IN THE COUNTY COURT, SIXTH JUDICIAL CIRCUIT, IN AND FOR, PINELLAS COUNTY, FLORIDA

CASE NO.: 2024-001865-CO

FLORIDA ROOF SPECIALISTS, INC.,
A Florida Corporation,

Plaintiff,

v.

GLORIA A. ARTHUR, an individual,

Defendant.
_____/

PLAINTIFF'S MOTION FOR RECONSIDERATION/REHEARING and INCORPORATED MEMORANDUM OF LAW and REQUEST FOR EXPEDITED HEARING

COMES NOW, PLAINTIFF, FLORIDA ROOF SPECIALISTS, INC. (hereinafter referred to as "Florida Roof" or "Plaintiff"), by and through its undersigned counsel, pursuant to the provisions of Rule 1.530 Fla. R. Civ. P., moves this Court to reconsider/rehear Defendant's Motion to Dismiss and vacate its Order dismissing Plaintiff's Complaint and, as grounds therefore, would say as follows:

1. On the 18th day of July 2024, The Court heard Defendant's Motion to Dismiss Plaintiff's Complaint.

2. At the conclusion of said hearing, the Court found that Plaintiff's Contract was illusory and unenforceable and that the Plaintiff's Selection Sheet signed by Defendant limited Defendant's obligation to pay Plaintiff any monies in excess of $2,500.00, and released and discharged Plaintiff's Lien and entered its Order of Dismissal [Doc. No.: 19].

3. Based on the facts and case law presented at the hearing, Plaintiff believes the Order is erroneous and, as such, the Court must reconsider/rehear this matter and vacate its Order based on the facts and case law in support thereof as presented herein below.

Standard to Reconsider/Rehear

4. In those cases where later events establish the existence of an erroneous ruling, this court has required that "litigants must be granted an opportunity to allow the aggrieved party an opportunity to present their case under a corrected ruling." *Gulf Eagle. LLC v. Park East Dev., Ltd.,* 196 So. 3d 476,479 (Fla. 2d DCA 2016). A remedy in such circumstances is to allow the aggrieved party to present additional evidence, and failure to do so may constitute an abuse of discretion. *Id.* at 479.

5. "Procedural due process requires both fair notice and a real opportunity to be heard ... 'at a meaningful time and in a meaningful manner.'" *Givogue v. Lighthouse Bay Condo. Ass'n,* 373 So. 3d 896, 898 (Fla. 4th DCA 2023).

Relevant Facts

6. That certain parcel of real property that is the subject of this action is owned by Defendant, in her individual capacity, and is commonly known as 3773 15th Avenue Southeast, Largo, Florida 33771 (the "Property") and more particularly described as:

Lot 80, SUN COAST ESTATES, according to the map or plat thereof as recorded in Plat Book 50, Page 34, of the Public Records of Pinellas County, Florida.

Parcel Identification Number: 01/30/15/86382/000/0800.

7. On the 20th day of September 2022, Defendant executed a Customer/Contractor Agreement with Plaintiff (the "Contract") to construct certain improvements to the Property. [Doc. No.: 2, Exhibit "B"]

8. The Contract is valid and enforceable.

9. Pursuant to **THE TERMS AND CONDITIONS** stated on the first page of the Contract: "Customer agrees to enter into this Contract based on the contingency that Company will receive enough funds to complete the project above from the insurance carrier *plus applicable deductible and nonrecoverable depreciation from the Customer which all is to be paid to Company*.... Customer understands that some items may not be covered by the Customer's insurance carrier such as rotten wood and that cost is the homeowner's responsibility.... The dollar amount of the contract is the amount approved on the Insurance Company's final Scope of Loss *plus any upgrades and/or overhead and profit*.... Customer will be liable to Company for any upgrades, additional work *that is not approved for payment by the Customer's Insurance Company.*"

10. Further pursuant to the **NOTICE TO INSURANCE COMPANY OF DIRECT PAYMENT AUTHORIZATION** stated on the first page of the Contract: "I/we, the Owner(s) of the property listed above, **hereby authorize Direct payment, by way of adding Florida Roof Specialists, Inc.**, name to any drafts, checks/ issued for any benefits or proceeds of the net insurance claim from our insurance company, Public Adjuster, Attorney or other representatives in relationship to the claim referenced above.... I/we agree that any portion of work, deductibles, betterment, depreciation or additional work requested by the undersigned, not covered by insurance, must be paid by the undersigned on or before its completion."

11. On or about the 22nd day of September 2022, Plaintiff provided Defendant with its initial estimate (the "Initial Estimate") of the Replacement Cost Value ("RCV") of the roof to be $12,732.85. [Doc No.: 2, Exhibit "C"]

12. On or about the 4th day of October 2022, Citizens Insurance provided Defendant with a written estimate of the Replacement Cost Value ("RCV") of the roof to be $10,239.40 and

the Actual Cost Value ("ACV") of the roof to be $8,568.68 (the "Citizens Estimate"). [Doc No.: 2, Exhibit "D"]

13. On the 8th day of November 2022, Defendant executed Plaintiff's Selection Sheet (the "Selection Sheet") affirming her obligation to pay Plaintiff her $2,500.00 deductible, among other obligations. [Doc No.: 2, Exhibit "E"] Pursuant to the Selection Sheet, Defendant reaffirmed her contractual obligation to pay directly to Plaintiff, her deductible in the amount of $2,500.00.

14. On the 8th day of November 2022, Defendant executed her Notice of Commencement (the "NOC") and recorded the same on the 21st day of November 2022, in Official Records Book 22267, Page 2377 of the Public Records of Pinellas County, Florida. [Doc No.: 2, Exhibit "F"]

15. On the 26th day of January 2023, Plaintiff commenced performance of its work pursuant to the Contract.

16. On the 4th day of March 2023, Plaintiff completed its duties under the Contract.

17. On the 7th day of March 2023, Plaintiff's work performed on the property pursuant to the Contract and under Permit Number EBP-23-00626 was approved by the Pinellas County Building Department. [Doc.: No 2, Exhibit "G"]

18. On or about the 23rd day of March 2023, on behalf of Plaintiff, Minorcan Construction Group, Inc., provided Defendant with its final estimate (the "Final Estimate") of the Replacement Cost Value ("RCV") of the roof to be $23,025.03. [Doc. No.: 2, Exhibit "I"]

19. On the 6th day of April 2023, Citizens provided Defendant with payment for Ordinance or Law Coverage in the amount of $897.87 (the "O&L Payment"). [Doc. No.: 2, Exhibit "J"]

20. Subsequent to the completion of its work under the Contract, Plaintiff provided Defendant with its Invoice No. 31-453-1 (the "Invoice") crediting Defendant with payments received through the 8th day of February 2023. In addition to crediting Defendant for payments received, Defendant was also given a credit of $3,612.24 for work Plaintiff did not perform. The outstanding balance owed to Plaintiff is $9,173.39. Defendant has failed and refused to pay the monies owed to Plaintiff, breaching the Contract. [Doc. No.: 2, Exhibit "H"]

21. All conditions precedent to payment have been performed or have occurred.

22. Plaintiff has been caused to record its Claim of Lien dated the 12th day of May 2023, (the "Lien") on the same day in Official Records Book 22439, Page 1575 of the Public Records of Pinellas County, Florida. [Doc.: No. 2, Exhibit "K"]

Supporting Authority

23. Under Florida law, a construction lien can arise only when a valid contract exists between the parties. *Niehaus v. Big Ben's Tree Servs.*, 982 So. 2d 1254, 1236 (Fla. 1st DCA). "[A] contract is essential to any mechanic's lien." *Id.* at 1254. For a contract to exist, the parties must reach agreement as to the meaning of each material term. *Id.* [O]ne basis requirement of contract law is specification of material terms. *Id.* [M]utual assent [on material terms] is an absolute condition precedent to the formation of a contract. *Id.*

24. In *Niehaus,* the trial court found that the parties had different understandings of the term "removal." *Id.* This term was material to the contract as, in significant part, it defined the extent of Respondent's duties. *Id.* at 1255. Without agreement on this material term, the parties failed to enter into a contract. *Id.* Without a contract, a lien could not attach to Petitioner's property. *Id.*

25. Since a contract is essential to any mechanic's lien, we look first to the enforceability of the basic contract obligation. *Viking Cmtys. Corp. v. Peeler Constr. Co.*, 367 So. 2d 737, 739 (Fla. 4th DCA 1979). The doctrine of substantial performance prevails in this State and a contractor who substantially performs and is in good faith entitled to enforce the contract even if performance has been less than complete. *Id.* at 739. Where a contractor breaches a construction contract, the damages are generally determined by the amount in excess of the contract price which the owner reasonably expects to complete the project. *Id.* Assuming good faith substantial performance, recovery under the contract should be diminished by this amount. *Id.* Where a contractor complies with all provisions of Chapter 713, Florida Statutes, and has substantially performed the contract, he is entitled to a mechanic's lien. *Id. See also, Michnal v. Palm Coast Dev.*, 842 So. 2d 927, 932 (Fla. 4th DCA 2003); *Cds & Assocs. of the Palm Beaches v. 1711 Donna Rd. Assocs.*, 743 So. 2d 1221, 1224 (Fla 4th DCA 1999).

26. A contractor must substantially comply with the statutory provisions governing a mechanic's lien before the lien may be foreclosed. *Grant v. Wester,* 679 So. 2d 1301, 1307 (Fla. 5th DCA 1996). Where a contractor complies with all provisions of Chapter 713, Florida Statutes and has substantially performed the Contract, he is entitled to a mechanic's lien. *Id.* at 1307. *See also, Boyce Constr. Corp. v. Dist. Bd. Of Trs.*,414 So. 2d 634, 636 (Fla. 5th DCA 1982).

27. In the absence of a definite price or a method of determining a price not left solely to Sunmark's discretion, the agreement must fail as a binding contract. *Gables I Townhomes v. Sunmark Restoration,* 687 So. 2d 6 (Fla. 3d DCA 1996).

28. If the parties provide a practicable, objective method for determining this price or compensation, *not leaving it to the future will of the parties themselves,* there is no such

indefiniteness or uncertainty as will prevent the agreement from being an enforceable contract. *Martin v. Jack Yanks Contstr. Co.*, 650 So. 2d 120, 121 (Fla. 3d DCA 1995).

Analysis

29. In *Niehaus,* the circuit court found that the owner agreed to have a tree on her property cut down and "removed" for $4,800.00. The company intended "remove" to mean simply moving the tree. On the other hand, the owner believed "remove" meant that the tree would be taken from her property.

30. The circuit court found that since the company never explained the industry meaning of "remove," the owner's understanding of its meaning was reasonable. However, the circuit court ruled that the company had a valid lien on the owner's property.

31. In her petition, the owner argued that the circuit court erred in upholding the lien as the parties never entered into a valid contract on which the lien could be based. The court found, accepting the circuit court's factual findings, that it was impossible to conclude that the statutory requirements for a construction lien had been met.

32. According to the court, the term "removal" was material to the contract as it defined the extent of the company's duties. Without an agreement on this material term, the parties failed to enter into a contract, and as a result, under §713.05, Fla. Stat., a lien could not attach to the owner's property.

33. The matter *sub judice* is distinguished from *Niehaus* as there is no dispute between the parties as to the scope of work or the understanding of the work Plaintiff was to provide to Defendant pursuant to the Contract, which was to remove and replace the existing roof on Defendant's home and to repair/replace any rotted wood discovered after the removal of

the existing roof, which is a building code requirement provided for in the Contract. Furthermore, there is no dispute that Plaintiff fully performed its obligations under the Contract.

34. As to this issue, Plaintiff has a valid and binding Contract with Defendant and has complied with all of the statutory requirements under §713, Fla. Stat.

35. Concerning the Court's finding that the second page of Plaintiff's Selection Sheet signed by Defendant, with the section identified as "Out-of-Pocket Costs to Homeowner," that the costs Defendant was to pay in excess of what her insurance carried paid is limited to the sum of $2,500.00, said finding was based on conclusory statements made by Defendant's counsel without any factual support. Reading this document in its entirety and as in conjunction with the Contract, it is clear that Defendant's financial exposure under the Contract is not, in fact, limited to $2,500.00.

36. Immediately below the parties' signatures is the Lumber Pricing schedule providing Defendant with notice of the per unit prices of the various items necessary to effectuate the complete removal and replacement of her roof that could be incurred dependent on the surface and/or structural damages that would only be discovered once Plaintiff had removed the roof. Therefore, it is clear that the Court's finding is in error as it was solely based on conclusory statements presented by Defendant's counsel without any factual basis or other supporting documentation.

37. In addition to the above, the Selection Sheet, when taken as a whole with the Contract, provides a practicable, objective method for determining the price of the Contract there is no such indefiniteness or uncertainty as will prevent the agreement from being an enforceable contract.

38. The issue in *Gables I* was that the parties discussed the possibility of having the contractor, Sunmark, negotiate recovery of the hurricane losses with the insurance company and then perform the necessary repairs on the townhomes. Sunmark's compensation was dependent upon the dollar amount of insurance proceeds negotiated from Gables I's insurance company.

39. The agreement lacked a price term, leaving the final amount to the contract up to the negotiations between Sunmark and the insurance company, and contained the following provision: "All repairs to be specified per estimate and scope furnished by the insurance co., or furnished by the company and approved by the insurance co. No changes may be made by either party without written approval by both parties."

40. Gables I contends that it believed the 'proposal/contract" only gave Sunmark the authority to negotiate with the insurance company and no contract existed between the parties for the hurricane repairs. After negotiations, the insurance company issued a check for $392,032.17 which Sunmark delivered to Gables I.

41. It was Gables I's understanding that a regular contractors' contract would be entered into at a later date with regard to the actual hurricane repairs. Gables I hired another contractor to do the repairs and Sunmark brought suit to recover damages for breach of contract.

42. The trial court found that the agreement failed for indefiniteness rendering it unenforceable. No meeting of the minds occurred between Gables I and Sunmark because the "proposal/contract" left it to the future will of Sunmark and the insurance company, who were not a party to the contract, to determine the price term of the contract. In the absence of a definite price or a method of determining a price not left solely to Sunmark's discretion, the agreement failed as a binding contract.

43. The matter *sub judice* is distinguished from *Gables I* as there is nothing in the Contract or the pleadings whereby Defendant believed that Plaintiff had agreed to negotiate with Defendant's insurance company or that Plaintiff would negotiate the costs to remove and replace Defendant's roof with her insurance company.

44. Further, there is no dispute between the parties as to the scope of work or the understanding of the work Plaintiff was to provide to Defendant pursuant to the Contract, which was to remove and replace the existing roof on Defendant's home and to repair/replace any rotted wood discovered after the removal of the existing roof, which is a building code requirement provided for in the Contract.

45. The scope of work, which was initially determined by Defendant's insurance company and referenced in the Contract, is the amount of labor plus incremental amounts of the various materials and supplies to be incorporated into the removal/replacement of Defendant's roof. The price of the Contract is the cost of the labor plus the incremental costs of the various materials and supplies to be incorporated in the removal/replacement of Defendant's roof.

46. There is nothing in the Contract or the pleadings whereby Defendant believed that Plaintiff had agreed to negotiate on her behalf with her insurance company the costs to remove and replace Defendant's roof.

47. It is also undisputed that Plaintiff provided Defendant with the Replacement Cost Value ("RCV" or "price") to remove and replace her roof several weeks before her insurance company provided Defendant with its scope of work, which was lower than the amount than the price presented by Plaintiff.

48. It is further undisputed that both the Contract and the Statement of Loss (the "SOL") provided to Defendant by her insurance company gave her written notice that the RCV

amount her insurance company was willing to pay for the removal/replacement of her roof could be less than what was presented by Plaintiff and that Defendant was obligated by the Contact to pay any difference to Plaintiff.

49. The RCV determined by Defendant's insurance company was determined solely by the insurance company and the pleadings and record before the Court are wholly devoid of any assertion or allegation that Plaintiff negotiated the insurance company's RCV or participated in any way with her insurance company's determination of said RCV.

50. As stated *supra*, the scope of work to remove/replace was determined by the insurance company and the Contract price is a function of the costs of the labor plus the incremental costs of the various materials and supplies to be incorporated into the removal/replacement of Defendant's roof.

51. Because there existed a method of determining the price to remove/replace Defendant's roof that was not left solely to Plaintiff's discretion, the Court erred in finding that Plaintiff's Contract was invalid and unenforceable and dismissing Plaintiff's Claim of Lien based on its erroneous finding that the Contract was invalid and unenforceable.

52. In *Yanks*, Martin's house was damaged by a hurricane and she obtained an estimate from Yanks which was a proposal that provided only that Yanks was to return the home to its condition "prior to the incident [hurricane]" and contained the statement: Final price for restoration work to be worked out with Liberty Mutual Insurance Company and the general contractor.

53. The agreement contained no other provisions to outline the parties' rights and obligations and in fact left it solely to Yank's discretion whether Yanks would come to an agreement with the insurer. Subsequently, the insurance company issued a check to Martin, who

after receiving said check decided not to pursue rebuilding her home and Yanks filed a claim of lien and sued for breach of contract.

54. At trial, the court found that the agreement failed for indefiniteness because there was no definite price stated in the agreement or a means of determining a price not left solely to Yank's discretion and because there existed no enforceable contract to support Yank's lien, dismissed the lien. Yanks appealed.

55. However, on appeal, the court found that in the absence of a definite price, if the parties provide a practicable, objective method for determining this price or compensation, *not leaving it to the future will of the parties themselves,* there is no such indefiniteness or uncertainty as will prevent the agreement from being an enforceable contract.

56. *Yanks* is distinguished from the instant action in that the proposal stated that Yanks was to return the home to its condition "prior to the incident [hurricane]" and contained the statement: Final price for restoration work to be worked out with Liberty Mutual Insurance Company and the general contractor.

57. The work to be performed by Yanks was only stated as to return the home to its condition prior to the hurricane but did not provide any description of the condition of Martin's home prior to the hurricane or any definitive scope of work to effectuate such restoration.

58. The price or cost of the restoration work was to be determined solely between Yanks and Liberty Mutual, who was not a party to the contract between Martin and Yanks. Additionally, the contract lacked a practicable, objective method for determining this price or compensation, not leaving it to the future will of the parties themselves.

59. In this matter, there is no dispute between the parties as to the scope of work or the understanding of the work Plaintiff was to provide to Defendant pursuant to the Contract,

which was to remove and replace the existing roof on Defendant's home and to repair/replace any rotted wood discovered after the removal of the existing roof, which is a building code requirement provided for in the Contract.

60. The scope of work, which was initially determined by Defendant's insurance company and referenced in the Contract, is the amount of labor plus incremental amounts of the various materials and supplies to be incorporated into the removal/replacement of Defendant's roof. The price of the Contract is the cost of the labor plus the incremental costs of the various materials and supplies to be incorporated in the removal/replacement of Defendant's roof.

61. There is nothing in the Contract or the pleadings whereby Defendant believed that Plaintiff had agreed to negotiate on her behalf with her insurance company the costs to remove and replace Defendant's roof.

62. It is also undisputed that Plaintiff provided Defendant with the Replacement Cost Value ("RCV" or "price") to remove and replace her roof several weeks before her insurance company provided Defendant with its scope of work, which was lower than the amount than the price presented by Plaintiff.

63. It is further undisputed that both the Contract and the Statement of Loss (the "SOL") provided to Defendant by her insurance company gave her written notice that the RCV amount her insurance company was willing to pay for the removal/replacement of her roof could be less than what was presented by Plaintiff and that Defendant was obligated by the Contact to pay any difference to Plaintiff.

64. The RCV determined by Defendant's insurance company was determined solely by the insurance company and the pleadings and record before the Court are wholly devoid of

any assertion or allegation that Plaintiff negotiated the insurance company's RCV or participated in any way with her insurance company's determination of said RCV.

65. As stated *supra*, the scope of work to remove/replace was determined by the insurance company and the Contract price is a function of the costs of the labor plus the incremental costs of the various materials and supplies to be incorporated into the removal/replacement of Defendant's roof.

66. Because there existed a method of determining the price to remove/replace Defendant's roof that was not left solely to Plaintiff's discretion, the Court erred in finding that Plaintiff's Contract invalid and unenforceable and dismissing Plaintiff's Claim of Lien based on its erroneous finding that the Contract was invalid and unenforceable based in its interpretation that the Contract was indefinite.

Argument

67. As stated *supra,* the Contract provides a method of determining the price to remove/replace Defendant's roof. Specifically, the scope of work was to remove/replace Defendant's roof was determined by the insurance company and the Contract price is a function of the costs of the labor plus the incremental costs of the various materials and supplies to be incorporated into the removal/replacement of Defendant's roof.

68. This is further supported by page 2 of the Selection Sheet where immediately below the parties' signatures is the Lumber Pricing schedule providing Defendant with notice of the per unit prices of the various items necessary to effectuate the complete removal and replacement of her roof that could be incurred dependent on the surface and/or structural damages that would only be discovered once Plaintiff had removed the roof.

69. Notwithstanding the fact that the Contract does not state a stated price to remove and replace Defendant's roof, the Contract, Selection Sheet and detailed cost estimate along with the determination made by Defendant's insurance company, when taken together as a whole, provides a practicable, objective method for determining the price of the Contract there is no such indefiniteness or uncertainty as will prevent the Contract from being an enforceable contract.

70. In making its ruling, the Court relied on conclusory and subjective statements by Defendant's counsel that were unsupported by any facts or evidence in the record and ruled that Plaintiff's Contract failed for indefiniteness in that it lacked a stated price and completely overlooked the documentation that established a practicable, objective method for determining the price of the Contract.

Conclusion

71. Based on the facts and case law cited herein in support of Plaintiff's Motion, the Court must reverse its decision, vacate its prior Order, and find Plaintiff's Contract to be valid and enforceable as well as to reinstate Plaintiff's Claim of Lien.

WHEREFORE, Plaintiff respectfully requests the Court to enter an order that:

A. Grants Plaintiff's Motion for Reconsideration/Rehearing;

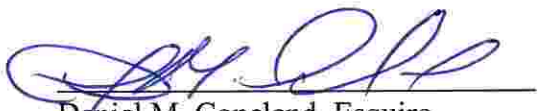
B. Grants Plaintiff's Request for Expedited Hearing; plus

C. Such other relief as the Court may determine to be just and appropriate under the circumstances.

Dated this 14th day of August 2024.

Signature and Certificate of Service appear on the following page.

DANIEL M. COPELAND
ATTORNEY AT LAW, P.A.



Daniel M. Copeland, Esquire
Florida Bar No.: 621595

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing was served on all individuals of record identified on the service list following hereon below by the Florida E-Filing Portal on this 14th day of August 2024.

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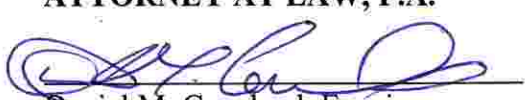

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