IN THE DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA
FIFTH DISTRICT

CAM BRADFORD HOMES, LLC,

Appellants,

v.

CASE NO. 5D24-0849
Nassau County
LT CASE NO. 2022-CA-000156-A

WAYNE ARRANTS AND
BERKELY ARRANTS,
Appellees.
_____/

APPELLANT, CAM BRADFORD HOMES, LLC'S INITIAL BRIEF ON THE MERITS

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JURISDICTIONAL STATEMENT

The Circuit Court, Nassau County, Florida had jurisdiction of the case as it involves the claims for money damages and construction lien foreclosure for amounts in excess of $50,000 and the Circuit Court of Nassau County had original jurisdiction of the case pursuant to §26.012(2)(a), Fla. Stat. This Court has jurisdiction pursuant to Fla. R. App. P. 9.030(b)(1)(A) as this Appeal seeks the review of a final order in the form of a judgment in favor of the Appellees concluding the claims of the Appellant and Appellant filed a timely Notice of Appeal on March 28, 2024 (Appellate Record Page 258 (cited hereinafter as "App. R. #")), from the Final Judgment of the Honorable Marianne Aho rendered on February 28, 2024 (hereinafter "Judgment").

STANDARD OF REVIEW

This is an appeal pursuant to Fla. R. App. P. 9.110(a)(1) from the Summary Judgment and Judgment in favor of the Appellees Wayne Arrants and Berkely Arrants. The standard of review is de novo. Volusia County v. Aberdeen at Ormond Beach, 760 So.2d 126 (Fla. 2000) ("Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law. Menendez v. Palms West Condominium Ass'n, 736 So.2d 58 (Fla. 1st DCA 1999). Thus, our standard of review is de novo.")

STATEMENT OF THE CASE

This appeal arises from the trial court granting a summary judgment ("Summary Judgment") and final judgment ("Judgment") from the Circuit Court, Civil Division, Nassau County, Florida (hereinafter "the Court") ruling in favor of the Appellees on Counts I, II, III, and IV of the affirmative claims of the Appellant. (App. R. 255-257). The Summary Judgment and Judgment found that Appellant was an unlicensed contractor for purposes of Chapter 489, Fla. Stat. (hereinafter referred to as "Chapter 489") for failure to have a primary or secondary qualifying agent ("Qualifying Agent") and thus the contract between the Appellant and Appellees is void pursuant to §489.128, Fla. Stat. (Sections of Florida Statutes herein after referred to as § or Section followed by the statue and as an example §489.128). (App. R. 255-257). The Judgement thus found that Appellant was not entitled to recovery under the construction lien, breach of contract, contract implied in fact, contract implied at law or tortious interference claim as a matter of law based solely on the alleged unlicensed contracting. (App. R. 255-256).

Appellant argues that Appellant was not an unlicensed contractor by virtue of having Mr. Cameron W. Bradford ("Bradford") performing all tasks as the primary qualifying agent ("Qualifying Agent") under Chapter 489. The record demonstrates that all of the work performed by the Appellant was

properly supervised by Bradford, a licensed general contractor pursuant to Chapter 489.

Appellant further argues that it was not an unlicensed contractor and that this Court should find that the substance should prevail over form. Technical administrative compliance may be an disciplinary issue for the Department of Business and Professional Regulation ("DBPR"), but the that Appellant should not face the harsh penalty of unlicensed contracting where the substantive requirements of Chapter 489 have been met. Appellant argues that the purpose and goals of Chapter 489 are accomplished so long as the licensed contractor properly oversees the work of the Appellant regardless of a technical violation.

The trial court held that because Bradford failed to take the administrative step to advise the DBPR that he was in fact acting as the primary qualifying agent for Appellant, that the Appellant was therefore unlicensed even though the policy and safety concerns of the State of Florida as prescribed under Florida Statutes were met. (App. R. 255-256).

Appellant argues that even if unlicensed, the trial court must analyze the work subject of the claim and Appellant is entitled to recover for work that did not need a license under Chapter 489. Therefore, summary judgment was not proper.

Finally, Appellant argues with respect to Count IV, Tortious Interference with an Advantageous Business relationship that the claim should continue since an enforceable contract is not necessary for a finding that someone unjustifiably interfered with the business relationship.

STATEMENT OF THE FACTS

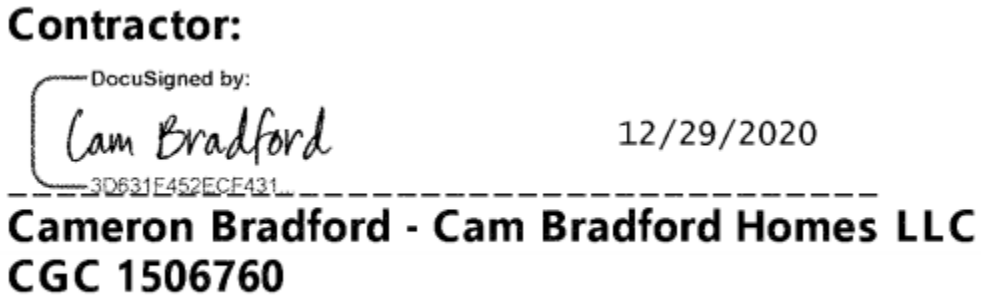
Appellant and Appellees entered into a contract to build a single-family home ("Home") on property owned by the Appellees. (App. R. 15). Cameron W. Bradford ("Bradford") is the sole manager of Appellant. (App. R. 212). At all material times, Bradford was a licensed general contractor. (App. R. 213). Bradford has been a licensed general contractor since February 2, 2004. (App. R. 213). Bradford supervised the construction performed by Appellant for the Appellees. (App. R. 214). Bradford manages and actively participates in the operation of Appellant. (App. R. 212). Bradford is the sole owner, as tenants by the entirety, of Appellant. (App. R. 212). Bradford does not delegate his management duties or obligations of Appellant and has personally managed the operations of Appellant from the date of registration to the present. (App. R. 212). Bradford has a Bachelor of Science in Building Construction from the University of Florida and have been continuously involved in the construction of homes and other construction since graduating in May of 1996. (App. R. 212). Bradford has been continuously

licensed to construct residential homes in the State of Florida since May 31, 1996. (App. R. 213). Bradford obtained the permit for construction in his name. (App. R. 214). At all times and for all work performed by Appellant, Bradford has been the Primary Qualifying Agent for Appellant as that term is defined in §489.105(4). (App. R. 213). As it pertains to the construction work performed by Appellant, including the Home of the Appellees, Bradford had the skill, knowledge, experience and responsibility to "supervise, direct, manage, and control the contracting activities of" Appellant. (App. R. 213). As it pertains to the construction of the Home, Bradford "had the responsibility to supervise, direct, manage, and control construction activities" on the Home for which he obtained the building permit. (App. R. 213). Bradford obtained his Florida contracting licenses only after having proven to the State of Florida that he has "the technical and personal qualifications [as] have been determined by investigation and examination as provided in this part, as attested by the [Florida Department of Business and Professional Regulation.]" (App. R. 213). Bradford visited the Appellees' Home during construction approximately once a week to inspect the quality and progress of the construction, inspect the work for compliance with the Florida Building Code, meet with subcontractors and the on-site project manager and to otherwise oversee the construction of the Home. (App. R.

214). Bradford signed or authorized the subcontracts for the construction of the Home. (App. R. 214). Bradford approved every construction draw for the Home. (App. R. 214). Bradford signed or authorized every check or disbursement to subcontractors and material suppliers for the Home. (App. R. 214). Bradford took all steps necessary to supervise the construction of the Home as the Primary Qualifying Agent for Appellant as required by Chapter 489, Fla. Stat. (App. R. 214). Bradford actively oversaw the construction of the Home, managing the finances of the construction of the Home and otherwise participated in the construction of the Home. (App. R. 214). Appellant hired licensed contractors for all scopes requiring a license such as roofing, electrical, plumbing and heating, ventilation, and air conditioning. (App. R. 214). Construction of the Home included drywall, framing, concrete tile, flooring, brick pavers, siding, trim and construction of other items that do not require a license under Chapter 489, Fla. Stat. (App. R. 215). Appellant held insurance at all applicable times that covered general liability of Appellant in the amount of $1,000,000 per occurrence with a $2,000,000 aggregate including products completed operations. (App. R. 215). Appellant held workers compensation coverage in the statutory amounts at all applicable times. (App. R. 215). Appellant did not self-perform work for the construction of the Home rather hired subcontractors to perform

the work and managed the work. (App. R. 215). Much of the work performed at the Home did not require licenses under Chapter 489, Fla. Stat. (App. R. 215).

Bradford was included in the defined term as "Contractor" in the contract as "Cameron Bradford- CGC 1506760". (App. R. 15). Bradford's license number was identified as the contractor's license in the contract. (App. R. 15). Bradford signed the contract as



(App. R. 22).

Appellees moved for summary judgment on the grounds that Appellant did not have a qualifying agent under Chapter 489 since Appellant had not submitted the paperwork necessary to the DBPR to identify Bradford as a Primary Qualifying Agent with the DBPR. (App. R. 111). Appellants responded to the Motion for Summary Judgment asserting that Bradford acted as and performed all tasks necessary as the Primary Qualifying Agent. (App. R. 225-227). The trial court held that Appellant was not licensed solely

due to the technical failure of Appellant to submit the paperwork to the DBPR. (App. R. 255).

On February 28, 2024, after a hearing on the matter, the Court entered Summary Judgment and a Judgement on March 14, 2024. (App. R. 255 and 257).

The Appellant made a timely appeal on March 28, 2024. (App. R. 258).

ARGUMENT

I. Summary of the Argument

Appellant had a "primary qualifying agent" as defined in § 489.105(4), Fla. Stat. and therefore is at least a material issue of fact as to their status as an licensed contractor. Primary qualifying agent ("Primary Qualifying Agent") is defined in Florida Statutes §489.105(4), Fla. Stat. as:

> Primary qualifying agent" means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which he or she is connected; who has the responsibility to supervise, direct, manage, and control construction activities on a job for which he or she has obtained the building permit; and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the department.

A contractor in Florida that does not have a Primary Qualifying Agent or secondary qualifying agent, as defined in the Florida Statutes, is considered to be unlicensed. §489.128(1)(a). In Florida, only individuals may hold a

license. §489.113(1). Corporations cannot have a contractor's license, thus each and every company operates through an individual licensed contractor. A Primary Qualifying Agent is an individual person. See §489.113(1).

Florida Statutes §489.128(1)(a) in conjunction with the definition of "primary qualifying agent" does not identify a technical registration requirement, *only* that there be a qualifying agent for the business organization that meets the criteria. Section 489.128(1)(a) states:

> (a) For purposes of this section, an individual is unlicensed if the individual does not have a license required by this part concerning the scope of the work to be performed under the contract. A business organization is unlicensed if the business organization does not have a primary or secondary qualifying agent in accordance with this part concerning the scope of the work to be performed under the contract. For purposes of this section, if a state license is not required for the scope of work to be performed under the contract, the individual performing that work is not considered unlicensed.

A business organization is only unlicensed if the *"business organization does not have a primary or secondary qualifying agent in accordance with this part concerning the scope of the work to be performed."* §489.128(1)(a).

In this instance, Bradford was the Primary Qualifying Agent and performed all obligations of a Primary Qualifying Agent for Appellant, Thus, Appellant did in fact have a Primary Qualifying Agent.

The sole question then becomes the interpretation of "in accordance with this part" in §489.128(1)(a) as it pertains to Primary Qualifying Agent.

The trial court held that “in accordance with this part”, by reading Chapter 489 as a whole, includes having a Primary Qualifying Agent and the merely technical application with the DBPR set forth in §489.119(2)(a) which essentially advises the DBPR who will be acting as the Primary Qualifying Agent for a business organization.

Appellant contends that this technical requirement of application to the DBPR is a regulatory compliance issue. That “in accordance with this part” refers to the specific definition of Primary Qualifying Agent in §489.105(4) since that is a defined term referenced §489.128(1)(a). In Section 489.128(1)(a), the Legislature directed the courts to look to whether or not the company has a “primary or secondary qualifying agent”. Since only individuals are Primary Qualifying Agents the Legislature directs the courts to look to the existence of competent individual performing the role. The application is merely for the purpose of advising the DBPR who the individual is who is acting for the business organization for purposes of disciplinary action. Accordingly, a contractor is not unlicensed pursuant to §489.128(1)(a), so long as a licensed contractor is performing the duties as the Primary Qualifying Agent, regardless of the technical administrative application. Accordingly, Summary Judgment was improper.

Further, §489.128(1)(a) specifically advises that "if a state license is not required for the scope of work to be performed under the contract, the individual performing that work is not considered unlicensed. Accordingly, the trial court must determine what, if any, of the work subject of the claim is for work that required a license and exclude recovery only for that work. And therefore, summary judgment was improper.

Finally, an enforceable agreement is not necessary for the purposes of finding that a third-party tortiously interfered with a business relationship. The Appellant may maintain a cause of action against the Appellees where the Appellant alleges that the Appellees tortiously interfered with a voidable or unenforceable contract.

II. Florida's entire regulatory provisions as set forth in Chapter 489 is based on the skill, knowledge and competence of the individual licensees as the basis for performing contracting and for the qualification of a business organization. It is the individual that is licensed, not a business organization.

"Chapter 489 establishes licensing procedures and regulatory duties for the construction industry and created the Construction Industry Licensing Board to enforce the performance of these procedures and duties." Murthy v. N. Sinha Corp., 644 So.2d 983, 986 (Fla. 1994). Chapter 489 imposes a barrier to entry for contractors based on competence, skill, knowledge and a number of other qualifications. §489.113(1). Florida has a public policy of

requiring individuals to be licensed as contractors and not allowing corporations to obtain contractors licenses. Gatwood v. McGee, 475 So.2d 720, (Fla. 1st DCA 1985). "Under Part I, Chapter 489, Florida Statutes (1979), the licensing and regulatory provisions governing construction contracting, the only way a company may be a contractor is by obtaining an individual licensed as a contractor as a qualifying agent." To best protect consumers, Florida's statutory scheme for contractors revolves around the professional responsibility of the individual. See Scherer v. Dep't of Bus. & Prof's, 919 So.2d 662, 664 (Fla. 5th DCA 2006). The Statutes are written such that it is the individual's experience, knowledge and education that is the basis for licensing. Chapter 489 largely ignores corporate existence since the skill, knowledge and competence are derived from the licensed individual.

The public policy behind Chapter 489 is the protection and the public health and consumers. §489.101. In 1979, Florida first enacted Chapter 489 as the "The Legislature deems it necessary in the interest of the public health, safety and welfare to regulate the construction industry." §489.101; See also Kvaerner Construction, Inc. v. American Safety Casualty Insurance Company, 847 So.2d 534, 536(Fla. 5th DCA 2003) (The purpose of Section 489.128 is "to protect the public from the activities of incompetent contractors."); Poole & Kent Co. v. Gusi Erickson Const. Co., 759 So.2d 2, 6

(Fla. 2d DCA 1999)(“the legislative history of §489.128 suggests that the statute is intended to address the problems that consumers and the public face due to shoddy work by unlicensed, unqualified contractors.").

This Court has previously held in Alles v. Department of Professional Regulation, 423 So.2d 624, 626 (Fla. 5th DCA 1982) as follows:

> The obvious purpose of these statutes allowing a company to act as a contractor through a licensed contractor is to insure that projects undertaken by a company are to be supervised by one certified and licensed by the board. To allow a contractor to be the "qualifying agent" for a company without placing any requirement on the contractor to exercise any supervision over the company's work done under his license would permit a contractor to loan or rent his license to the company. This would completely circumvent the legislative intent that an individual, certified as competent, be professionally responsible for supervising construction work on jobs requiring a licensed contractor. Thus, the Board was correct in determining that appellant had a statutorily imposed professional duty, as sole qualifying agent of record of Univel, to supervise all of Univel's projects.

This quote captures the essence of the reliance on the individual and the substance of the supervision as regards to the intent of Chapter 489. See also Hunt v. Department of Professional Regulation, 444 So.2d 997, 999 (Fla. 1st DCA 1983) (“As held in *Alles* a designated agent may not avoid responsibility by stating that he had nothing to do with the project. We conclude that the qualified contractor who procures a building permit has associated himself with the project and that he may not relieve himself of

responsibility by saying that he was one of several qualifying agents who could have supervised the construction.")

Throughout the years Chapter 489 has evolved into a comprehensive regulatory structure designed to provide a minimum level of competence for contractors. Chapter 489 specifically details which scopes of work in the construction industry are regulated by Florida. Chapter 489 provides a ist of classifications of contractors that the Legislature deemed necessary to regulate in the construction industry. §489.105(3)(a-p).

A complete reading of Chapter 489 reveals that the consumer protection and safety goals set forth in §489.101 are paramount. For example, the regulations focus on general contracting and specific technical scopes of work such as plumbing, mechanical, structural aspects of construction, pool construction, roofing, air condition and other specific scopes of work. §489.105(3), Fla. Stat. The common thread is that these scopes of work need experience and technical knowledge to properly perform and the focus of Chapter 489 is to make sure that individuals obtaining the licenses meet the necessary criteria.

To ensure that a contractor has the necessary qualifications, Chapter 489 sets forth competency requirements based on experience, educational requirements, and an examination to obtain a license. §489.113(1), Fla. Stat.

As referenced above, only individuals may obtain a license under Chapter 489. Business organizations may not be licensed. The Statutes discuss, in all respects, the responsibility of the "contractor." "Contractor" is defined in §489.105(3), Fla. Stat. as:

> [T]he person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. *Emphasis added*.

While not specifically defined in Chapter 489, "person" must be construed as an individual based on the context as used in the Chapter. Florida law does not establish a second standard of competence for an individual contractor to work through a business organization. §489.119, Fla. Stat.

The primary point of the application with the DBPR, is set forth in §489.119(2)(b) requiring and affidavit:

> "attesting that the applicant has final approval authority for all construction work performed by the business organization and that the applicant has final approval authority on all business matters, including contracts, specifications, checks, drafts, or payments, regardless of the form of payment, made by the business organization."

Once again, the focus for business organization is based on the individual contractor license and their control over the business organization. In so

doing, the Legislature is trying to prevent people from hiring a licensed contractor with no control over the process. The focus of the Chapter 489, and §489.128, is to ensure that an individual licensee is performing as the Primary Qualifying Agent.

Based on the **individual**, a company may be qualified so long as the individual supervises and oversees the work. The Legislature, in crafting the contractor licensing statutes, sought to ensure that an individual with the knowledge supervised and oversaw the construction. Chapter 489 is a statute for safety of building construction and the Legislature determined that the importance is on the individual and not the company. This is similar to other professions such as doctors, lawyers, engineers, and architects. In all of those professions, the individual is responsible and the individual with experience provides the knowledge and competence.

III. The trial court erred in finding, as a matter of law, that Bradford was not the Primary Qualifying Agent of the Appellant. The intent of Chapter 489 is that an individual hold the license and supervise the construction of a business organization. The actions of Appellant met this statutory intent. Therefore, the trial court erred finding that the Appellant was unlicensed and granting summary judgment against the Appellant on Counts I, II, III and IV.

Appellant, at all material times, had an individual acting as the Primary Qualifying Agent in accordance with Chapter 489. In this Instance, it in

undisputed that Bradford performed as the Primary Qualifying Agent in accordance with Chapter 489.

"[L]egislative intent is the pole star by which we must be guided in interpreting the provisions of law." Parker v. State, 406 So.2d 1089, 1092 (Fla. 1981) cited by Murthy v. Sinha, 644 So.2d 983, 985 (Fla. 1994). Section 489.128(1)(a) states "A business organization is unlicensed if the business organization does not have a primary or secondary qualifying agent." Primary Qualifying Agent is defined in §489.105(4) as:

> [A] person who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which he or she is connected; who has the responsibility to supervise, direct, manage, and control construction activities on a job for which he or she has obtained the building permit; and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the department.

Reading §489.128(1)(a) and inserting the defined term of Primary Qualifying Agent in §489.105(4), the only conclusion is that a company is not unlicensed so long as an individual licensee performs the role of the Primary Qualifying Agent.

The definition of Primary Qualifying Agent does not reference the requirements set forth in §489.119(2). Accordingly, the Court should not include in the statutory construction of §489.128 the administrative requirements of §489.119(2). Rather, the Court should construe the term as

it is defined to mean that a business organization is not unlicensed if a business organization has an individual that performs as Primary Qualifying Agent such as Bradford did in this case.

The Legislature makes clear that the Courts should look to the substance over form. In this instance, Bradford performed as the Primary Qualifying Agent of the Appellant. Thus, the protections for public health and consumer protection set forth in Chapter 489 were safeguarded. The registration of the Primary Qualifying Agent should be regarded as merely an administrative issue and not a substantive licensing requirement.

In this case, it is undisputed that Bradford, the namesake of the company, is licensed to construct residential homes as a contractor and has been for 28 years. (App R. 213). It is undisputed that Bradford took all steps necessary to act as the Primary Qualifying Agent. (App R. 212-215). It is undisputed that Bradford used his individual license to obtain the building permits, as done in every project. (App R. 212-215). It is undisputed that Bradford oversaw construction, the finances of the company, the finances of the project, subcontractor retention and oversight and did all other necessary substantive actions as the Primary Qualifying Agent in accordance with Chapter 489. (App R. 212-215). It is undisputed that the Appellant held

workers compensation and insurance coverage in amounts well above the minimum amounts required by Chapter 489. (App R. 215).

Section 489.128(1)(a) is clear that a business organization that has an individual that performs the role of the Primary Qualifying Agent for the business organization is not unlicensed. To hold otherwise would inflict a harsh penalty for form, rather than substance for a merely technical administrative violation best handled by the DBPR.

This is a matter of first impression in Florida as there are no cases in Florida with a similar set of circumstances where the sole manager and owner of a company is a licensed contractor but failed to take the technical administrative steps with regards to qualifying a business organization. There are two U.S. Federal District Court, Middle District, Florida case holdings that are on point. Lake Eola Builders, LLC v. Metropolitan at Lake Eola, LLC, 416 F.Supp.2d 1316 (M.D. Fla. 2006) and Baker County Medical Services, Inc. v. Summit Smith, LLC, 2007 WL 1229702 (M.D. Fla. 2006). Lake Eola Builders, LLC held that where a licensed general contractor performed the obligations as the Primary Qualifying Agent, that substance should be considered over form and that there was a material issue of fact as to whether the company was unlicensed. Lake Eola Builders, LLC at 1319. The Court then held, given the fact that the Florida licensed contractor

acted as the Primary Qualifying Agent and linked himself to the permit and took all steps necessary perform the tasks as a Primary Qualifying Agent, there was a material issue of fact as to whether the contractor was unlicensed. Id. at 1319. The Court in Summit Smith, LLC had a similar analysis. Summit Smith, LLC at 6-7. In Summit Smith, LLC the court held that the evidence supported the fact that C.D. Smith was a licensed contractor, his name was in the project manual and he supervised the construction. Id. at 7. The Court then held there was at least a material fact as to licensure. Id. There are no other cases to consider similar facts at issue in this case.

In the case of RTM General Contractors, Inc. v. GV Riverwalk, LLC, 893 So.2d 583, 585 n.4 (Fla. 2d DCA 2004), the Court analyzed the substantive acts of the parties to determine that the parties were unlicensed. In that case, the Court found that where RTM knowingly allowed another party, DeVore an unlicensed individual, to use RTM's license to perform all the work, the parties were unlicensed. Id. The Court, seemingly applied the purpose of Chapter 489, the Legislative intent, and the lack of individual participation by the licensee to find the contracts unenforceable. Id. In this case, the individual licensee, Bradford, performed as the contractor and therefore, should be considered licensed.

By procuring the permit and associating himself with the project, Bradford was responsible for, and did, supervise the construction. Penalizing Appellant and Bradford for a technical violation while continuing to hold them responsible for the work, under these circumstances, is contrary to the Legislative intent of the statute. Furthermore, in this case, the substance of the actions and involvement of Bradford preclude a finding that Appellant was unlicensed.

Based on the Legislative intent of Chapter 489 being focused on regulating the construction industry through the individuals, this Court should hold that Appellants had a Primary Qualifying Agent and thus, were not unlicensed and reverse the trial court's ruling.

IV. Florida's contractor licensing is divided into two parts, the regulatory aspect of the licensing and the substantive aspect of performing the work. The Court should construe §489.128(1)(a) as a safety and welfare statute and so long as the individual "contractor" is licensed and performs all the duties of the Primary Qualifying Agent, a business organization should not be considered unlicensed and its contracts unenforceable. To do so would provide for a great inequity for a very technical deviation.

The substantive provisions of §489.128(1)(a) should not be merged with the regulatory portions of §489.119(2)(b) for the purposes of determining the license status of a business organization. In Florida, the individual is licensed and it is the substantive acts of the individual that are

paramount to the Legislative intent and the purpose and goals of Chapter 489.

While failing to make application with the DBPR as set forth in §489.119(2)(b) may be a regulatory compliance issue, that does not override the substantive actions of the individual and the business organization. Accordingly, this Court should find that, for purposes of unlicensed contracting, it is the substantive actions of the contractor that matter.

In Murthy v. N. Sinha Corp., 644 So.2d 983, 986 (Fla. 1994), the Florida Supreme Court distinguished between the administrative arm of Chapter 489 and the substantive aspects. The Court held that "the language of chapter 489 indicates that it was created merely to secure the safety and welfare of the public by regulating the construction industry. Id. The Court went on to recognize the administrative remedies available under Chapter 489 are distinguishable from the substantive portions of the statute. Id. at 987.

This case is differentiated from cases where there is truly an unlicensed contractor performing work. In those cases, the safety and welfare of the consumer is in question. However, in this case, Bradford had his name and license number in the contract. Bradford signed the contract personally. Bradford used his license number to obtain the permit for the

Home. Bradford met with the Appellees and oversaw the work and acted as a responsible contractor.

In an instance such as this, this was not unlicensed contracting as the Legislative intent of Chapter 489 was fulfilled. The work was actually performed and oversaw by a duly licensed contractor. Accordingly, it was improper for the trial court to find that Appellant acted as an unlicensed contractor and the Summary Judgment should be reversed.

V. Even if the Appellant is unlicensed for a portion of the work, the trial court erred by not separating work performed that did not require a license against that work performed that required a license. There exists an issue of material fact of whether some of the work for which payment is sought did not require a license and for which Appellant would be able to recover even if unlicensed for other portions of the work.

Even if Appellant is determined to not be a licensed contractor, the contract would only be void for work that required a license. Appellant was seeking payment for work that did not require a license under Chapter 489. Section 489.128(1)(a) specifically states that a "if a state license is not required for the scope of work to be performed under the contract, the individual performing that work is not considered unlicensed."

For example, if Appellant sought payment for drywall materials or for drywall work performed, then Appellant would have the right to enforce that

part of the contract. The Contract between the Appellant and the Defendant would only be unenforceable as to scopes that required a license.

Chapter 489.105(3)(c) outlines the various scopes of work that require a license. Furthermore, a contractor performing scopes of work that does not require a license would not need to have a license to enforce the contract or alternatively, would have an equitable claim that is not barred by §489.128(1)(a). See Master Tech Satellite, Inc. v. Mastec North America, 49 So.3d 789 (Fla. 3D DCA 2010).

The trial court would need to analyze the claim of the Appellant to determine which portions of the claims of the Appellant that did not require a license and therefore, are enforceable. Accordingly, this Court should reverse the Summary Judgment and Judgment.

VI. The trial court erred in granting summary judgment on the Tortious Interference with an Advantageous Business Relationship claim in Count IV since an enforceable contract is not necessary for purposes of such a claim.

The Florida Supreme Court has determined that unjustified interference with an unenforceable contract gives rise to a claim for tortious interference with an advantageous business relationship. United Yacht Brokers, Inc. v. Gillespie, 377 So.2d 668, 672 (Fla. 1979). Even if the contract interfered with is void, an injured party may still make a claim against a third party wrongdoer. Id. The Supreme Court held that “This separate cause of

action recognizes that economic relations are entitled to freedom from unreasonable interference." Id. The Supreme Court found persuasive the argument set forth in Allen v. Leybourne, 190 So.2d 825, 828 (Fla. 3d DCA 1966) that "the law does not object to the voluntary performance of agreements merely because it will not enforce them, and it indulges in the assumption that even unenforceable promises will be carried out if no third person interferes." Id. citing W. Prosser, Handbook of the Law of Torts, § 129 at 932 (4th ed. 1971).

In this case, the contracts upon which the tortious interference claims were based were merely voidable and not void. Section 489.128 specifically advises that contracts by unlicensed contractors are "unenforceable" by the contractor. However, the contracts may still be enforced by the other party and likewise, may be voluntarily performed. Accordingly, a contract with an unlicensed contractor is merely voidable by the other party and unenforceable in court by the contractor. The United Yacht Brokers, Inc. case can be interpreted that even void contracts are protected from unjustified interference by a third party; in that case, the defendants argued that "the contract between United and Johnson was void and thus unenforceable for failure to comply with section 537.05(2)…" Id. at 672. The Supreme Court ruled against this argument indicating that even interference with a void

contract could be the basis of a tortious interference claim. The only Florida court to rule on this matter found that interference with a "void and illegal" contract could not be subject of a tortious interference claim where the statute violated was a criminal statute. See Thomas v. Ratiner, 462 So.2d 1157 (Fla. 3d DCA 1984).

However, the contract between a party and an unlicensed contractor is voidable based on the language of §489.128(1)(a). Therefore, without question United Yacht Brokers, Inc. applies and Appellant's claims against the Defendant should stand. Summary Judgment was therefore inappropriate with regards to the tortious interference claims in Count IV.

CONCLUSION

The trial court erred in finding that Appellant was unlicensed pursuant to §489.128(1)(a). Appellant, at all material times had a Primary Qualifying Agent, directly supervised and oversaw the work and therefore, was not an unlicensed contractor. This Court should reverse the Judgment and Summary Judgment.

Should the Court find that Appellant was an unlicensed contractor, the Court should reverse the Judgment and order the trial court to conduct a trial to determine whether all or parts of the claims of the Appellant did not require

a contractor's license. The contract between the Appellant and the Appellees is enforceable to the extent the work did not require a contractor's license.

The Court should find that the Appellants claim for tortious interference survives regardless of the enforceability of the contract interfered with. The Court should therefore reverse the Judgment and Summary Judgment as it pertains to Count IV of the Complaint regardless of the status of the licensure of the Appellant.

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been filed through the Florida Courts E-Filing Portal, which will serve a copy by email to the following:

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