

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 666-746

DIV. B

COLIN ROCKE

VERSUS

CLIFFORD C. COFFMAN, JR., COFFMAN HOMES, LLC, AND JEFFERSON PARISH
CLERK OF COURT AND RECORDER OF MORTGAGES

FILED

DEPUTY CLERK

**TRIAL MEMORANDUM IN SUPPORT OF
PLAINTIFF'S PETITION FOR MANDAMUS**

NOW INTO COURT, through undersigned counsel, comes your Petitioner Colin
Rocke, who respectfully submits to this Court this Trial Memorandum in Support of its Petition
for Mandamus, seeking the removal of a "Claim of Lien" and "Amended Claim of Lien" filed by
Defendant Coffman Homes, L.L.C.

Introduction and Background

On August 29, 2008, Coffman Homes, L.L.C. filed a "Claim of Lien" against Plaintiff's
property in the amount of \$40,000.00. Plaintiff maintained that the Claim of Lien was not filed
in accordance with the Louisiana Private Works Act (L.A. R.S. 9:4801 *et seq.*). Accordingly,
on October 27, 2008 the Plaintiff sent a 9:4833(A) written request to Defendants to cancel the
lien within 10 days. Despite receipt of the notice, however, the lien was not cancelled.

The Plaintiff therefore filed the instant Petition for Mandamus on November 17, 2008.

On December 2, 2008, thirty-six (36) days after Plaintiff sent its 9:4833(A) request for
cancellation, the Defendant filed an "Amended Lien Affidavit."

Contemporaneously with the filing of the Amended Lien Affidavit, the Defendant submitted an answer to Plaintiff's Petition, whereby it:

- (1) Admitted that Clifford C. Coffman, Jr. performed the disputed services (Answer ¶ 1);
- (2) Admit that the October 27, 2008 LA R.S. 9:4833(A) written request for cancellation was sent as plead by Petitioner (Answer ¶ 8);
- (3) Admit that Clifford C. Coffman, Jr. and Coffman Homes, L.L.C. have refused to remove the lien (Answer ¶ 9);
- (4) State that the "Defendants have reasonable cause to refuse to voluntarily erase its Lien." (Tenth Affirmative Defense).

Despite the Answer of Defendants, and the Amended Lien Affidavit, the Petitioner avers that the instrument in controversy was filed in violation of the Louisiana Private Works Act, and that the Defendants have refused to voluntarily erase its lien without reasonable cause, and in bad faith.

Lien Defect #1: Notice of Contract Not Timely or Properly Filed

Assuming that the Court entertains the notion that Mr. Clifford Coffman and Coffman Homes, L.L.C. are synonymous with one another for the purposes of the Louisiana Private Works Act, the Petitioner avers that neither could avail themselves of the Act because there was a failure to record the Notice of Contract before work began on the project.

Regarding the Notice of Contract, LA R.S. 9:4811 provides as follows:

- A. Written notice of a contract between a general contractor and an owner shall be filed as provided in R.S. 9:4831 before the contractor begins work, as defined by R.S. 9:4820, on the immovable. The notice:
- (1) Shall be signed by the owner and contractor.
 - (2) Shall contain the legal property description of the immovable upon which the work is to be performed and the name of the project.
 - (3) Shall identify the parties and give their mailing addresses.
 - (4) Shall state the price of the work or, if no price is fixed, describe the method by which the price is to be calculated and give an estimate of it.

- (5) Shall state when payment of the price is to be made.
- (6) Shall describe in general terms the work to be done.

B. A notice of contract is not improperly filed because of an error in or omission from the notice in the absence of a showing of actual prejudice by a claimant or other person acquiring rights in the immovable. An error or omission of the identity of the parties or their mailing addresses or the improper identification of the immovable shall be prima facie proof of actual prejudice.

It is clear that a contractor shall not have the privileges granted to it through the Private Works Act if it fails to file a notice of contract as required by La R.S. 9:4811. *See* La. R.S. 9:4811(D); *See also* *Burdette v. Drushell*, 837 So.2d 54, 2002 La. App. (Where a contractor failed to properly file written notice of his contract in the mortgage records as required by LA R.S. 9:4811(A), he was not entitled to the privilege granted under the Louisiana Private Works Act).

In this instance, the Petition avers that the Defendants have not averred themselves of the privilege granted by La. R.S. 9:4801 *et seq.*, as it: (1) did not timely file its notice of contract; and (2) did not properly file its notice of contract.

The Notice of Contract was not Timely Filed.

In Defendants' Fourth Defense, it is argued that "Clifford C. Coffman may avail himself of the privilege" because the Contract was filed with the Record of Mortgages (Instrument NO. 10815382). However, the Petitioner argues that the contract was not filed timely.

LA R.S. 9:4811(A) clearly stipulates that the contract or notice of contract must be filed "*before the contractor begins work.*"

The recorded contract at controversy – Instrument No. 10815382 – was filed on March 12, 2008.

The contract between the parties was dated December 21, 2007, and required that work begin within 30 – 60 days. According to the terms of the contract, therefore, work was to begin – at the latest - on February 20th.

The Notice of Contract was not Properly Filed

Instrument No. 10815382 is attached to this trial memorandum as Exhibit A. A cursory review of the document will demonstrate that it has the following deficiencies:

- (1) It does not contain the legal property description of the immovable upon which the work is to be performed, or the municipal address of said immovable;
- (2) It does not give the mailing address of the Owner, a party to the contractor.

Proper filing of a Notice of Contract is required for a general contractor to avail itself of the privilege granted by the Private Works Act. *See* La. R.S. 9:4811(D); *Burdette*, *supra*; *Norman H. Voelkel Constr., Inc. v. Recorder of Mortgs.*, 859 So.2d 9, (2003 La. App 1 Cir).

While La R.S. 9:4811(B) requires that a party show “actual prejudice” before an error or omission in a notice of contract renders it improperly filed, the statute further provides that an “error or omission of the identify of the parties or their mailing addresses or the improper identification of the immovable shall be prima facie proof of actual prejudice.”

The Notice of Contract at controversy completely omits identifying the mailing address of the Owner, Colin Rocke, and any identification of the property whatsoever. In the Defendants’ Sixth Affirmative Defense, the party even admits to the instrument’s deficiency, and the prejudice caused to the Plaintiff, by stating as follows:

Defendants were not required by the Act to provide Plaintiff with notice of the Lien pursuant La. R.S. 9:4822 (A)(1), as the Contract filed in filed with the Recorder of Mortgages for Jefferson Parish and is located at Instrument No. 10815382, Book 4364, Folio 528 does not give the address of the owner of the immovable property, here the Plaintiff.

Conclusion

The purported 9:4811 “Notice of Contract” in this case bears Instrument No. 10815382 in the Jefferson Parish Mortgage Records, and was filed on March 12, 2008. The notice was not timely filed since it was filed after work began on the project. The notice was not properly filed because it failed to identify the immovable where work was performed, or the municipal address of the Owner.

These defects with the notice prevent the Defendants from availing themselves of the Private Works Act as per La. R.S. 9:4811(D), and accordingly, the Claim of Lien and Amended Lien Affidavit should be ordered cancelled.

Lien Defect #2: Who Filed the Lien? Who Was the Contractor?

On December 21, 2007, the Plaintiff entered into a contract with Clifford C. Coffman, individually. While Mr. Coffman was apparently also a Member of the limited liability company, Coffman Homes, L.L.C., his status as a Member of this company was not indicated in the building contract. Furthermore, the identify of the limited liability company was not exposed to the Plaintiff.

Attached hereto as Exhibit B is a printout from the Louisiana State Board of Contractors website. The contractor's database shows that Mr. Coffman Jr. is registered as a licensed contractor individually, and does not mention or otherwise identify Coffman Homes, L.L.C.

On August 29, 2008, despite being licensed as an individual by the State of Louisiana, and despite contracting with the Plaintiff as an individual, a "Claim of Lien" was placed against the Plaintiff's property by Coffman Homes, L.L.C., representing itself to have performed labor or material at the property in controversy.

On December 2, 2008, in an apparent attempt to clean up these inconsistencies, the Defendants filed an Amended Lien Affidavit and an Answer to Plaintiff's Mandamus Petition with included explanations that Clifford Coffman is a member of Coffman Homes, L.L.C., and was authorized to act on behalf of the company. Presumably, the Defendants argue that Clifford Coffman was not acted on his individual behalf, but instead was acting on behalf of the limited liability company.¹

¹ In ¶ 1 of Defendant's answer, the Defendant admits that the individual Clifford Coffman performed the labor and supplied materials to the property.

Clifford Coffman individually contracted with Plaintiff and performed the services at Plaintiff's property, and Coffman Homes, L.L.C. is not a party who can file a construction lien

Louisiana C.C. Art. 2046 provides that “when the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties’ intent.”

In the instant matter, the contract’s first page clearly states that the agreement is between “the Owner, Colin Rocke, And the Contractor, Clifford Coffman, 4104 Bayou Savage Drive, Kenner, Louisiana 70065.” Mr. Coffman resides at this indicated address.

The wording of the contract setting forth the parties to the agreement are clear and explicit. Furthermore, since Coffman Homes, L.L.C. is not a licensed contractor, and Mr. Coffman individually is, the wording leads to no absurd consequences.

The clear and explicit language of the contract may not be subject to any further interpretation in search of the parties “intent” or “understanding,” as per La. C.C. Art. 2046. Accordingly, the actual Lienor – Coffman Homes, L.L.C. – is not a party who is entitled to file a construction lien as identified by La. R.S. 9:4808.

Coffman Homes, L.L.C. is not a licensed contractor and does not have a right to lien the project under the Private Works Act.

While Mr. Clifford Coffman is a registered contractor with the Louisiana State Board of Contractors, Coffman Homes, L.L.C. is not. Assuming for the purposes of argument, therefore, that this Court did read Coffman Homes, L.L.C. as a party to the contract at controversy, Petitioner contends that its contract with Coffman Homes, L.L.C. would be Null & Void by operation of law, or in the alternative, vitiated by fraud. As a result thereof, the Petitioner alternatively argues that Coffman Homes, L.L.C. did not have the right to the claim and privilege under the Private Works Act.

In making the above-urged determination, the first question to consider is whether a contract between Coffman Homes, L.L.C. and Plaintiff would be nullified by operation of law.

Louisiana Civil Code Article 2030 stipulates that a contract is absolutely null “when it violates a rule of public order, as when the object of a contract is illicit or immoral.” Petitioner

argues that its contract with Coffman Homes, L.L.C. violated a rule of public order, or was otherwise illicit or immoral, since a party to the contract was not properly authorized to enter into the contract.

Louisiana Revised Statutes Title 37 regulates the licensing of individuals and entities in the profession of construction and material supply. LA R.S. 37:2150 explains the purpose behind Title 37 and the regulations therein, clearly connecting these statutes to the public order of Louisiana, whereby it states as follows:

The purpose of the legislature in enacting this Chapter is the protection of the health, safety, and general welfare of all those persons dealing with persons engaged in the contracting vocation, and the affording of such persons of an effective and practical protection against the incompetent, inexperienced, unlawful, and fraudulent acts of contractors with whom they contract. Further, the legislative intent is that the State Licensing Board for Contractors shall monitor construction projects to ensure compliance with the licensure requirements of this Chapter.

Further, LA R.S. 37:2160 stipulates that “it shall be unlawful for any person to engage or to continue in this state in the business of contracting, or to act as a contractor as defined in this Chapter, unless he holds an active license as a contractor under the provisions of this Chapter.”

While Mr. Coffman himself is licensed as a contractor in Louisiana (see Exhibit A), a search for licenses held by Coffman Homes, L.L.C. yields no results. Since that entity is not licensed with the Louisiana State Board of Contractors, its alleged contract with Plaintiff was against Title 37 of the Louisiana Rev. Stat., and by extension, the public order.

In making the above-urged determination, the second question to consider is whether the nullity of the contract between the parties eliminates the ability for Coffman Homes, L.L.C. to assert a claim or privilege under the Private Works Act.

Louisiana R.S. 9:4803(A) explains that the amounts secured by the claims and privileges under the Private Works Act is of the “[t]he principal amounts of the obligations described in...R.S. 9:4802(A).”

Louisiana R.S. 9:4823(A)(3) provides that a privilege created by the Private Works Act is extinguished if “[t]he obligation which it secures is extinguished.”

The Petitioner avers that upon the nullity of its contract with Coffman Homes, L.L.C., the fundamental “obligation” of Coffman Homes, L.L.C.’s claim and privilege are extinguished.

Furthermore, the “amounts of the obligations” and the “price of their work” are nullified and no longer substantiated through contract.

While its true that Coffman Homes, L.L.C. may have a right to claim reimbursement from Plaintiff under an “Unjust Enrichment” theory of recovery, this should not erase the fact that (a) the obligation secured by the statement of claim and privilege filed by Defendants has been extinguished; and (b) the price of the work within the statement of claim and privilege filed by Defendants is legally eliminated.

Comment (b) to La. R.S. §9:4802 provides as follows:

Although the personal liability imposed upon the owner and the personal liability imposed upon the contractor are not those of sureties the claims are clearly obligations of security and are accessory to the primary contractual obligations of the claimants. (See Civil Code Article 1750). Thus, extinguishment of the primary contractual obligation extinguishes the statutory liability. (See Section 4823A(3), *infra*). It is intended that the owner or contractor who is required to pay a claimant will be legally subrogated to the claimants contractual rights. (See Civil Code 2161(3)).

It is clear that the legislature intended the privilege under the Private Works Act to be ancillary to the contractual obligations of the claimants. Accordingly, upon the “extinguishment of the primary contractual obligation,” such as is the case herein, the statutory privilege of §9:4802 so too extinguishes.

Coffman Homes, L.L.C., therefore, does not have the right to file the statement of claim and privilege that is at the heart of these proceedings, and accordingly, this Court should order the inscription removed.

Plaintiffs are entitled to attorneys fees as per La. R.S. 9:4833

A written request to cancel the original “Claim of Lien” was sent to Defendants on October 27, 2008. Within that correspondence, the Plaintiff informed the Defendant of the following defects with the instrument: (1) It did not properly cite the statutory authority for its filing; (2) It was filed in violation of La. R.S. 9:4811(D) since a Notice of Contract was not properly executed and timely filed; (3) It failed to identify the immovable; (4) It does not set

forth the nature of the obligation giving rise to the claim; (5) It does not reasonably itemize the elements comprising the claim.

Despite receipt of the letter, the Defendants refused to provide Plaintiffs with a written request for cancellation within ten days as required by LA R.S. 9:4833.² In fact, the Defendants failed to provide the Plaintiff with any correspondence in response to the notice, necessitating this litigation.

§9:4833 provides where relevant as follows:

§ 9:4833. Request to cancel the inscription of claims and privileges; cancellation; lis pendens

A. If a statement of claim or privilege is improperly filed or if the claim or privilege preserved by the filing of a statement of claim or privilege is extinguished, an owner or other interested person may require the person who has filed a statement of the claim or privilege to give a written request for cancellation in the manner provided by law directing the recorder of mortgages to cancel the statement of claim or privilege from his records. The request shall be delivered within ten days after a written request for it is received by the person filing the statement of claim or privilege.

B. One who, without reasonable cause, fails to deliver a written request for cancellation in proper form to cancel the claim or privilege as required by Subsection A of this Section shall be liable for damages suffered by the owner or person requesting the authorization as a consequence of the failure and for reasonable attorney fees incurred in causing the statement to be cancelled.

C. A person who has properly requested a written request for cancellation shall have an action pursuant to R.S. 44:119 against the person required to deliver the written request to obtain a judgment declaring the claim or the privilege extinguished and directing the recorder of mortgages to cancel the statement of claim or privilege if the person required to give the written request fails or refuses to do so within the time required by Subsection A of this Section. The plaintiff may also seek recovery of the damages and attorney fees to which he may be entitled under this Section.

It's clear from the face of the statute and Louisiana jurisprudence that when a lien is filed improperly, and demand for its removal is made and ignored, a Petitioner has a claim for attorneys fees. See *La Moyne-Clegg Dev. Corp. v. Bonfanti-Fackrell, Ltd.*, 509 So. 2d 43

² Defendants Answer ¶ 9 admits that they refused to remove the Lien.

(La. App. 1 Cir. 1987). (Statement of claim or privilege was improperly filed by a contractor due to an improper amount, and the developer was empowered to require the contractor to authorize the recorder of mortgages to remove the lien from the records and had an action against the contractor to have the lien removed and to recover any damages and reasonable attorney's fees); see also *Mayeaux v. McInnis*, La. App. 2000-1540, 809 So. 2d 310, (La. App. 1 Cir. Sept. 28 2001), writ denied by La. 2001-3286, 810 So. 2d 1164 (La. Mar. 8, 2002). (Court did not err in not awarding attorney fees and costs to homeowners under La. Rev. Stat. Ann. § 9:4833(B) upon canceling a contractor's lien because the contractor's refusal to cancel the lien was unreasonable).

It is not necessary to prove that the defendant's refusal to cancel the lien was arbitrary and capricious, but only unreasonable. *Ducote v. Voinche*, 820 So. 2d 656, 659 (La.App. 3 Cir. June 19, 2002). Furthermore, the language of La. R.S. 9:4833 is mandatory, and a defendant who acts without reasonable cause "shall" be liable for attorneys fees. *Id.*

In the instant matter, it is undisputed that a 9:4833 notice was delivered to the Defendants requesting cancellation of the inscription, and that the Defendants failed to provide the cancellation *or any response* within the statutory 10 day period. The Defendant did not have reasonable cause, nor in their answer do they assert possession of any reasonable cause, for its failure to respond to the October 27, 2008 request.

It's failure to respond to the 9:4833 requests made the instant litigation necessary. In response to the litigation, on December 2, 2008, the Defendant filed an "Amended Lien Affidavit" attempting to remedy the alleged defects in the lien. The Petitioner argues that this December 2nd filing is an admission of certain defects with the original instrument, and its failure to cancel the admitted defective instrument within the 9:4833 period was without reasonable cause, and unnecessarily resulted in this litigation.

Furthermore, as argued in this Memorandum, the Amended Lien Affidavit also contains defects that render it improperly filed. The Defendant's filing of this instrument, and its failure to cancel the same, has resulted in this unnecessary litigation. The Petitioner avers that the Defendants were advised of the liens' defects, and that the Defendants are without reasonable cause for its failure to provide Petitioner with a written request for cancellation.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all counsel of record to this proceeding through facsimile transmission or US First Class Mail, postage prepaid, this 7th of December, 2008.

SCOTT G. WOLFE

Respectfully Submitted,

Scott G. Wolfe, Jr. (Bar Roll 30122)
THE WOLFE LAW OFFICES, L.L.C.
4821 Prytania Street
New Orleans, LA 70115
P: 504-894-9653
F: 866-761-8934
Attorney for Plaintiffs

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10815382

CLIFFORD COFFMAN BUILDERS CONTRACT

State of Louisiana

03/12/2008 01:50:11 PM JEFF PAR 2010834 jbt \$0.00
10815382 MORTGAGE BOOK 4364 PAGE 528

Parish of Jefferson

Agreement made as of the 21st day of December 2007

Between the Owner, Colin Roche

And the Contractor, Clifford Coffman, 4104 Bayou Savage Drive, Kenner, LA 70065

Contractor and Owner, for the consideration hereinafter named, agree and bind

And obligate themselves as follows: (Project to start in 30-60 days)

Contractor's Obligations:

The Contractor agrees to, obtain all subcontractors, to do and perform or have performed all the work, and to erect, build finish and deliver in a workmanlike manner A 2 story, single family residence, with one year warranty as shown on The drawings and described in the specifications prepared or to be prepared by Owner's Architect Jason McGhee and to be dated and signed by the parties hereto on the date of submission to the contractor, which said drawings and specifications are by reference made a part thereof, and, together with this agreement, from the contract.

At anytime, should deviation or change of those plans and specifications occur, Owner and Contractor shall sign a written acknowledgment of said deviation or change, Thereby by reference making any deviations or changes a part thereof.

Contractor agrees to provide all general liability and workers' compensation

03/12/2008 12:54 PM JEFF PAR 2010793 jbt \$33.00

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EXHIBIT
A

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Insurance needed for the construction to occur. Contractor shall obtain all proper permits and inspections necessary to obtain a final Certificate of Occupancy.

The said building to be erected on the following described property, which either Currently belongs to the owner, or shall be obtained by owner, viz:

Owner's Obligations:

In consideration thereof, the said Owner binds and obligates himself to pay the Contractor for the true and faithful performance of all and everyone of the covenants, agreements and stipulations herein contained, a total of 15% Contractor's fee in addition to the total costs for permits, inspections, materials and subcontractors' labor required to construct the home per plans and specifications. Owner will be responsible for any price increases on material and labor if any are incurred from time of original estimate is given.

Owner shall supply a builders risk insurance policy during construction.

Owner shall finance construction of the residence through a federally insured Savings & loan and/ or banking institution (alender), by executing a construction-type Loan, whereby draws on the loan are made upon completion of certain phases of the Home construction. Owner shall authorize Contractor to discuss building progress and funding requirements and needs with the loan officer designated for the handling and security of he construction loan. Any and all such discussions and agreements shall be binding upon

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The Owner, as if the Owner himself made such declarations or agreements.

Owner shall provide Contractor with all documentation evidencing the construction And completion requirements of the lender to obtain each draw of the loan, which Requirements shall be met by Contractor as a condition to and prior to the distribution of Any draw to the Owner. Upon each disbursement or draw from the construction loan, Owner shall immediately make payment to the Contractor for any and all cost Contractor Incurred for materials and labor required to complete the particular phase of construction required for the draw, payment directly to subcontractors and material providers for those materials and labor required to complete the particular phase of construction as directed by Contractor, as well as payment of Contractor's fee of 15 % of the total costs incurred as part of the draw.

Owner's Authorization to Contractor:

Owner hereby authorizes contractor to contract and agree to retain on his behalf any labor and materials necessary for the construction of the building, and Owner shall be solely responsible for payment directly to those individuals and companies providing said labor and materials those amounts incurred on behalf of the Owner by the Contractor.

Owner's Responsibility for payment of all Labor and Materials:

Any and all materialmans' liens and encumbrances placed upon the property as a Result of nonpayment for materials and services shall be the sole responsibility of Owner, And Owner hereby indemnifies and holds harmless Contractor from any claims, liens or Lawsuits arising from nonpayment of labor and material providers.

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Conclusion of Contract and Obligations:

Upon granting of Certificate of Occupancy ,Owner shall sign a notice of acceptance of Contractor's work under the terms of this contract, which will be filed with the Parish of Jefferson Clerk and Recorder of Mortgages, thereby relieving Contract from any and all further obligations under this contract.

Cancellation of Contract or Failure to Perform by Owner:

Should the owner cancel this contract at any time for any reason , Owner Hereby agrees and stipulates that liquated damages to the Contractor in the amount of \$20,000.00 shall be paid directly to the Contractor as damages for cancellation of this contract, in addition to payment of any outstanding amounts due at the time of the cancellation to subcontractors or materials providers, which amounts were incurred by Contractor in order to perform his obligations under this contract. Should Contractor be required to enforce the terms of this contract through the institution of legal proceedings, Owner hereby agrees to pay all of Contractor's legal costs and attorney's fees in the amount of 25% of the total amount due under the Contact.

Failure to Perform by Contactor:

Should Contractor abandon said work, or for any reason, fail, refuse or neglect to prosecute the same with due diligence, dispatch and efficiency, the Owner shall have the right, at the Owner's option, upon ten (10) days' written notice to the Contractor, take over said and complete the same and shall pursue any and all legal remedies available to the Owner, including demand for specific performance and damages.

State of Louisiana Licensing Board for Contractors - Find A Co...

http://www.lslbc.louisiana.gov/search/cdetail.asp?id=117373



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Search Results - Contractor Detail

Business Name: CLIFFORD C. COFFMAN JR.
Mailing Address: 4104 Bayou Savage Road
Kenner, LA 70065
Phone Number: (504) 914-9303
Fax Number: (504) 305-4296
Email Address: clcc@cox.net
Website:
Classifications:
RESIDENTIAL BUILDING CONTRACTOR
Qualifying Party - Coffman, Clifford C. Jr.

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Lic#	Type	Status
85242	Residential License Certificate	LICENSED

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EXHIBIT
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