IN THE STATE COURT OF BULLOCH COUNTY

STATE OF GEORGIA

MO FLO, LLC d/b/a FLOORS OUTLET,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WILHELMINA ALEXANDER and EDWIN ALEXANDER,	§	
	§	**CIVIL ACTION NO. 2022-CV-202**
Defendants,	§	
	§	
AND	§	
	§	
MO FLO, LLC d/b/a FLOORS OUTLET,	§	
	§	
Plaintiff/Third-Party Plaintiff,	§	
	§	
v.	§	
	§	
S&T FLOOR COVERING, LLC,	§	
	§	
Third-Party Defendant.	§	

ORDER

Pending before the Court are three motions: (1) Motion for Joinder of Persons Needed for Just Adjudication ("Motion for Joinder") filed by Defendants Wilhelmina Alexander ("Randtke") and Edwin Alexander ("Alexander") (jointly "Defendants"); (2) Motion to Correct Party Names filed by Defendants ("Motion to Correct"); (3) Request to Permit Entry Upon Defendants' Land for Inspection and Other Purposes ("Motion for Entry") filed by Plaintiff Mo Flo, LLC d/b/a Floor Outlet ("Mo Flo"); and (4) Motion for

Leave to File and Serve Third Party Complaint ("Motion for Leave"). Having considered the Motions, the Responses, if any, and all matters filed of record, the Court finds as follows:

Relevant Facts

The parties entered into a contract for the purchase and installation of tile at 204 Highland Road, Statesboro, Georgia 30458, Defendants' property. In exchange, Defendants agreed to pay the sum of $16,716.44, with half due at the time of the signing of the contract and the remainder to be paid no later than two days after the installation was completed. The contract, a copy of which was filed of record, does not mention Mo Flo, LLC, shows Floors Outlet's name at the top and was signed by Brian McDonald, who appears to be one of the principals of Mo Flo.

Mo Flo seeks to recover $8,269.72, acknowledging that the parties entered into a contract for the purchase and installation of tile. Mo Flo claims that it is entitled to the amount sought based on Defendants' alleged refusal to allow Mo Flo to complete the agreed upon work.[1] Defendants counter that the work was performed deficiently, that damage was caused to their property during the installation of the tile and that they are entitled to damages as a result.

Motion for Joinder

In their Motion for Joinder, Defendants seek to have this Court authorize the joinder of three individuals, Brian McDonald ("McDonald"), Randy Childs ("Childs") and Prince Preston ("Preston") to this action. It is alleged that these individuals are the

[1] To be clear, the Court does not herein make any findings of fact but instead restates the allegations of the parties. However, of note is the fact that Defendants challenge the veracity of this allegation and in support of their position proffer an e-mail purporting to be from Brian McDonald stating, "[w]e do not intend to come back to your house to do any type of work." (E-mail from Brian McDonald to Wilhelmina Randtke of June 14, 2022).

principals of Mo Flo. For this reason, Defendants contend they should be added to the action.

"A person who is subject to service of process shall be joined as a party in the action if … [i]n his absence complete relief cannot be afforded among those who are already parties." Merritt v. Marlin Outdoor Advertising, Ltd., 298 Ga. App. 87, 93, 679 S.E.2d 97, 104 (2009) (citing O.C.G.A. § 9-11-19(a)(1)). Therefore, "if there are no compelling reasons for joining third parties, then they are not indispensable, and it is not necessary to join them for a just adjudication of the action between the original parties." Id. Defendants have not met this burden as to Childs and Preston.

In Merritt, a plaintiff sought to add a party to the pending action. Chief Judge Robert L. Russell, III, of the Superior Court of Bryan County, Georgia, denied the motion and the plaintiff appealed. On appeal, the plaintiff argued that Chief Judge Russell had erred because the party that sought to be added had committed acts that would pierce the corporate veil and make the individual personally liable. Our Court of Appeals affirmed the lower court's decision and reasoned that, "[t]he concept of piercing the corporate veil is applied in Georgia to remedy injustices which arise where a party has over extended his privilege in the use of a corporate entity in order to defeat justice, perpetuate fraud or evade contractual or tort liability." Id. at 94. Therefore, the Court explained, even if the individual had committed fraud, which exposed him to liability, he could only be held liable as a joint tort feasor. Moreover, "[j]oint tort feasors are not indispensable parties in an action against one of them, because their liability is both joint and several." The Court therefore upheld Chief Judge Russell's decision denying the motion to join an indispensable party. Id.

Plaintiff's argument in opposition to this Motion is that there is no basis for the personal liability of the three individuals in this case. Construing the *pro se* Defendants' Counterclaim in the light most favorable to them, and further holding such pleadings to a less stringent standard than the Court would impose upon pleadings drafted by attorneys, it is at least arguable that the individuals' actions would allow the corporate veil to be pierced, imposing personal liability. Cardinale v. Keane, 363 Ga. App. 644, 869 S.E.2d 613 (2022). However, as our Court of Appeals has explained, these individuals would be joint tort feasors with the Plaintiff in this case and joint tort feasors are not indispensable parties in an action against one of them. Therefore, the Motion to Join is denied as to Childs and Preston.

McDonald's situation, however, is different from that of the other individuals. First, he negotiated the contract with the Defendants and executed it. While he may argue that he did so as an agent for Mo Flo, the Court has not been provided any evidence that he informed the Defendants of the agency. In Crolley v. Haygood Contracting, Inc., 201 Ga. App. 700, 411 S.E.2d 907, plaintiff filed suit against a company and the company's majority stockholder demanding damages based on a construction contract. The trial court granted partial summary judgment against the company and the individual. On appeal, the individual argued that there was no basis for personal liability. He averred that the company's trade name appeared on the contract, which created an issue of material fact as to whether the principal, his company, was disclosed to the plaintiff as the contracting party. Our Court of Appeals disagreed and explained that the contract was signed by the individual with no indication of a corporate office or title. Moreover, the name of the company did not appear on the form contract and there was no evidence that the alleged trade name at issue was registered by the company as required by law. The

Court thus held that there was no basis upon which to find that the plaintiff was put on notice that the contract was entered into by the corporate entity, and not personally by the individual. Personal liability could be imputed under the circumstances.

Similarly, in this case, the contract at issue does not name Mo Flo and it is signed by McDonald without any indication as to his corporate office or title, only designating him as "Contractor." Moreover, Defendants argue, without contradiction by Plaintiff, that the trade name Floors Outlet was not registered as required by law at the time the parties entered into the contract. It is at least possible that McDonald may be found personally liable under circumstances. Moreover, McDonald's liability would not be joint and several with Mo Flo in such instance, which makes him an indispensable party. The Motion to Join is therefore **GRANTED** as to McDonald.

Brian McDonald is therefore hereby joined to this action as a party plaintiff. The style of the case shall be changed to so show. The Defendants are hereby ordered to serve their Counterclaim, any amendment thereto, and a copy of this Order on McDonald.

MOTION TO CORRECT

In this Motion, Defendants seek to have the Court correct the style of the case to show Randtke's correct name. Plaintiff consents to the Motion. Therefore, the Motion is hereby **GRANTED**. The style of the case shall be revised to show the name of Wilhelmina Randtke as a party defendant instead of Wilhelmina Alexander.

MOTION FOR ENTRY

In this Motion, Plaintiff seeks permission to enter upon Defendants' property for the purpose of "inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, including, but not limited to, all the issues raised in Defendants' Answer and Counterclaim." (Motion for Entry, p. 1).

From Defendants' Objection, it appears that the parties have conferred and counsel for Plaintiff has indicated[2] the inspection would be limited to:

1. commencing at 1:00 p.m.;
2. would take approximately one hour, with Defendants agreeing to a limit of three hours;
3. that the inspection would be limited to observation and photographing, without moving furniture;
4. only one room of the property could be observed or photographed at a time, so that the parties cannot be in different rooms at the same time; and
5. only one owner of Mo Flo would be allowed on the property during the inspection.

Therefore, the Defendants are hereby ordered to allow Plaintiffs Mo Flo, including its representatives, and McDonald to enter upon the Property for the purpose of observation and photographing the issues raised in Defendants' Counterclaim. The inspection shall occur on a date that is mutually agreeable to the parties, but which shall occur within 30 days from the date of service of the counterclaim on McDonald.[3] The inspection shall commence at 1:00 p.m. and shall conclude no later than 4:00 p.m. on the agreed-upon date. Neither Mo Flo, including its representatives, nor McDonald shall be allowed to move furniture during the inspection. Only one room of the property may be inspected at a time; Plaintiffs cannot be in different rooms during the inspection.

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[2] Plaintiff has not challenged this assertion.

[3] The Court is cognizant that McDonald is not currently a party to this action, as service has not been perfected on him, and that an argument can be made that allowing the inspection to proceed within such time frame of the service being effectuated on him will place him at a disadvantage. However, McDonald has been actively involved in this case from the beginning. In fact, he, on behalf of Mo Flo, signed, and likely filed, the notice of claim that initiated this action. Therefore, he will not be in any disadvantage if he is required to proceed within this time frame.

While Defendants ask the Court to limit the number of Mo Flo's owners allowed to enter the property for the purpose of the inspection, the Court cannot grant this request. Defendants have asked this Court, and the Court has granted the request, as set forth above, to join McDonald to this case. As a party, he is certainly allowed to be present at the inspection and as a separate party from Mo Flo, his right to be present is independent from Mo Flo's right. Therefore, to the extent that Mo Flo wishes to have another of its owners present during the inspection, along with any other representatives/experts, it may do so.

The Motion for Entry is therefore **GRANTED** under the conditions set forth above.

MOTION FOR LEAVE

In this Motion, Mo Flo seeks leave of Court to (a) file the Summons and Third-Party Complaint attached to the Motion as Exhibits "A" and "B" and all previously filed pleadings in this case as Exhibit "C" to the Motion; and (b) to serve S&T Floor Covering, LLC with the Summons and Third-Party Complaint. As no objection has been filed to the Motion, and for good cause shown, the said Motion for Leave is hereby **GRANTED**.

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CONCLUSION

For the within and foregoing reasons, the Court rules as aforesaid.

The Clerk of Court is hereby directed to provide a copy of this Order to Mo Flo's counsel and the Defendants.

SO ORDERED this 13th day of February, 2023.

HON. BILLY E. TOMLINSON
Judge, State Court of Bulloch County
State of Georgia
Sitting by Designation