

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO.: 2015-024515-CA-01

SECTION: CA11

JUDGE: Mavel Ruiz

COMPLIMENTI, INC.

Plaintiff(s) / Petitioner(s)

vs.

SG 2901, LLC

Defendant(s) / Respondent(s)

_____ /

FINAL JUDGMENT

THIS CAUSE having come to be heard before this Honorable Court on March 25- 27, 2019, and the Court having taken testimony, heard argument of counsel and being otherwise fully advised in the premises, finds as follows:

Findings

1. Ms. Nuria Anor, Plaintiff and owner of Complimenti, Inc. testified that she was hired as a designer and owner's representative by the Defendant, that he would be out of the country frequently and needed someone to manage the renovations being done on his residential property. Ms. Anor testified that she always communicated with the Defendant, SG 2901, LLC and its owner, Simeon Garcia regarding every expense and that he approved each and every expenditure. The Court finds Ms. Anor's testimony credible.
2. Complimenti coordinated a meeting with several licensed individuals in order to introduce them to the Defendant, so that he could review their proposals and hire each if decided to. Present at this initial meeting were both Plaintiff and Defendant along with Antonio Luvara, a licensed General Contractor; Efrain Izquierdo, a licensed Architect; and Ivan

Cajina, a licensed A/C contractor. Except for the Defendant, all of the other individuals present at this meeting testified under oath that it did in fact occur. All testified that as a result of the meeting, they were hired by the Defendant, and were left with the impression, if not the direct instruction, to deal with Plaintiff on all matters moving forward — specifically with respect to payment. The Court finds that this meeting occurred.

3. Mr. Luvara further confirmed that all times he was solely responsible for the supervision and approval all the work being completed at the Project. In fact, it was Mr. Luvara, acting in his capacity as the General Contractor on the project, who discovered the substandard and deceptive work being performed by Aredo, one of the sub-contractors hired and approved by the Defendant.
4. Mr. Luvara further testified that he remained on the project as the General Contractor until all of the work was completed, had passed inspection and the open permits were closed on or about November 13, 2014. The Court finds Mr. Luvara's testimony credible.
5. Ms. Rodriguez, an experienced permit expeditor in the tri-county area, testified that she was hired by the General Contractor to submit architectural plans and pull the required permits at the project. The Court finds Ms. Rodriguez's testimony credible.
6. Ms. Rodriguez explained how in her experience as a permit expeditor it was not uncommon for the owner of the project to pay for her services directly, and that her invoices were submitted to Complimenti because it was her understanding that Plaintiff was serving as SG¹'s representative or agent and was therefore the person responsible to provide payment.
7. Mr. Cajina, a licensed Air Conditioning Contractor, present at the initial meeting, discussed how he prepared and submitted two different proposals for his services to the Defendant for his consideration and approval. Mr. Cajina confirmed that it was the Defendant, and not Complimenti, who approved his job scope and hired him to perform the work on the project.

8. Mr. Cajina further testified that he submitted the invoices for his work to Complimenti because he had been given the impression, at his meeting with the Defendant, that Complimenti was serving as the representative or agent of SG and would be person he was to deal with should he need anything from the owner, specifically, providing payment on Defendant's behalf. The Court finds Mr. Cajina's testimony credible.
9. The Court also heard from Mr. Joel Jardines, who again confirmed that all his work was done under the supervision and approval of the General Contractor, Mr. Antonio Luvara. He testified that if there were any issues or problems that arose during the course of his work that we would immediately bring these matters to Mr. Luvara's attention, as he was the General Contractor in charge of the project. The Court finds Mr. Jardines' testimony credible.
10. Mr. Jardines testified that many times, the Defendant himself would review and approve of the work that was being completed at the project, and that the job scope of all of his invoices were submitted to and approved by the General Contractor, and not Complimenti, as that was not her responsibility in this Project.
11. The Notice of Commencement, issued by the city and admitted into evidence via stipulation of the parties, also lists "Santinacho Enterprises" as the General Contractor responsible for the project, and was signed by Mrs. Nuria Anor in here capacity as "Owner Agent."
12. The only signed contracts for contracting services admitted into evidence, were the two proposals submitted by Santinacho Enterprises, and were clearly executed by Mr. Anor in her capacity as "Owner/Representative." This fact was confirmed by both Mr. Luvara and Mrs. Anor.
13. When asked what it was he hired Mrs. Anor and Complimenti to do, Mr. Garcia admitted, - as he had done in a prior email - that he had hired her to assure that the quality of the work was up to his standards.

14. Defendant admitted to negotiating the oral Agreement he entered into with Mrs. Nuria Anor:

Q. How was the compensation for all these services to be paid? Did you discuss that with Ms. Anor?

A. Yes. She asked me for 20 percent of all the investments that were going to be made in the apartment. I told her I was not in agreement with that, if we could reach 15 with the condition that nobody with the condition that she would not collect commissions from the people that would be hired or from the places that she would be purchasing the materials. See Trial Transcript at page 410, lines 10-19.

15. Defendant acknowledged that he paid a portion of the commission due and owing the Plaintiff, under the Agreement.

Q: And we have established that you agreed to pay her 15 percent of what the project was on this? A:

A: Correct.

See Transcript, at page 410, lines 22-24.

16. The Court finds that Mr. Garcia intended for Ms. Anor to act as his representative in order to facilitate the renovation of his luxurious residence.

17. The Defendant argues that Complimenti was required to have a license for the type of work it performed under the Agreement.

18. The Defendant must show that: (1) Complimenti first qualifies as a contractor under the statutory definition of "contractor" set out in Fl. St. 489.105(3), Fla. Stat. and (2) that Complimenti was "unlicensed" as defined under Florida Statutes, Section 489.128(1).

19. The statute which renders an unlicensed contractor's contract enforceable essentially parallels the statute which imposes criminal penalties for engaging in the business of contracting without the required license. If Complimenti were acting as an "unlicensed contractor, the Agreement be unenforceable and Complimenti would be guilty of a

crime.

20. Florida law holds that penal statutes must be strictly construed according to their letter. See State v. Jackson, 526 So. 2d 58 (Fla. 1988); State ex rel. Cherry v. Davidson, 103 Fla. 954, 139 so. 177 (1931); Evarte Bailey, 39 Fla. 734, 23 so. 552 (1897).
21. The definition of "contractor" is:

"Contractor" means the person who is qualified for, and shall only be 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
22. Chapter 489 establishes a two-pronged analysis in order to be a "contractor." "First, the individual must 'construct, repair, alter, remodel, add to, demolish, subtract from, or improve' a structure; second, the individual who engages in such an undertaking must have a job scope that is 'substantially similar' to a job scope described in subsections (a) through (q) of 489.105(3), which includes 'general contractor' . . . " Full Circle Dairy, LLC v. McKinney, 467 F. Supp. 2d 1343, 1346 (M.D. Fla. 2006).
23. The Defendant failed to meet its burden and has failed to provide any evidence that Complimenti falls under either of the two definitions above, and as such has failed to establish the Complimenti is subject to the requirements and penalties, provided for under Chapter 489.
24. The record evidence presented in this matter conclusively establishes that the licensed General Contractor, Antonio Luvara, hired by the Defendant, was the "person qualified for, and solely responsible for, the project contracted for" and that any individual whom performed any service in connection with the project was hired and approved by the Defendant directly.
25. Further, the record evidence establishes that the licensed General Contractor, Antonio Luvara, hired by the Defendant, was the "person qualified for, and solely responsible for,

the project contracted for" and that any individual who performed any service in connection with the project was hired and approved by the Defendant directly. There would be no reason for the Defendant to hire two contractors. Complimenti was acting as the owner representative, facilitating the project while the owner was out of the country.

26. Therefore, Complimenti cannot be considered a "contractor" under 489.105(3), and is thereby not barred from enforcing the valid Agreement.
27. The Court finds that the record evidence establishes, by the greater weight of the evidence, that Complimenti's job scope was specifically limited to providing design/decorating services and acting as the point of contact in a representative or agency capacity on Defendant's behalf. Any hiring and/or contracting of work done at the property - licensed or not - was done and approved directly by SG himself and or the licensed General Contractor, Mr. Antonio Luvara.
28. The Court finds that, given the project scope agreed to by the parties, Complimenti should be governed under Chapter 481 Fla. Statute "Architecture, Interior Design, and Landscape Architecture", and not Chapter 489, Fla. Stat., "Contracting."
29. It is undisputed that Mr. Antonio Luvara, a licensed General Contractor, hired and supervised any individual who performed any work on the project. Mr. Luvara confirmed, and the record evidence corroborates, that at all times he was responsible for the supervision and approval of all work done at the project, including any actions performed by Complimenti.
30. Florida Statutes, Section 713.03 Liens for professional services, provides:
 - (1) Any person who performs services as architect, landscape architect, interior designer, engineer, or surveyor and mapper, subject to compliance with and the limitations imposed by this part, has a lien on the real property improved for any money that is owing to him or her for his or her services used in connection with improving the real property or for his or her services in supervising any portion of the work of improving the real property, rendered in accordance with his or her contract and with the direct contract.

- (2) Any architect, landscape architect, interior designer, engineer, or surveyor and mapper who has a direct contract and who in the practice of his or her profession shall perform services, by himself or herself or others, in connection with a specific parcel of real property and subject to said compliances and limitations, shall have a lien upon such real property for the money owing to him or her for his or her professional services, regardless of whether such real property is actually improved.
- (3) No liens under this section shall be acquired until a claim of lien is recorded. No lienor under this section shall be required to serve a notice to owner as provided in s. 713.06(2) or an affidavit concerning unpaid lienors as provided in s. 713.06(3).

31. Florida statues regulating architecture and interior design do not apply to a person who performs interior design services or interior decorator services for any residential application. Specifically:

A person who performs interior design services or interior decorator services for any residential application, provided that such person does not advertise as, or represent himself or herself as, an interior designer. For purposes of this paragraph, "residential applications" includes all types of residences, including, but not limited to residence buildings, single-family homes, multifamily homes, townhouses, apartments, condominiums, and domestic outbuildings appurtenant to one-family or two-family residences.

Fla. Stat 481.229(6)(a).

32. The services provided by Complimenti in this matter were for a residential application as defined above, and as a result does not require any licensure.

33. The Court finds that Plaintiff has established all of the elements of their case in chief, by a preponderance of the evidence. The Court finds that competent, substantial evident supports a verdict for the Plaintiff as to Count 1, Breach of an Oral Contract, Count 2, Unjust Enrichment and Count 3, Foreclosure of Construction Lien, in the amount of \$181,377.38, due and owing plus interest, statutory penalties, attorney's fees and

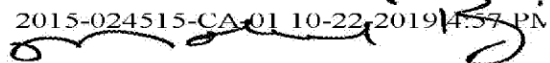
costs. Count four is dismissed as Plaintiff has prevailed in Count three and it was pled in the alternative.

IT IS THEREUPON ORDERED AND ADJUDGED THAT:

Plaintiff, Tax I.D. #65-1077451, and whose business address is 502 NW 98 Court, Miami, FL 33172, shall recover from Defendant, SG 2901, LLC, damages in the sum of **ONE-HUNDRED EIGHTY-ONE THOUSAND THREE-HUNDRED SEVENTY-SEVEN DOLLARS and 38/100** (\$181,377.38), together with any pre-judgment interest, and attorneys' fees and court costs, which for good cause shown let execution issue forthwith. Plaintiff shall be entitled to post-judgment costs incurred in the execution of the Judgment pursuant to Florida Statute.

The Court Reserves jurisdiction to decide the issues of the amount of taxable costs and Plaintiff's entitlement to reasonable attorney's fees and the amount to be awarded.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 22nd day of October, 2019.

2015-024515-CA-01 10-22-2019 4:57 PM


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Hon. Mavel Ruiz

CIRCUIT COURT JUDGE

Electronically Signed

Final Order as to All Parties SRS #: 3 (Non-Jury Trial)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

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