

IN THE STATE COURT OF BULLOCH COUNTY
STATE OF GEORGIA


Heather Banks McNeal, Clerk
Bulloch County, Georgia

MO FLO, LLC d/b/a FLOORS OUTLET,)
)
Plaintiff,) CIVIL ACTION NO. STCV2022000202
)
v.)
)
WILHELMINA RADNTKE and EDWIN)
ALEXANDER)
)
Defendants,)
)
AND)
)
MO FLO, LLC d/b/a FLOORS OUTLET,)
)
Plaintiff/Third-Party Plaintiff,)
)
v.)
)
S&T FLOOR COVERING, LLC)
)
Third-Party Defendant.)
_____)

**RESPONSE OF PLAINTIFF MO FLO, LLC D/B/A FLOORS OUTLET IN OPPOSITION
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

The Motion for Summary Judgment (as to Plaintiff's claims only) of Defendants Wilhelmina Radntke and Edwin Alexander fails to meet the requirements of O.C.G.A. § 9-11-56 and should be denied. Rule 56 provides that a Motion for Summary Judgment is only entered in favor of the moving party "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law ..." O.C.G.A. § 9-11-56(b). In addition, Defendants must reference evidence in the record to support its Motion for Summary Judgment. See Lau's Corp. v. Haskins, 261 Ga. 491, 495. Here, there is no verified pleading from

Defendants and no depositions have been taken, though several have been scheduled. Thus, the record of the case consists only of unverified pleadings and written discovery.

Defendants' Motion for Summary Judgment contains numerous "facts" that have not been entered into the limited record of this case. Those unsubstantiated allegations cannot be relied upon by this Court in evaluating the motion. Moreover, as to the exhibits offered in support of Defendants' motion, the Court may only consider "admissible evidence ... when evaluating a motion for summary judgment." Nyankojo v. North Star Capital Acquisition, 298 Ga. App. 6, 7 (2009). To admit a document into the record, Defendants must "both authenticate the document and address any hearsay concerns ..." See Hungry Wolf/Sugar & Spice, Inc. v. Langdeau, 338 Ga. App. 750, 751 (2016). Defendants' Motion for Summary Judgment violates the rules of form and admissibility of evidence as it relies upon numerous exhibits that have not been properly authenticated and entered into the record.

In bypassing the requirements of Rule 56 and the rules of evidence, Defendants are attempting to conduct a trial of the case through a motion. This is improper under Georgia law for a litany of reasons, including the inability of Plaintiff to cross-examine Defendants regarding the many allegations of this motion which are not in the record and which lack foundation. These procedural and evidentiary missteps are material to the Court's review of the instant motion, necessitating the denial of the motion.

BURDEN OF PROOF AND STANDARD OF REVIEW

Summary judgment is only appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. O.C.G.A. § 9-11-56 (c). All reasonable inferences from the evidence must be viewed in a light

most favorable to Plaintiff as the non-moving party. Lau's Corp. v. Haskins, 261 Ga. 491, 405 S.E.2d 474 (1991). No negative inferences may be drawn against Plaintiff from any evidence presented by Defendants as the movants. Id. Even **slight evidence will be sufficient to defeat a motion for summary judgment.** Bruno's Food Stores, Inc. v. Taylor, 228 Ga. App. 439, 491 S.E.2d 881 (1997) (emphasis added). The factual disputes of this case must be left for the determination of the jury unless there is no doubt the Plaintiff cannot prevail as a matter of law.

Problematically, Defendants' Motion for Summary Judgment seeks to flip the standard of review and prematurely shift the burden of proof to Plaintiff as the non-moving party. Defendants ask the Court to draw a never-ending list of inferences against Plaintiff and in favor of Defendants. Defendants' motion routinely cites vacancies in the record as evidence that Defendants must prevail. At every turn, the motion misinterprets and/or misstates the appropriate standard of review. An appropriately deferential examination of the limited record should afford the parties a complete opportunity to conduct discovery and try the case on its merits.

PLAINTIFF'S RESPONSE TO DEFENDANTS' ENUMERATED ALLEGATIONS

The vast majority of Defendants' lengthy motion is focused on one issue: whether Plaintiff's claim for payment is barred by Georgia contractor licensing requirements. Defendants contend that Plaintiff was not appropriately licensed to perform the contracted work and thus cannot enforce a claim to payment. Plaintiff contends that it is qualified as a specialty contractor and thus exempt from general contractor and residential contractor licensing requirements.

In support of their position on this one central issue, Defendants have offered 80 enumerated paragraphs. Many of these paragraphs contain bare legal conclusions with no application to the facts of the case. Other paragraphs include bare allegations of "fact" which are not substantiated by the record and which lack any clear application to the law. Still other

paragraphs include arguments which are totally irrelevant or which seek to implicate persons or entities that are not parties to the case. Each such instance serves only to highlight the triable issues of fact that are yet to be resolved. Nevertheless, in consideration of Defendants' status as *pro se* litigants, Plaintiff will respond to each paragraph of the Defendants' motion, at least to the extent it is capable of providing a response not based entirely on conjecture.

Plaintiff's Response to Defendants' Paragraph No. 1: Paragraph No. 1 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 2: Paragraph No. 2 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 3: Plaintiff does not dispute the allegation contained in Paragraph No. 3 that the contract between the parties was for materials and installation. However, in contrast to the contract in Cross v. State cited by the Defendants, the Plaintiff's contract documents designate costs and payments separately among materials and installation. The amounts sought by Plaintiff in this case are designated specifically for installation. Defendants ask the court to infer that a consolidated work order must mean that the materials are inseparable from the labor. However, that is not the holding of Cross v. State and the Court must infer the opposite under the standard of Rule 56.

Plaintiff's Response to Defendants' Paragraph No. 4: Paragraph No. 4 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this

paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 5: Paragraph No. 5 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 6: Triable issues of fact persist regarding the allegations contained in Defendants' paragraph No. 6. Plaintiff admits the authenticity of the April 9, 2022 contract. However, Defendants' allegation that "[o]n April 9, 2022, we met up with Brian McDonald at the Floors Outlet showroom at 1267 Northside Drive East; Statesboro, Georgia 30458 and signed it" is not drawn from the record and lacks substantiation.

Plaintiff's Response to Defendants' Paragraph No. 7: Triable issues of fact persist regarding the allegations contained in Defendants' paragraph No. 7. The allegations of this paragraph contain an incomplete reference to relevant law and facts which are not in the record. Plaintiff admits that it is not a licensed general contractor, but it has averred in the record that it operates as a "specialty contractor" pursuant to O.C.G.A. § 43-41-17 and is thus exempt from the general contractor licensing requirement. Plaintiff's Responses to Defendants' Request for Admissions No. 49 and 52. Defendants aver that Plaintiff is not a specialty contractor. The competing positions of the parties require analysis of facts which are not of record and must be left for determination by the jury. Defendants' unsubstantiated allegations fail to establish a violation by Plaintiff as a matter of law and Defendants' motion must be denied.

Plaintiff's Response to Defendants' Paragraph No. 8: Triable issues of fact persist regarding the allegations contained in Defendants' paragraph No. 8. Plaintiff again alleges that it was

operating as a “specialty contractor” pursuant to O.C.G.A. § 43-41-17(f), and thus its activities were permissible.

Plaintiff’s Response to Defendants’ Paragraph No. 9: Paragraph No. 9 of the Defendants’ motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff’s Response to Defendants’ Paragraph No. 10: Paragraph No. 10 of the Defendants’ motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff’s Response to Defendants’ Paragraph No. 11: Paragraph No. 11 of the Defendants’ motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff’s Response to Defendants’ Paragraph No. 12: Paragraph No. 12 of the Defendants’ motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff’s Response to Defendants’ Paragraph No. 13: Triable issues of fact persist regarding the allegations contained in Defendants’ Paragraph No. 13. Plaintiff acknowledges that Exhibit AG attached to Defendants’ Motion for Summary Judgment appears to be a genuine copy of the referenced ordinance. However, despite Defendants’ representations to the contrary, that ordinance makes no mention of a “business license”. The referenced ordinance is expressly limited to the

levying of occupational tax. There is no evidence of record conclusively showing that Plaintiff failed to hold a business license (or occupational tax certificate) from the City of Statesboro. The exhibit offered to establish such contention lacks foundation and is inadmissible hearsay. Even if such evidence were in the record, Defendants have cited no authority to suggest Plaintiff cannot enforce the subject contract if it did not hold a business license. Occupational tax requirements are (as the name plainly suggests) tax tools. The remedy for failure to maintain an occupational tax certificate is not the nullification of any contracts entered during the uncertified period. Defendants again ask the Court to make incorrect inferences against Plaintiff when the law requires the opposite.

Plaintiff's Response to Defendants' Paragraph No. 14: Triable issues of fact persist regarding the allegations contained in Defendants' Paragraph No. 14. This paragraph includes allegations that have not been entered into the record, including the allegations that Plaintiff's work involved "plumbing" and the implicit allegations that Plaintiff acted as a "master plumber" or "journeyman plumber". Plaintiff restates that it was operating as a "specialty contractor" pursuant to O.C.G.A. § 43-41-17, and any work relating to appliances with connections to a water supply were incidental to the flooring work and therefore did not require a plumbing license.

Defendants' Response to Plaintiff's Paragraph No. 15: The allegations contained in Paragraph No. 15 of the Defendants' motion plainly evidence Defendants' failure to recognize that they must establish their entitlement to summary judgment "by reference to evidence in the record". Cowart v. Widener, 287 Ga. 622, 623 (2010). Plaintiff contends that its work is authorized as a "specialty contractor". There is no evidence in the record to refute that contention as a matter of law, thus Defendants cannot substantiate their claims in the record. The Defendants' statement that "[t]he burden of proof is on Plaintiffs to show they held a valid license" is neither supported by the facts

or law. There remains a triable issue of fact regarding the parties' competing assertions and Defendants have not referenced any evidence from the record which might shift the burden to Plaintiff at this time.

Plaintiff's Response to Defendants' Paragraph No. 16: Paragraph No. 16 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 17: Triable issues of fact persist regarding the allegations contained in Defendants' Paragraph No. 17. Plaintiff admits that it does not hold a general contractor license or a residential contractor license. However, Plaintiff has refuted in the record the allegation that it does not meet any exemption to licensing. Plaintiff again avers that it is a "specialty contractor" and that its work fully complied with Georgia law and the agreement among the parties.

Plaintiff's Response to Defendants' Paragraph No. 18: Triable issues of fact persist regarding the allegations contained in Defendants' Paragraph No. 18. There is no evidence of record conclusively showing that Plaintiff was required to hold a "business license" or that Plaintiff failed to maintain a business license or occupational tax certificate. The only "evidence" offered by Defendants is inadmissible and fails to even mention a "business license". Even if such evidence were in the record, Defendants have cited no authority to suggest Plaintiff cannot enforce the subject contract without a business license.

Plaintiff's Response to Defendants' Paragraph 19: Triable issues of fact persist regarding the allegations contained in Defendants' Paragraph No. 19. There is no evidence of record conclusively showing that Plaintiff was required to hold a plumbing license. Defendants'

averments in this regard are not supported by the record and lack foundation. Plaintiff restates that it was operating as a “specialty contractor” pursuant to O.C.G.A. § 43-41-17, and any work relating to appliances with connections to a water supply were incidental to the contract and therefore did not require a plumbing license.

Plaintiff’s Response to Defendants’ Paragraph No. 20: In response to the allegations contained in Defendants’ Paragraph No. 20, Plaintiff admits that Brian McDonald signed the contract but only in his representative capacity on behalf of Plaintiff. The Court has already addressed this issue in its ruling on Defendants’ Motion to Add a Party Defendant. There is a triable issue of fact regarding the allegation that the manner of execution of the contract makes Brian McDonald a “contractor” for this project.

Plaintiff’s Response to Defendants’ Paragraph No. 21: Paragraph No. 21 of the Defendants’ motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff’s Response to Defendants’ Paragraph No. 22: Plaintiff disputes the allegations in Defendants’ Paragraph No. 22 to the extent Defendants rely on facts that are not in the record, including alleged representations by Plaintiff at the time of execution of the contract. Plaintiff denies that it has admitted these allegations. As quoted in the final sentence of Paragraph No. 22, Plaintiff expressly denied these allegations in its Answer to Defendants’ Counterclaim and it does so again here.

Plaintiff’s Response to Defendants’ Paragraph No. 23: Plaintiff does not dispute the allegations contained in Defendants’ Paragraph No. 23. Brian McDonald does not hold a general contractor license or a residential contractor license. This does not mean, as a matter of law, that Plaintiff

performed unlicensed work for which it cannot recover from Defendants. Plaintiff acted as a specialty contractor and it is entitled to be paid pursuant to the contract.

Plaintiff's Response to Defendants' Paragraph No. 24: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 24. No employee, partner, or officer of Plaintiff holds a general contractor license or a residential contractor license. This does not mean, as a matter of law, that Plaintiff performed unlicensed work for which it cannot recover from Defendants.

Plaintiff's Response to Paragraph No. 25: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 25. Again, this does not mean, as a matter of law, that Plaintiff performed unlicensed work for which it cannot recover from Defendants. Plaintiff acted as a specialty contractor and it is entitled to be paid pursuant to the contract.

Plaintiff's Response to Defendants' Paragraph No. 26: Paragraph No. 26 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 27: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 27. Again, this does not mean, as a matter of law, that Plaintiff performed unlicensed work for which it cannot recover from Defendants. Plaintiff acted as a specialty contractor and it is entitled to be paid pursuant to the contract.

Plaintiff's Response to Defendants' Paragraph No. 28: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 28. Again, this does not mean, as a matter of law, that Plaintiff performed unlicensed work for which it cannot recover from Defendants. Plaintiff acted as a specialty contractor and it is entitled to be paid pursuant to the contract.

Plaintiff's Response to Defendants' Paragraph No. 29: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 29. Again, this does not mean, as a matter of law, that Plaintiff performed unlicensed work for which it cannot recover from Defendants. Plaintiff acted as a specialty contractor and it is entitled to be paid pursuant to the contract.

Plaintiff's Response to Defendants' Paragraph No. 30: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 30. Again, this does not mean, as a matter of law, that Plaintiff performed unlicensed work for which it cannot recover from Defendants. Plaintiff acted as a specialty contractor and it is entitled to be paid pursuant to the contract.

Plaintiff's Response to Defendants' Paragraph No. 31: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 31. Again, this does not mean, as a matter of law, that Plaintiff performed unlicensed work for which it cannot recover from Defendants. Plaintiff acted as a specialty contractor and it is entitled to be paid pursuant to the contract.

Plaintiff's Response to Defendants' Paragraph No. 32: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 32. Again, this does not mean, as a matter of law, that Plaintiff performed unlicensed work for which it cannot recover from Defendants. Plaintiff acted as a specialty contractor and it is entitled to be paid pursuant to the contract.

Plaintiff's Response to Defendants' Paragraph No. 33: Paragraph No. 33 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 34: Paragraph No. 34 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this

paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 35: Paragraph No. 35 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains. By way of further response, **there is no language found in O.C.G.A. § 43-41-17(f) or any interpretive authority to support Defendants' argument that it is impermissible for a specialty contractor to subcontract labor incidental to the performance of its contract.** Defendants would have the Court interpret the language "work for an owner" to mean that the contracting entity must drive every nail and lay every plank. However, there is no support for that position in the law. "Privity" is a contractual term of art that is never once mentioned within the licensing code and which has no relevance to the competing claims on this issue. A triable issue of facts remains regarding Plaintiff's status as a "specialty contractor."

Plaintiff's Response to Defendants' Paragraph No. 36: Paragraph No. 36 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 37: Paragraph No. 37 of the Defendants' motion contains allegations which find no support in the record, but which are offered as legal authority. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 38: Paragraph No. 38 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this

paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains. As stated above, there is no language found in O.C.G.A. § 43-41-17(f) or any interpretive authority to support Defendants' argument that it is impermissible for a specialty contractor to subcontract labor incidental to the performance of its contract. Defendants ask the Court to infer such a limitation, but offer no authority for such an inference. A triable issue of facts remains regarding Plaintiff's status as a "specialty contractor."

Plaintiff's Response to Defendants' Paragraph No. 39: In response to the allegations contained in Defendants' Paragraph No. 39, Plaintiff notes that the Traditional Specialty Contractors Policy and Limited Service Specialty Contractors Policy are merely persuasive authorities which do not take a position on whether a specialty contractor may subcontract out work performed under a contract. Nevertheless, Plaintiff notes that the Traditional Specialty Contractors Policy recognizes that wood flooring is considered a specialty. Plaintiff states that it is a specialty contractor as defined in O.C.G.A. § 43-41-2 and § 43-41-17. Plaintiff further states that neither O.C.G.A. § 43-41-2 or § 43-41-17 expressly prohibits a specialty contractor from subcontracting out work to another entity.

Plaintiff's Response to Defendants' Paragraph No. 40: Triable issues of fact persist regarding the allegations contained in Defendants' Paragraph No. 40. Plaintiff avers that it has no burden to "show any required license" as it is a specialty contractor exempt from the licensing requirements under Chapter 43. Defendants cite the case of Restor-It, Inc. v. Beck, 353 Ga. App. 613 (2019) as support for their contention that Plaintiff must prove it held a valid general contractor license or residential contractor license in order to subcontract for labor. However, Restor-It is plainly distinguishable from the case at hand. In Restor-It, the Court only considered whether a contractor undertaking a complete bathroom demolition and renovation must have a license to perform

plumbing and electrical work. In contrast, Plaintiff merely contracted to perform flooring services, which does not require a separate license like plumbing and electrical. Moreover, unlike the contractor in Restor-It, Plaintiff did not represent to Defendants it was licensed or insured for plumbing work. Even if the Court infers that Plaintiff performed plumbing services for Defendants, such services were incidental to the contract and permissible given Plaintiff's status as a "specialty contractor".

Plaintiff's Response to Defendants' Paragraph No. 41: Triable issues of fact persist regarding the allegations contained in Defendants' Paragraph No. 41. This paragraph includes many allegations which find no support in the record, including a series of statements regarding the licensing status of Plaintiff's subcontractor. The record is completely devoid of any evidence regarding that subcontractor's licensing status. Moreover, Paragraph No. 41 asks the Court to rule on the validity of a contractual agreement between Plaintiffs and its subcontractor. The legality of that contract is not at issue in this case and Defendants' allegations regarding that contract are both irrelevant and unsubstantiated.

Plaintiff's Response to Defendants' Paragraph No. 42: Paragraph No. 42 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 43: The vague and unsubstantiated allegations contained in Defendants' Paragraph No. 43 are disputed by Plaintiff.

Plaintiff's Response to Defendants' Paragraph No. 44: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 44.

Plaintiff's Response to Defendants' Paragraph No. 45: In Paragraph No. 45, the Defendants ask the court to consider hypotheticals and draw negative inferences against Plaintiff based on those hypotheticals. These allegations evidence both a misunderstanding of lien law and the standards of Rule 56. What could potentially occur in some other time and place (however unlikely) is not relevant to what has occurred among these parties. The Court may only consider the latter as evidenced by the record.

Plaintiff's Response to Defendants' Paragraph No. 46: Paragraph No. 46 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 47: The vague and unsubstantiated allegations contained in Defendants' Paragraph No. 47 are disputed by Plaintiff.

Plaintiff's Response to Defendants' Paragraph No. 48: In response to the allegations contained in Defendants' Paragraph No. 48, Plaintiff admits the allegation from footnote two that the Claim of Lien was cancelled. Plaintiff disputes all remaining allegations of this paragraph which are unsubstantiated, inflammatory, and hypothetical.

Plaintiff's Response to Defendants' Paragraph No. 49: The allegations contained in Defendants' Paragraph No. 49 are irrelevant, unsubstantiated, and hypothetical. Plaintiff disputes each of these allegations to the extent they have any applicability to this case.

Plaintiff's Response to Defendants' Paragraph No. 50: In response to the allegations contained in Defendants' Paragraph No. 50, Plaintiff admits that it does not hold a general contractor or residential contractor license and that it did not post a bond for this job. The remaining allegations of this paragraph are again irrelevant, unsubstantiated, and hypothetical. Plaintiff disputes each of

these allegations to the extent they have any applicability to this case. Defendants' personal thoughts on public policy cannot carry a Motion for Summary Judgment.

Plaintiff's Response to Defendants' Paragraph No. 51: The allegations contained in Defendants' Paragraph No. 51 are irrelevant, unsubstantiated, and inflammatory. Plaintiff disputes each of these allegations to the extent they have any applicability to this case. A Claim of Lien is not a prerequisite to this litigation and its cancellation has no impact on the proceedings.

Plaintiff's Response to Defendants' Paragraph No. 52: The allegations contained in Defendants' Paragraph No. 52 are irrelevant, unsubstantiated, and inflammatory. Plaintiff disputes each of these allegations to the extent they have any applicability to this case. Defendants' allegations in this paragraph only serve to highlight another triable issue of fact regarding the last timing of performance.

Plaintiff's Response to Defendants' Paragraph No. 53: The allegations contained in Defendants' Paragraph No. 53 are irrelevant, unsubstantiated, and inflammatory. Plaintiff disputes each of these allegations to the extent they have any applicability to this case. Such allegations evidence of a lack of understanding of the jurisdiction of the court, the proper parties in interest, and the matters appropriately for the court's review.

Plaintiff's Response to Defendants' Paragraph No. 54: Paragraph No. 54 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 55: Once again, the allegations contained in Defendants' Paragraph No. 55 ask the Court to infer numerous "facts" which find no basis in the record or Georgia law. Except as specifically admitted by Plaintiff herein, each of these allegations

are in dispute. Chief among them is the unsubstantiated allegation that Plaintiff could not subcontract any element of its scope of work. That allegation is again presented with no supporting authority. To rule in Defendants' favor on that issue would require that many negative inferences be drawn against Plaintiff from the record.

Plaintiff's Response to Defendants' Paragraph No. 56: Paragraph No. 56 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 57: Triable issues of fact persist regarding the allegations contained in Defendants' Paragraph No. 57. Despite Defendants' representations to the contrary, the referenced ordinance makes no mention of a "business license" but is expressly limited to the levying of occupational tax. There is no evidence of record conclusively showing that Plaintiff was required to hold a business license from the City of Statesboro. Even if such evidence were in the record, Defendants have cited no authority to suggest Plaintiff cannot enforce the subject contract if it did not hold a business license. Occupational tax requirements are (as the name plainly suggests) tax tools. The failure to maintain an occupational tax certificate does not negate a party's ability to contract. Defendants again ask the Court to make incorrect inferences against Plaintiff when the law requires the opposite.

Plaintiff's Response to Defendants' Paragraph No. 58: Plaintiff does not dispute the allegation in Defendants' Paragraph No. 58 that its office is located at 1267 Northside Drive East, Statesboro, Georgia 30458, which is in the city of Statesboro, Georgia. The remaining allegations of this paragraph are unsubstantiated and irrelevant to the Court's consideration of this motion. Plaintiff disputes each such allegation.

Plaintiff's Response to Defendants' Paragraph No. 59: Plaintiff does not dispute the allegation in Defendants' Paragraph No. 59 that its office is located at 1267 Northside Drive East, Statesboro, Georgia 30458, which is in the city of Statesboro, Georgia. However, the exhibit offered in support of this allegation lacks foundation.

Plaintiff's Response to Defendants' Paragraph No. 60: Plaintiff does not dispute the allegation in Defendants' Paragraph No. 60 that its office is located at 1267 Northside Drive East, Statesboro, Georgia 30458, which is in the city of Statesboro, Georgia. However, the exhibit offered in support of this allegation lacks foundation and fails to impose any business license requirement on Plaintiff.

Plaintiff's Response to Defendants' Paragraph No. 61: Plaintiff does not dispute the allegations in Defendants' Paragraph No. 61.

Plaintiff's Response to Defendants' Paragraph No. 62: Plaintiff does not dispute the allegations in Defendants' Paragraph No. 62. However, the referenced Exhibit lacks foundation.

Plaintiff's Response to Defendants' Paragraph No. 63: Triable issues of fact persist regarding the allegations contained in Defendants' Paragraph No. 63. Plaintiff does not allege that it held "the required local business license" because Plaintiff is unaware of any "business license" requirement from the City of Statesboro. The ordinance referenced by Defendants is expressly limited to the levying of occupational tax. There is no evidence of record conclusively showing that Plaintiff was required to hold a "business license" from the City of Statesboro. The exhibit offered in support of such allegation lacks foundation and is inadmissible hearsay. Even if such evidence were in the record, Defendants have cited no authority to suggest Plaintiff cannot enforce the subject contract without a business license.

Plaintiff's Response to Defendants' Paragraph No. 64: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 64. However, the referenced exhibit is not a part of the record and has not been properly authenticated.

Plaintiff's Response to Defendants' Paragraph No. 65: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 65. Plaintiff has not produced a "local business license" and there is no evidence that the City of Statesboro requires (or even issues) business licenses.

Plaintiff's Response to Defendants' Paragraph No. 66: Triable issues of fact persist regarding the allegations contained in Defendants' Paragraph No. 66. There is no evidence of record conclusively showing that Plaintiff failed to hold a business license from the City of Statesboro. Even if such evidence were in the record, Defendants have cited no authority to suggest Plaintiff cannot enforce the subject contract without a business license. There is absolutely no basis on which the Court could determine that holding a local business license is a requirement to be considered a "specialty contractor" under state contractor licensing law.

Plaintiff's Response to Defendants' Paragraph No. 67: Plaintiff does not dispute the allegations contained in Defendants' Paragraph No. 67.

Plaintiff's Response to Defendants' Paragraph No. 68: Paragraph No. 68 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 69: Paragraph No. 69 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 70: Paragraph No. 70 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 71: Paragraph No. 71 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 72: Paragraph No. 72 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 73: Paragraph No. 73 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 74: Paragraph No. 74 of the Defendants' motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff's Response to Defendants' Paragraph No. 75: Triable issues of fact persist regarding the allegations contained in Defendants' Paragraph No. 75. This paragraph includes allegations that have not been entered into the record, including the allegations that Plaintiff's work involved

“plumbing”, that Defendants “have copper plumbing” throughout their home, that Defendants’ “washing machine hookups and refrigerator ice maker connection” were damaged, and that Plaintiff “abandoned the contract”. Plaintiff has denied these allegations in the record. See Plaintiff Mo Flo, LLC’s Responses and Objections to Defendants’ First Request for Admissions Nos. 100 and 101. Each of these allegations thus presents a triable issue of fact. Plaintiff restates that it was operating as a “specialty contractor” pursuant to O.C.G.A. § 43-41-17, and any work relating to appliances with connections to a water supply were incidental to the flooring work and therefore did not require a plumbing license.

Plaintiff’s Response to Defendants’ Paragraph No. 76: Triable issues of fact persist regarding the allegations contained in Defendants’ Paragraph No. 76. This paragraph again includes allegations which are not in the record. Plaintiff has denied these allegations and does so again here. See Plaintiff Mo Flo, LLC’s Responses and Objections to Defendants’ First Request for Admissions Nos. 100 and 101. The case cited by Defendants, Restor-It, Inc. v. Beck, is again distinguishable from the case at hand as the contractor in that case agreed to perform a complete bathroom demolition and renovation and affirmatively represented that it was licensed to perform plumbing work. By contrast, Plaintiff’s contract is specifically limited to “flooring services” and work incidental to flooring and it makes no representations that it is specially licensed.

Plaintiff’s Response to Defendants’ Paragraph No. 77: Paragraph No. 77 of the Defendants’ motion contains a bare legal citation with no reference to any fact of record. To the extent this paragraph asks the Court to draw a legal conclusion not supported by the evidence, a triable issue of fact necessarily remains.

Plaintiff’s Response to Defendants’ Paragraph No. 78: Triable issues of fact persist regarding the allegations contained in Defendants’ Paragraph No. 78. The allegation that Plaintiff has

“admitted to being unlicensed” is refuted by the record. Plaintiff has only admitted that it does not hold a general contractor license or residential contractor license. Plaintiff has continually maintained that it is a qualified “specialty contractor” and the record repeatedly reflects that position. It is the role of the jury to resolve the parties competing positions on this issue based upon an analysis of the record at trial.

Plaintiff’s Response to Defendants’ Paragraph No. 79: Triable issues of fact persist regarding the allegations contained in Defendants’ Paragraph No. 79. Plaintiff clearly has legal standing to bring this action. Defendants’ allegations to the contrary are without merit. There is an ongoing factual dispute as to whether Plaintiff required special licensing given the facts of this case. Defendants have failed to show that dispute should be resolved against Plaintiff as a matter of law.

Plaintiff’s Response to Defendants’ Paragraph No. 80: Triable issues of fact persist regarding the allegations contained in Defendants’ Paragraph No. 80. Defendants admittedly “seek guidance” from the Court as to these allegations, again highlighting a triable issue. This case involves allegations of breach of contract and negligence – not declaratory judgment – thus the Court is not in a position to offer guidance regarding the contract. The Court may only apply the facts in the record to the law. If it does so with appropriate deference to Plaintiff as the non-moving party, it must afford Plaintiff the opportunity to present its case to the jury.

CONCLUSION

Because Defendants’ Motion for Summary Judgment fails to meet the requirements of Rule 56 and relies heavily upon facts and exhibits that have not been properly entered into the record, Defendants’ Motion for Summary Judgment must be denied. Beyond these procedural issues, the Defendants have not adequately carried their burden of proving beyond question that Plaintiff does not fall within the specialty contractor licensing exemption under Georgia law. The record before

the Court establishes that genuine issues of material fact exist as to whether Plaintiff may enforce its claim for payment under the contract.

Defendants' Motion for Summary Judgment should be accordingly **DENIED**.

Respectfully submitted, this 22nd day of March, 2023.

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