by MSE's supervisor, not by a PeopleHR employee, and there is a dispute as to whether PeopleHR was engaged in construction activities. The defendants argue that concrete work, like framing, is recognized as a construction activity and that, therefore, PeopleHR was engaged in construction and required a general contractor's license under § 34-8-1. However, there is a dispute in this case regarding whether the temporary laborers were engaged in actual concrete work, construction, or supervisory activities that fall under the licensing requirements of § 34-8-1 or whether they were engaged in menial labor.

The evidence before the trial court indicated that the scope and the extent of the temporary laborers' activities were unclear. Jones testified that the temporary laborers were doing "mostly carpenter work and

forming and pouring" but that they were directed and supervised by an MSE supervisor. Jones also explained that, under the direction and supervision of MSE, the temporary laborers may have also "tie[d] in the rebar," "prepp[ed] the slab," placed "poly" sheets and vapor barrier guards, and placed stone. Jones testified that temporary laborers did not ordinarily pour the footings or finish the concrete. Jones could not pinpoint the activities in which the temporary laborers had been engaged.

There was also evidence indicating that MSE used various equipment in performing its responsibilities on the project, including, among other equipment, an excavator, a skid steer, a dump truck, a fork lift, a man lift, and a scissor lift. There was also evidence indicating that MSE had executed a "vehicle/motorized mobile equipment indemnity agreement" with PeopleHR that specifically stated that MSE had "requested a temporary associate from PeopleHR whose duties will include driving a motor vehicle or other motorized mobile equipment." The foregoing evidence further convolutes the issue whether PeopleHR's temporary laborers were utilized in operating equipment, in performing menial labor, or in performing construction activities.

Accordingly, the evidence before the trial court, when viewed in the light most favorable to MSE, the nonmovant, demonstrated the existence of a genuine issue of material fact regarding whether "the contracted work was of the type covered by the licensure statute," and such a dispute should have been submitted to a jury for resolution. Central Alabama Home Health Servs., 790 So. 2d at 260 and 262 (affirming a trial court's denial of motion for judgment as a matter of law "[b]ecause there was sufficient evidence to at least produce a conflict on the issue whether [an unlicensed contractor's] services were those of a 'general contractor'). Accordingly, we reverse the trial court's summary judgment insofar as it determined that MSE's claims were barred as a matter of law based on a violation of § 34-8-1.⁶

II.

⁶Because we reverse the summary judgment insofar as it barred MSE's claims as a matter of law, we pretermitt discussion of MSE's arguments that the trial court's decision on this issue invaded the province of the State Licensing Board for General Contractors and violated the separation-of-powers doctrine, that the defendants should be estopped from arguing illegality, that the trial court erred in completely barring MSE's recovery of damages, and that the trial court erred in striking certain evidence MSE submitted in opposition to the summary-judgment motions.

MSE also challenges the summary judgment on its negligence claim against Buc-ee's. As noted earlier, in its summary-judgment motion, Buc-ee's specifically asserted that MSE's negligence claim against it failed as a matter of law. "The elements of a negligence claim are a duty, a breach of that duty, causation, and damage." Armstrong Bus. Servs., Inc. v. AmSouth Bank, 817 So. 2d 665, 679 (Ala. 2001) (citing AALAR, Ltd., Inc. v. Francis, 716 So. 2d 1141, 1144 (Ala. 1998)). A duty of care may arise when there is foreseeability that harm may result if care is not exercised. Id.

Relying on Berkel & Co. Contractors v. Providence Hospital, 454 So. 2d 496, 502 (Ala. 1984), MSE argues that Buc-ee's assumed a duty to act reasonably when it took affirmative steps to interject itself into the Stewart/Perry and MSE contractual relationship by inspecting and rejecting MSE's concrete work. MSE asserts that Buc-ee's had no engineering or concrete qualifications and that its rejection of MSE's concrete work was contrary to the project specifications. MSE further asserts that Buc-ee's directed Stewart/Perry to terminate MSE from the project, which, it asserts, caused MSE harm.

The evidence submitted in support of and in opposition to the summary-judgment motions demonstrated that Stewart/Perry directed MSE to remove the deficient concrete and to transition its crews to constructing the retaining walls before Buc-ee's viewed the concrete or advised Stewart/Perry that it could terminate MSE from the project. Moreover, Stewart/Perry did not terminate MSE from the project but, instead, diminished the scope of its work. Perhaps most importantly, however, the contract between Stewart/Perry and MSE explicitly authorized the owner of the property, Buc-ee's, to reject concrete work in its sole discretion and on an aesthetic basis. MSE did not present substantial evidence demonstrating that Buc-ee's wrongfully interjected itself into the Stewart/Perry and MSE contractual relationship, that Buc-ee's breached any duty, or that Buc-ee's caused the alleged harm to MSE. Accordingly, the summary judgment on MSE's negligence claim against Buc-ee's is due to be affirmed.

III.

MSE argues that its lien claim should be permitted to proceed.⁷ MSE asserts that, considering §§ 35-11-221, -223, and -224, Ala. Code 1975, in conjunction with one another, MSE is permitted to bring an action to enforce a materialman's lien and that its lien was not discharged merely because it was transferred to a bond, as Buc-ee's argued to the trial court.

Section 35-11-224 "requires that liability for the debt be established and that a money judgment be entered against the debtor as a prerequisite to perfecting and enforcing the lien." Ex parte Grubbs, 571 So. 2d 1119, 1120 (Ala. 1990). See also Valley Joist, Inc. v. CVS Corp., 954 So. 2d 1115, 1117 (Ala. Civ. App. 2006). Because we have reversed the summary judgment insofar as it held that MSE's claims were barred as a matter of law under § 34-8-1 and, as a result, the question of liability remains and depends upon the resolution of disputed facts, MSE's claim seeking to enforce the materialman's lien, likewise, remains for resolution in the trial court.

⁷The trial court did not specifically address in its summary judgment MSE's claim to enforce its materialman's lien or its claim alleging violation of the prompt-payment requirements of § 8-29-1 et seq., Ala. Code 1975; however, it specifically stated that the judgment disposed of all claims.

IV.

Finally, MSE argues that the trial court should not have entered a summary judgment against it on its claim seeking payment under § 8-29-1 et seq., Ala. Code 1975, which is sometimes referred to as the "Prompt Pay Act."⁸ See Autauga Creek Craft House, LLC v. Brust, 315 So. 3d 614 (Ala. Civ. App. 2020). Relying on Williams v. Limestone County Water & Sewer Authority, 223 So. 3d 240 (Ala. Civ. App. 2016), MSE asserts that Stewart/Perry did not substantively address its claim under the Prompt Pay Act in Stewart/Perry's summary-judgment motion, and, as a result, a summary judgment on that claim was improper.⁹

Section § 8-29-6 expressly provides that, if a contractor brings a civil action successfully demonstrating that an owner, contractor, or

⁸See note 7, supra.

⁹Stewart/Perry, in one sentence in its response brief, contends that a summary judgment was proper on MSE's "'claim'" because a Prompt Pay Act claim is merely an additional remedy that is part of a breach-of-contract claim and, as a result, that issue did not need to be addressed separately. Stewart/Perry cites in a footnote legal authority from other jurisdictions purportedly holding that a claim under similar prompt-payment acts is not a separate cause of action. The distinction between whether it is a cause of action or a remedy is irrelevant for purposes of this appeal.

subcontractor has not timely paid an amount in accordance with its contractual obligation and in violation of the Prompt Pay Act, a court shall award the amount due and interest, and "the party in whose favor a judgment is rendered shall be entitled to recover payment of reasonable attorneys' fees, court costs and reasonable expenses from the other party." Because a judgment was not rendered in its favor, MSE was not entitled to recover under § 8-29-6. As with its lien claim, MSE's ability to recover under § 8-29-6 is dependent upon its ability to successfully prove facts it was prevented from presenting based on the trial court's determination that its claims were barred as a matter of law under § 34-8-1. Because the summary judgment on MSE's breach-of-contract claim against Stewart/Perry has been reversed, the summary judgment is likewise reversed on MSE's claim seeking recovery under the Prompt Pay Act.

Conclusion

The summary judgment, insofar as it determined that MSE's claims are barred as a matter of law under § 34-8-1, is reversed because there are material issues of disputed fact regarding whether the labor brokers utilized by MSE were required to obtain a general contractor's

license under § 34-8-1. Accordingly, the summary judgment on MSE's lien claim and prompt-payment claim is also reversed. The summary judgment on MSE's negligence claim against Buc-ee's is affirmed. In addition, the summary judgment is affirmed insofar as it was entered in favor of Stewart/Perry on MSE's claims of unjust enrichment and quantum meruit, because MSE did not challenge the judgment on those claims in its appellate brief. See Boshell v. Keith, 418 So. 2d 89, 92 (Ala. 1982)("When an appellant fails to argue an issue in its brief, that issue is waived.").

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Parker, C.J., and Wise and Cook, JJ., concur.

Sellers, J., concurs in the result.