

MEMORANDUM

TO: MAYOR & CITY COUNCIL  
FROM: GREGORY J. ORAVEC, CITY MANAGER *GJO*  
SUBJECT: BUILDING DEPARTMENT/HERITAGE CARPET & TILE AND MINAS  
PROFESSIONAL SERVICES CORP. v. CITY OF PORT ST. LUCIE  
DATE: OCTOBER 4, 2012

For your information, please find the enclosed memorandum of September 28, 2012, from Azlina Goldstein Siegel, Assistant City Attorney, concerning the subject. Please be advised that the City Attorney, Roger G. Orr, and I recommend against an appeal and believe that we should modify the Building Department's policies and procedures to comply with the Court's ruling.

If you have any questions or would like additional information, please do not hesitate to contact me.

Thank you.

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**MEMORANDUM**

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TO: GREGORY J. ORAVEC, CITY MANAGER/CRA DIRECTOR

THRU: ROGER G. ORR, CITY ATTORNEY *RGO*

FROM: AZLINA GOLDSTEIN SIEGEL, ASSISTANT CITY ATTORNEY *AS*

DATE: SEPTEMBER 28, 2012

SUBJECT: CHANGE TO CERTAIN BUILDING DEPARTMENT POLICIES AND ENFORCEMENT PROCEDURES IN REFERENCE TO HERITAGE CARPET & TILE and MINAS PROFESSIONAL SERVICES CORP. v. CITY OF PORT ST. LUCIE

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As you are aware, I have been working on the lawsuit *Heritage Carpet & Tile, Inc., and Minas Professional Services Corp. vs. City of Port St. Lucie*, Case Number 562011CA003542, which was filed against the City. The action filed by the Plaintiffs, Heritage Carpet & Tile, Inc. ("Heritage"), and Minas Professional Services Corp. ("Minas"), concerns the City's enforcement of State and local laws, rules, regulations, codes and ordinances that apply to construction activities in Port St. Lucie.

To briefly summarize the facts of the case, Heritage entered into a subcontract agreement with Minto Townpark, LLC, a Florida limited liability company, to perform flooring installation work for single-family residential dwellings being constructed for a development known as Townpark at Tradition. Heritage also entered into a subcontract agreement with Kolter Signature Homes, LLC, a Florida limited liability company, to perform flooring installation work for single-family residential dwellings being constructed for a development known as Verano. Heritage and the other Plaintiff, Minas, entered into a Master Subcontract Agreement where Minas was to act as an independent contractor to perform the flooring installation work that Heritage was to perform on the Townpark at Tradition and Verano Projects.

In general, a local license from the City is required in order to perform contracting services for the construction, remodeling, repair, or improvement of single-family residences. Heritage is a certified general contractor in the State of Florida and therefore is not required to obtain a local license to perform the flooring installation work as an independent contractor for the Townpark at Tradition and Verano Projects. Following the City's inspections of the job sites of Heritage for the Townpark at Tradition and Verano Projects, the City issued citations to the Plaintiffs. The City issued the citations because instead of directly hiring and using its own employees, Heritage, pursuant to its Master Subcontract Agreement with Minas, had Minas, which is a business organization *not* a person, perform the flooring installation work for the Townpark at Tradition and Verano Projects. Further, Minas is unlicensed, unregistered and uncertified. As a result of being issued the citations, the Plaintiffs were required to cease the flooring installation work on the job sites until the violations were corrected.

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The City's issuance of the citations to the Plaintiffs was based on its interpretation of Section 489.117(4)(d) of the Florida Statutes, also known as the "Jim Walter Exemption." The Jim Walter Exemption provides that:

***Any person*** who is not required to obtain registration or certification pursuant to s. 489.105(3)(d) – (o) ***may perform contracting services*** for the construction, remodeling, repair, or improvement of single-family residences, including a townhouse as defined in the Florida Building Code, ***without obtaining a local license if such person is under the supervision of a certified or registered general, building, or residential contractor.*** As used in this paragraph, supervision shall not be deemed to require the existence of a direct contract between the certified or registered general, building, or residential contractor and the person performing specialty contracting services. [Emphasis added].  
§ 489.117(4)(d), Fla. Stat. (2011)

The City's position on the matter was that the Jim Walter Exemption to local licensing requirements applies to persons, that is to individuals not business organizations or other legal entities. The City does acknowledge that when construing certain statutes, rules, codes, or other laws the word "person" can include business organizations or other legal entities where the context permits. However, section 489.105(13) of the Florida Statutes specifically provides a definition of the term "business organization." Thus, the City subscribed to the belief that statutory distinctions were made between the terms persons and business organizations in Chapter 489 of the Florida Statutes, which governs the licensing of the construction industry. Accordingly, in our interpretation of the Jim Walter Exemption, the City took the position that the Jim Walter Exemption *only exempts a person (an individual)* from the applicable local licensing requirements, not a business organization like Minas, which hires individuals to perform the work.

The Plaintiffs disagreed with the City's reasoning for the issuance of the citations and filed the above-described action for injunctive relief and a declaratory judgment to challenge the City's enforcement of the Jim Walter Exemption. The Plaintiffs sought summary judgment on all counts asserted against the City in their Amended Complaint. A hearing on the Plaintiffs' Motion for Summary Judgment was held before the Court on July 12, 2012. Both the City and the Plaintiffs filed memoranda of law and presented their arguments to the Court at said hearing. After reviewing and considering the arguments of counsel, the pleadings and other documents on the matter, the trial court, on September 24, 2012, entered an order adverse to the City by granting the Plaintiffs' Motion for Summary Judgment.

Although the Circuit Court of the 19<sup>th</sup> Judicial Circuit in and for St. Lucie County disagrees with the City's interpretation and enforcement of the Jim Walter Exemption, the Court's adverse ruling is appealable to the 4<sup>th</sup> District Court of Appeal. It is the position of the Legal Department that the City's interpretation of the Jim Walter Exemption is the most logical and serves to best protect the welfare and safety of the public. Moreover, as a result of the trial court's ruling, not only an unlicensed person can perform specialty contracting services under the supervision of a certified or registered general, building or residential contractor, but also an unlicensed, unregistered, or uncertified business organization like Minas can go out as an independent contractor or subcontractor and hire day laborers or other unlicensed, unregistered, uncertified "persons" to perform those same contracting services so long as those activities are performed under the umbrella-like supervision, which does not have to be direct, of a certified or registered general, building or residential contractor.

In light of the above summary of the status of this case, I am requesting further direction on how to proceed. In the event you and City Council desire to appeal the trial court's decision, I would need that direction as soon as possible because under the Florida Rules of Appellate Procedure, I have only 30 days from rendition of the trial court's order to file my Notice of Appeal. As previously stated, the trial court signed the Order on Plaintiff's Motion for Summary Judgment on September 24, 2012. However, if there is no desire to appeal the adverse ruling, then please advise if you want me to prepare a memorandum to the Building Official directing him to inform his Building Department staff that the performance of their inspections and investigations needs to be consistent with the attached Order entered by the trial court.

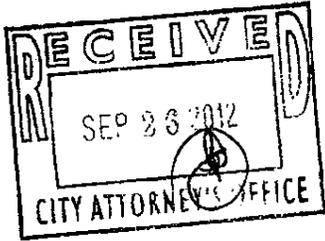
Please process this matter as necessary so that it may be placed on the next meeting agenda for City Council's consideration. If you have any questions, please do not hesitate to contact me.

AGS/bb

Attachments: Order on Plaintiffs' Motion for Summary Judgment

cc: Pam E. Booker, Senior Assistant City Attorney  
Joel A. Dramis, CBO, Building Official  
Jack Reisinger, Technical Services Manager

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IN THE CIRCUIT COURT OF THE 19TH  
JUDICIAL CIRCUIT IN AND FOR  
ST. LUCIE COUNTY, FLORIDA

CASE NO. 562011CA003542

HERITAGE CARPET & TILE, INC. and  
MINAS PROFESSIONAL SERVICES  
CORP.,

Plaintiffs,

v.

CITY OF PORT ST. LUCIE,

Defendant.

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**ORDER ON PLAINTIFFS HERITAGE CARPET & TILE, INC. AND MINAS  
PROFESSIONAL SERVICES CORP'S MOTION FOR SUMMARY JUDGMENT  
AND INCORPORATED MEMORANDUM OF LAW**

THIS CAUSE came upon the Court upon Plaintiffs Heritage Carpet & Tile, Inc. and  
Minas Professional Services Corp's Motion for Summary Judgment and Incorporated  
Memorandum of Law, and the Court having heard argument of counsel on July 12, 2012, and the  
Court having otherwise reviewed the papers and pleadings in this matter, it is therefore

CONSIDERED, ORDERED AND ADJUDGED as follows:

*Plaintiff's Motion for Summary Judgment is granted. This issue  
is controlled by F.S. 489.117(4)(a), Fla. Home Builders  
Ass'n v. St. Johns County, 914 So2d 1035, 5th DCA  
and the other authority and arguments in Plaintiff's Memo*

DONE AND ORDERED in Chambers in Fort Pierce, St. Lucie County, Florida, this  
*24* day of ~~July~~, 2012.

*Sept 24*

*[Signature]*  
CIRCUIT COURT JUDGE

Copies to:

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Port St. Lucie, FL 34984

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