

ARKANSAS COURT OF APPEALSDIVISION I
No. CA11-278DAN C. CLOW & SUZANNE CLOW
APPELLANTS

V.

VICKERS CONSTRUCTION CO.,
INC.

APPELLEE

Opinion Delivered November 2, 2011

APPEAL FROM THE STONE
COUNTY CIRCUIT COURT
[CV-2009-56-4]HONORABLE TIM WEAVER,
JUDGE

REVERSED

DAVID M. GLOVER, Judge

The issue presented in this case is whether the “no-sue” provisions of Arkansas Code Annotated section 17-25-103(d) apply to residential contractors. In December 2006, appellants Dan and Suzanne Clow entered into an oral contract with appellee Vickers Construction, Inc.; Vickers agreed to construct a single-family residence with a shop/garage for the Clows for the cost of labor and materials plus ten percent. Vickers began construction in April 2007; however, its contractor license had lapsed in March 2007 and was not reinstated until August 2008. Problems arose between the Clows and Vickers, and Vickers did not complete the job.

In April 2009, Vickers filed a complaint against the Clows in Stone County Circuit Court to recover the cost of labor and materials it alleged were due—a total of \$48,515.56—on the basis of the oral contract or alternatively, under the theory of quantum meruit. The Clows answered Vickers’s complaint and pleaded affirmatively that

Cite as 2011 Ark. App. 662

Vickers was an unlicensed contractor at the time it constructed their house and shop, and that Arkansas Code Annotated section 17-25-103(d) barred it from seeking recovery either at law or under the theory of quantum meruit. The Clows filed a motion to dismiss Vickers's complaint based on this statutory provision. The trial court found that section 17-25-103(d) was not applicable to Vickers and denied the Clows' motion to dismiss. Then, after a hearing on the merits, the trial court awarded Vickers a judgment of \$40,775.38. The Clows now appeal, arguing that section 17-25-103(d) was applicable to Vickers and that the trial court erred in not dismissing Vickers's complaint. We reverse the circuit court.

This is an issue of first impression.¹ Code provisions imposing penalties for noncompliance with licensing requirements must be strictly construed. *Wilcox v. Safley*, 298 Ark. 159, 766 S.W.2d 12 (1989). If the language of the code provisions is not clear and positive, or if it is reasonably open to different interpretations, every doubt as to construction must be resolved in favor of the one against whom the enactment is sought to be applied. *Id.* Where a provision is clear and unambiguous, the intention of the

¹Arkansas Code Annotated section 17-25-515 (Supp. 2011), which is found under Subchapter 5—Residential Building Contractors Committee, was enacted in Act 1208 of 2011 and provides, “A contractor found guilty of a violation of this subchapter shall not bring an action: (1) in law or equity to enforce any provision of a contract entered into in violation of this subchapter; or (2) for quantum meruit.” However, this provision does not apply to the case in question because it was not in effect at the time this issue arose between the parties.

Cite as 2011 Ark. App. 662

legislature must be determined from the plain meaning of the language of the provision.

Id.

It is necessary that we identify and quote various provisions within two subchapters of Title 17, Chapter 25—subchapters 1 and 5. While the provisions of subchapter 1 have been in force for many years, the provisions of subchapter 5, which specifically apply to residential contractors, were enacted in 1999. Arkansas Code Annotated section 17-25-101(a)(1) (Repl. 2010) defines “contractor” as

any person, firm, partnership, copartnership, association, corporation, or other organization, or any combination thereof, that, for a fixed price, commission, fee, or wage, attempts to or submits a bid to construct or demolish, or contracts or undertakes to construct or demolish, or assumes charge, in a supervisory capacity or otherwise, or manages the construction, erection, alteration, demolition, or repair, or has or have constructed, erected, altered, demolished, or repaired, under his or her, their, or its direction, any building, apartment, condominium, highway, sewer, utility, grading, or any other improvement or structure on public or private property for lease, rent, resale, public access, or similar purpose, *except single-family residences*, when the cost of the work to be done, or done, in the State of Arkansas by the contractor, including, but not limited to, labor and materials, is twenty thousand dollars (\$20,000) or more.

(Emphasis added.) Subsection (c) of this section provides, “It is the intent of this definition to include all improvements, demolition, or structures, *excepting only single-family residences*.” (Emphasis added.) Section 17-25-103(a)(5) (Repl. 2010) provides that any contractor who uses an expired or revoked certificate of license shall be deemed guilty of a misdemeanor and shall be liable for a fine of not less than one hundred dollars (\$100) or more than two hundred dollars (\$200) for each offense, with each day to constitute a separate offense. Subsection (d) of this section states, “No action may be brought either at

Cite as 2011 Ark. App. 662

law or in equity to enforce any provision of any contract entered into in violation of this chapter. No action may be brought either at law or in equity for quantum meruit by any contractor in violation of *this chapter*.” (Emphasis added.)

As noted above, in 1999 our legislature amended the contractor-licensing statutes by enacting subchapter 5, which pertains to residential-building contractors. At the time of the dispute, section 17-25-501 provided, in pertinent part, “It is the intent of this subchapter to protect the purchasers of homes constructed in this state by establishing reasonable and adequate licensing and regulation of homebuilders. It is intended that this subchapter apply to everyone not specifically excluded.” Ark. Code Ann. § 17-25-501 (Repl. 2010). Section 17-25-502(2) (Repl. 2010) defines “residential building contractor” as “any . . . corporation, . . . which for a fixed price, commission, fee, or wage attempts to or submits a bid to construct or contract or undertakes to construct or assumes charge in a supervisory capacity or otherwise manages the construction of single family residences.” Section 17-25-505 (Repl. 2010) provides, “No person shall act as a residential building contractor after July 1, 2001, unless licensed by the Residential Building Contractors Committee or exempted from licensure under this subchapter.”

Because the “no-sue” provision was not added to the residential-building-contractor subchapter until 2011 (see footnote 1), this court must determine whether the “no-sue” provision found in § 17-25-103(d) is applicable to residential-building contractors. Section 17-25-103(d) provides that “no action may be brought either at law or in equity for quantum meruit by any contractor in violation of *this chapter*.” (Emphasis

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added.) Although the definition of “contractor” in § 17-25-101(a)(1) still specifically exempts single-family residences, the residential-contractor subchapter added in 1999 provided that this subchapter applied to everyone not specifically excluded. Ark. Code Ann. § 17-25-501.² Residential contractors are clearly a part of the chapter; therefore, we hold that § 17-25-103(d) did apply to Vickers, and the trial court erred in not dismissing Vickers’s lawsuit.

Reversed.

ROBBINS and WYNNE, JJ., agree.

²In the A.C.R.C. notes to subchapter 5, it is stated that references to “this chapter” in subchapters 1-3 may not apply to this subchapter which was enacted subsequently. However, no authority is cited for this statement, and the appellate courts have not addressed this issue prior to this opinion.