

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. _____

DIV. _____

COLIN ROCKE

VERSUS

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

FILED

DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS

The petition of Colin Rocke. (hereinafter “Rocke”) a person of the full age of majority, domiciled within the Parish of Jefferson, State of Louisiana, who appearing through undersigned counsel, respectfully represents that:

1.

Made defendants in these proceedings are:

Clifford C. Coffman, Jr. (hereinafter “Contractor”), who upon information, is domiciled and with his principal place of business in this Parish and this State, and at performing the disputed service in this Parish and this State; and

Coffman Homes, LLC (hereinafter “Lienor”), who upon information, has its principal place of business in this Parish and this State.

2.

Also made defendant herein is the Jefferson Parish Recorder of Mortgages and the Jefferson Parish Clerk of Court represented through its clerk the Hon. John A. Gegenheimer, who collectively with Contractor and Lienor, represent the “Defendants.”

3.

This action is being brought to this Court who has jurisdiction pursuant to La. R.S. 44:114 as made applicable by La. R.S. 9:4833, in order to procure the cancellation of a document which is incorrectly recorded and permitted to be cancelled.

4.

Venue in this Court is proper pursuant to La. C.C.P. Art. 76.1 because the performance of the contract under which this proceeding is based occurred in this parish and the action to be taken by this Court shall occur in this parish.

BACKGROUND AND FACTS

5.

On or around December 2007, Contractor put in a bid to act as a limited general contractor for the Plaintiff's personal residence, located at 726 Oak Avenue, Harahan, Louisiana 70123 (hereinafter the "Project"). As general contractor, Contractor was merely required to perform limited construction services for the Project, leaving some trade work at the control of the Plaintiff.

6.

Plaintiff subsequently accepted Contractor's bid forming a contract obligating the Contractor to perform the work on the project as general contractor in consideration for a Fifteen (15%) Percent contractor's fee (the "Contract"). The Contract required that Contractor provide all the necessary material, supplies, labor in order to perform his portion of the work. Additionally, Contractor was specifically required to provide workmanlike labor, 1 year warranty, commercial general liability insurance, workers compensation insurance, and ensure that all fees, permits and taxes were paid.

7.

The Contract provided a termination provision that permitted termination of the Contract by Owner in the event of breach by Contractor. Owner has waived no rights against the Contractor in the event the Contract was terminated in this manner.

8.

During the build out of the Property, Contractor excessively charged, overbilled, defrauded, and intentionally interfered with Plaintiff and Plaintiff's own contractors.

9.

Contractor specifically obtained lump sum bids for tradesmen, subcontractors and suppliers, and provided those bid amounts to the Plaintiff. After accepting those bids and permitting the completion of the relevant work, Contractor, himself, added large sums to those billings and demanded payment from Plaintiff.

10.

Contractor further attempted to obtain and charge Plaintiff for workers compensation insurance in an inordinate and inappropriate amount, merely to inflate his own right to compensation of his contractual fee.

11.

Furthermore, Contractor approached and attempted to coerce many of the Plaintiff's own tradesmen, subcontractors and workers to inflate their billings and overcharge the Plaintiff, once again in an attempt to inflate his own fee.

12.

After determining that Contractor had breached its contract in bad faith and was failing to accomplish completion of the property, Plaintiff obtained its own contractors to get the home completed in accordance with the Contract.

13.

Plaintiff attempted to obtain its certificate of occupancy from the Parish, however it was informed that Contractor had intentionally asked that its electrical contractor refrain from performing final inspection in order to “hold up” the certification process.

14.

After attempting to coerce the Plaintiff into paying Contractor for sums he was not due, Contractor refused to permit Plaintiff contact with its electrician. Plaintiff was unable to complete its inspections towards certification.

15.

Lienor thereafter, without notice to Plaintiff, filed a “Claim of Lien,” numbered 10846323, in this Parish and this State. The “Claim of Lien” was filed by Lienor and not Contractor, a party that was not privy to the Contract and has no licensing to perform the work complained of. No notice of the claim was provided until well after the filing. The lien is deficient for various reasons set forth in this Petition. Plaintiff avers that the lien was filed in bad faith, with actual malice, and without reasonable cause by the Contractor / Lienor. A copy of the lien is attached as **Exhibit A**.

16.

A written request to cancel this lien was sent to Contractor on October 27, 2008, in accordance with LSA R.S. 9:4833(A), a copy of which is attached hereto and made a part hereof marked as **Exhibit B**. Within that letter, Plaintiff citing the language of La. R.S. 9:4822(C) stated that Contractor had failed to preserve its claim by not filing timely, properly, and in compliance with the Louisiana Private Works Act, La. R.S. 9:4801, et seq. Contractor and Lienor were notified that failure to remove the lien would result in liability for attorneys fees and legal costs.

17.

To date, Contractor, Lienor and the Clerk of Court for the Parish of Jefferson have refused to erase the inscription of the lien. In response, Plaintiff has taken up the expense of initiating this action.

18.

Having no other route to remedy and requiring remedy immediately without trial, Plaintiff submits to this Court its Petition for Writ of Mandamus.

CAUSE OF ACTION

19.

Plaintiff restates allegations 1-18 and any allegations which may be interpreted as causes of action or elements of such shall be reincorporate to this section.

20.

This Petition for Mandamus is properly brought pursuant to LSA R.S. 44:114(B) in order to compel the Defendants to ensure cancellation from the records of the above referenced instrument.

21.

Plaintiff avers that Defendants have refused to satisfy Plaintiff's request to remove the lien from the public records and therefore under LSA R.S. 9:4833(B) the Defendants are liable to the Petitioner for failing to remove the improper lien including the costs of court and reasonable attorney's fees in order to pursue this court action. The Plaintiff avers that the refusal to remove the lien was done in bad faith and with actual malice, and without reasonable cause.

22.

Primarily, Petitioner requests that this Court mandate the removal and cancellation of the illegal lien referred to above (hereinafter "Lien") because the Lien is in violation of the Louisiana Private Works Act, La. R.S. 9:4801, et seq.

23.

The Lien does not comply with law because the Lienor has no contractual right to recovery, nor has it performed any labor, provided materials, or completed any “work” as defined by La. R.S. 9:4808. Lienor is not a party to the Contract, was not a subcontractor, supplier, sub-subcontractor, and did not provide any labor or materials to the Project.

24.

Further, Lienor is not properly licensed to provide the work complained of. Lienor has no license to perform residential contracting services, in violation of La. 37:2150, et seq. Lienor cannot assume the contractual rights of Contractor because it is not licensed to perform the work contemplated by the Contract. Lienor is not a “contractor” as posed in La. R.S. 9:4807. Contracts entered into by unlicensed contractors are void for failure of capacity under La. R.S. 37:2160. Therefore, Lienor can have no right to the liquidated damages that make up the amount of his claim under the “Claim of Lien.”

25.

As Lienor is not a licensed contractor, its attempted “Claim of Lien,” intended as a Statement of Claim, shall not be valid.

26.

Furthermore, Lienor has violated La. R.S. 9:4801, et seq., because: (1) Lienor failed to file a Notice of Contract under La. R.S. 9:4811; (2) Lienor failed to properly deliver notice of the lien; (3) Lienor failed to properly identify the Project and property in violation of La. R.S. 9:4822 and La. R.S. 9:4831; (4) Lienor failed to properly identify the document as a “statement of claim and privilege;” (5) Lienor failed to properly identify the “nature of the obligation giving rise to the claim” in violation of La. R.S. 9:4822(G)(4); (6) Lienor failed to properly identify the itemization of the services provided in violation of La. R.S. 9:4822(G); and (7) Lienor failed to properly identify the signor of the “Claim of Lien.”

27.

In the alternative, and in the event that this Honorable Court deems the filing sufficient to satisfy the claim of the Contractor, the Contractor's filing is deficient for several reasons.

28.

Upon the information and belief of the Plaintiff, the "Claim of Lien" is violation of La R.S. 9:4822 because the Contractor failed to procure the filing of a lien within sixty (60) days of the (a) substantial completion or (b) abandonment of the work. Plaintiff argues that Contractor never provided any work or labor on the Project, because he was simply utilized as a project manager, whose services added no value to the Project. Further, that Contractor finished completing any qualifying statutory services, though disputed but if deemed to exist, no sooner than sixty (60) days prior to the filing of its "Claim of Lien."

29.

Furthermore, Contractor has violated La. R.S. 9:4801, et seq., due to, but without limitation: (1) Upon information and belief, Contractor failed to file a proper Notice of Contract which complies under La. R.S. 9:4811; (2) Contractor failed to properly deliver notice of the "Claim of Lien;" (3) Contractor failed to properly identify the Project and property in violation of La. R.S. 9:4822 and La. R.S. 9:4831; (4) Contractor failed to properly identify the document as a "statement of claim and privilege;" (5) Contractor failed to properly identify the "nature of the obligation giving rise to the claim" in violation of La. R.S. 9:4822(G)(4); (6) Contractor failed to properly identify the itemization of the services provided in violation of La. R.S. 9:4822(G); and (7) Contractor failed to properly identify the signer of the "Claim of Lien."

30.

The "Claim of Lien" is further in violation of La. R.S. 9:4801, et seq because (1) the Contract was breached by Contractor for several reasons including but not limited to fraud, overbilling, and intentional interference with Plaintiff's contracts, all of which constitute bad faith; and (2) Contractor is owed no further amount under any contract.

31.

In the alternative that this Court believes the “Claim of Lien” is timely, proper and without defect necessary for its immediate cancellation, and that it should be preserved, the Plaintiff requests that this Court mandate the amendment of the Lien to be reduced only to the amounts due to Contractor. The Contract for the Project requires payment of 15% over the amount of contracts, fees and permits assessed due to Contractor’s alleged work, of which \$20,000.00 has previously been paid. Contractor has made a “Claim of Lien” for \$20,000.00, upon information and belief, representing a \$20,000.00 liquidated damage which the Contractor feels he is owed. However, because the Contract was not terminated by Plaintiff, and because the Contractor breached the Contract, these damages are not recoverable. Further, Plaintiff believes that any amount which might be due for Contractor’s alleged work on the Project, has already paid, leaving a balance of zero, remaining on the Contract.

32.

Therefore, the balance due and owing to Contractor is zero, hence the Lien should be removed as improper or amended to be reduced by the amount the Court sees fit.

33.

Plaintiff further seeks the full extent of its attorney’s fees and costs associated with the removal of the “Claim of Lien” pursuant to La. R.S. 9:4833(C), because it has properly provided a written request for the cancellation of the “Claim of Lien” and no cancellation was made within the ten (10) day statutory limit. Plaintiff avers that Defendants were more than aware that the “Claim of Lien” was in violation of law and believes that the filing of such was merely a malicious means of coercing the Plaintiff into payment of amounts not due.

34.

For the reasons put forward herein or as may be amended by memoranda or pleadings, Plaintiff requests that this Court mandate that the Recorder of Mortgages and Clerk of Court for the Parish of Jefferson procure the cancellation of the “Claim of Lien,” with prejudice, ordering

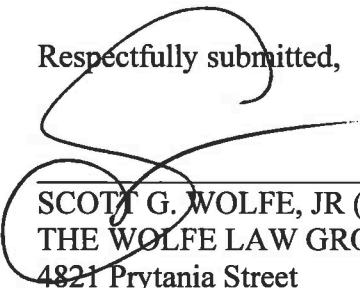
Contractor and Lienor, and all of its affiliates, contractors, laborers, or other related entities or persons, to file no further privileges, statements or liens against the Project.

35.

In the alternative, that Contractor and Lienor be ordered to amend the "Claim of Lien" within a reasonable time fashioned by this Honorable Court to reflect the true amount due under the Contract, and further grant to the Plaintiff the full extent of its legal costs and attorney's fees incurred in the handling of this "Claim of Lien."

WHEREFORE, Petitioner prays that John A. Gegenheimer, Clerk of Court, Clifford C Coffman, Jr., and Coffman Homes, LLC, be ordered to show cause why a Writ of Mandamus should not be issued herein ordering the lien and bond be cancelled from the records of this Parish, and that a judgment in favor of your Petitioner against Defendants Clifford C. Coffman, Jr. and Coffman Homes, LLC, be issued for the full amount of damages, attorneys' fees and expenses as this Honorable Court feels are equitable

Respectfully submitted,


SCOTT G. WOLFE, JR (Bar Roll 30122)
THE WOLFE LAW GROUP, L.L.C.
4821 Prytania Street
New Orleans, LA 70115
(504) 324-1642 (phone)
(866) 761-8934 (fax)
Attorney for Petitioner

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

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COLIN ROCKE

VERSUS

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CLERK OF COURT AND RECORDER OF MORTGAGES

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DEPUTY CLERK

WRIT OR RULE TO SHOW CAUSE

Considering the foregoing Petition for Writ of Mandamus,

It is ordered that defendants, be and he are ordered to cancel the "Claim of Lien" at issue from the mortgage records of Jefferson Parish, or show cause on the _____ day of _____, 200__, at _____ AM/PM.

JEFFERSON PARISH, LOUISIANA, this _____ day of _____, 2008.

JUDGE

PLEASE SERVE PETITION AND ORDER:

Coffman Homes, LLC, through its registered agent for service of process
Clifford C. Coffman, Jr. or Connie D. Coffman
4104 Bayou Savage Dr.
Kenner, LA 70065

Clifford C. Coffman, Jr., personally
4104 Bayou Savage Dr.
Kenner, LA 70065

JON GEGENHEIMER, CLERK OF COURT
P.O. Box 10
Gretna, LA 70054-0010

10846323

CLAIM OF LIEN

Notice is hereby given that on the 29th day of August, 2008, Coffman Homes LLC first provided labor or material for a new construction residence to Colin Beck LLC OAKCRE HAZARD LA 70123. The last day of providing the labor or material was the 21st day of July, 2008.

The lien claimant's contract amount, including extras, is \$ 92,000.00. The lien claimant has received payment thereon in the total amount of \$ 20,000.00, and therefore claims a construction lien upon the above-described real property in the amount of \$ 20,000.00.

Coffman Homes LLC
Company Name
[Signature]
Signature of Lien Claimant

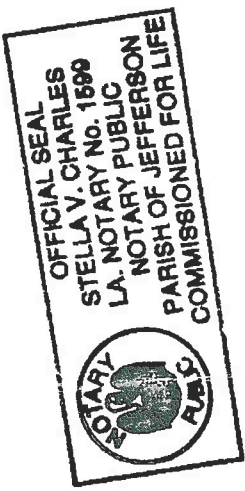
4104 Bayou Sauvage Dr Kenner LA 70065
Company Address

Dated: 8/29/08

State of Louisiana
Parish of Jefferson
Subscribed and sworn to before me this 29th day of August, 2008

Signature of Notary Public [Signature]

My commission expires: with life

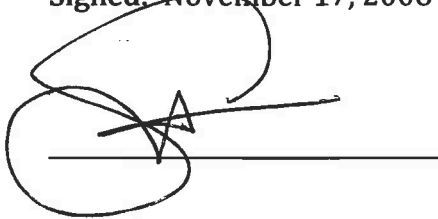


NOVEMBER 17, 2008
AFFIDAVIT OF SCOTT G. WOLFE, JR.


Before me, undersigned Notary Public for the State of Louisiana, personally came and appeared before me, Scott G. Wolfe, Jr., whose municipal address is 543 Exposition Blvd, New Orleans, Louisiana 70115, who after being duly sworn did say that:

- 1) On October 27, 2008, he did place into the United States Postal System for delivery the enclosed correspondence written to Clifford C. Coléman, Jr.;
- 2) That proper postage was prepaid and that the parcel was properly addressed;
- 3) That the parcel was sent via certified mail, and marked with Certified Mail No. 7006 3450 0002 8906 6240 through PS Form 3800;

Signed: November 17, 2008



Sworn to and subscribed before me,
Notary Public, this 17th day of November, 08.



FRANK SCHIRO, Bar No. 25240
Commission is for Life

FRANK P. SCHIRO, III
ATTORNEY/NOTARY PUBLIC
MY COMMISSION
IS ISSUED FOR LIFE
LA. BAR # 25240

WOLFE LAW GROUP

NEW ORLEANS
4821 PRYTANIA STREET
NEW ORLEANS, LA 70115
(504)894-9653
F: (866)761-8934

SEATTLE
3232 FIRST AVENUE S
SEATTLE, WA 98134
(206)801-1600
F: (866)761-8934

October 27, 2008

To: Clifford C Coffman Jr
Coffman Homes LLC
4104 Bayou Savage Rd
Kenner, LA 70065
Work Fax: (504) 305-4296

CC: Colin Rocke

Re: Colin Rocke v. Coffman Homes, L.L.C. and Clifford Coffman
My File: 08-C-C224M13

**SENT VIA US MAIL &
US CERTIFIED MAIL 7006 3450 0002 8906 6242**

Dear Mr. Coffman:

Please accept this letter as notice that this law office represents the interest of Mr. Colin Rocke with regard to a dispute between him and yourself respecting construction services performed on property located at 726 Oak Ave, Harahan, Louisiana, 70123. Specifically, this office represents Mr. Rocke with respect to a "Claim of Lien" that was filed improperly against this property. Herein we request that you cancel the request as per the Louisiana statutes mandating the same. Should you fail to respond to this letter by canceling the "Claim of Lien" as requested herein, we will shortly move to have the lien removed by the appropriate court and request that you reimburse Mr. Rocke for all of his legal expense, cost and attorneys fees.

Any and all correspondence related to this matter should be forwarded to this office. Further, if you are represented by counsel, please immediately forward this letter to him or her.

We are in receipt of a "Claim of Lien" apparently filed against property owned by our client, and located at 726 Oak Ave, Harahan, Louisiana. The lien appears to have been filed with the Jefferson Parish Recorder of Mortgages on or around August 29, 2008.

For the following non-exclusive reasons, Mr. Colin Rocke disputes that your lien was properly, timely or otherwise legitimately filed:

1. There is no "Claim of Lien" under Louisiana law. Contractors, subcontractors, material suppliers and similar parties are allowed to file a "Statement of Claim and Privilege" under the Private Works Act, as per Louisiana Rev. Stat. Ann. 9:4801 *et seq.* It does not appear that you filed your claim under this statute or authority, and therefore, the lien is improper.

2. As you affirm in your "Claim of Lien," the contract amount, including extras, exceeded the amount of \$25,000.00. According to our search through the public records of Jefferson Parish, a Notice of Contract was not properly executed and timely filed into its public records. You are therefore not afforded the privilege of the Private Works Act as per La. R.S. 9:411(D).

3. The claim does not reasonably identify the immovable as required by La. R.S. 9:4822 (G)(3), which according to case precedents, requires more than simply the stating of a municipal address (as you have done). A legal property description is considered a sufficient identification of the property, but your

claim lacks the use of a legal property description, or any description more substantial than a municipal address.

4. The claim does not set forth the nature of the obligation giving rise to the claim as required by La. R.S. 9:4822(G)(4). The claim merely says that Cottman Homes, L.L.C. provided "labor or materials" for a "new construction residence," which is an insufficient description of the nature of the obligation as required by statute.

5. The claim does not reasonably itemize the elements comprising it as required by La. R.S. 9:4822(G)(4).

As such, please consider this letter as a formal request that the lien be removed by you as per LA R.S. 9:4833 within ten days from this request. Failure to remove the lien within this period will result in this office filing an action pursuant to LA R.S. 44:119.

Furthermore, this letter shall be sufficient to provide you with notice of the defects of your "Claim of Lien," and your failure to conduct diligent research regarding these defects and/or remove the lien at controversy will be considered as bad faith behavior by Mr. Rocke. Our client is attempting to refinance his property, and the invalid lien filed against his property is causing him extensive damages. Mr. Rocke will seek these damages from you, as he will also ask the court for attorneys fees and legal expenses in bringing a La. R.S. 44:119 action, which is unnecessary if you cooperate with this initial and formal request.

Best Regards,
WOLFE LAW GROUP, L.L.C.

Scott Wolfe, Jr.

WOLFE LAW GROUP

NEW ORLEANS
4821 PRYTANIA STREET
NEW ORLEANS, LA 70115
(504)894-9653
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3232 FIRST AVENUE S
SEATTLE, WA 98134
(206)801-1600
F: (866)761-8934

November 17, 2008

To: 24th JDC Clerk of Court
P.O. Box 10
Gretna, LA
70054-0010
Work: (504) 364-3882

Re: Colin Rocke v. Clifford C. Coffman, Jr., et al.
My File: 08-C-C224M13
Your File: 24th JDC, No. 666746

SENT VIA ELECTRONIC UPLOAD TO JEFFNET

Dear Sir or Madam:

This afternoon our office filed a Petition for Mandamus via JeffNet, and included two exhibits and a Rule to Show Cause.

We could not determine a way to request service through the JeffNet system, and therefore, we submit this letter of request to the Clerk of Court, respectfully requesting that the Petition, its Exhibits, and a hearing date for the Rule to Show Cause be served upon the following, whoupon service was requested within the Petition:

Coffman Homes, L.L.C., through its registered agent for service of process
Clifford C. Coffman, Jr. or Connie D. Coffman
4104 Bayou Savage Dr.
Kenner, LA 70065

and

Clifford C. Coffman, Jr., personally
4104 Bayou Savage Dr.
Kenner, Louisiana 70065

and

Jon Gegenheimer, Clerk of Court
200 Derbigny Street
Grenta, Louisiana

Best Regards,
WOLFE LAW GROUP, L.L.C.



Scott Wolfe, Jr.