

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**Eva Celine Boccia,  
Defendant/Third-Party Plaintiff  
Below, Petitioner**

**FILED**  
May 13, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA, 2011

vs) **No. 101589** (Jefferson County No. 06-C-370)

**James Julius, Third-party  
Defendant Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Eva Celine Boccia (“Ms. Boccia”) appeals from the circuit court’s order granting summary judgment in favor of respondent James Julius in this action<sup>1</sup> asserting, *inter alia*, a breach of contract claim. Petitioner seeks a reversal and a remand for a jury trial. Respondent has filed a timely response.

This Court has considered the parties’ briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties’ written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On September 12, 2005, petitioner Eva Celine Boccia entered into a “Purchase Contract” to have a single-family modular home constructed on property owned by her. Ms.

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<sup>1</sup> This action is styled in the circuit court as “Julius Builders, LLC, Plaintiff v. Eva Celine Boccia, Defendant and Third Party Plaintiff, v. James Julius and Gerald Leather, Third Party Defendants.” This Memorandum Decision addresses only the summary judgment order entered in favor of respondent James Julius and does not in any way comment upon any other claims in this litigation.

Boccia states she believed that her contract was to be with third-party defendant, Gerald Leather,<sup>2</sup> who advised her that the construction of her home would be his last job as he was in the process of retiring. Ms. Boccia states that on the date she signed the contract, Mr. Leather informed her that while he was the general contractor on the job, the name on the contract would be Julius Brothers, LLC (“Julius Builders”)<sup>3</sup>, a West Virginia limited liability company.

Ms. Boccia states that while the contract says “Julius Builders, LLC,” the evidence would show that Mr. Leather, as agent for respondent James Julius, and Mr. Julius, himself, made representations to her that belied the contract. Ms. Boccia asserts that Mr. Julius, a member<sup>4</sup> of Julius Builders, used the name and reputation of a “proper contractor,” Gerald Leather, after which Mr. Julius engaged in a pattern of conduct that clearly showed that he had no intention of honoring the contract.

Construction began on the home in the early winter of 2006. Ms. Boccia states that Julius Builders added expenses not specifically set forth in the contract and fabricated a “rock claim” to demand additional money under a “rock clause” in the contract. Ms. Boccia adds that Mr. Julius threatened to terminate work on the home without just cause.

In July of 2006, a dispute arose that resulted in Julius Builders vacating the construction of the home. Julius Builders claimed that it was entitled to the next to the last “draw,”<sup>5</sup> whereas Ms. Boccia claimed that insufficient work had been completed to warrant that draw. Ms. Boccia states that Mr. Julius told her and others that the home was 95% finished when it was not.

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<sup>2</sup> Gerald Leather is not a party to this appeal. The record reflects that Mr. Leather’s motion for summary judgment was granted by the circuit court on August 23, 2010.

<sup>3</sup> It appears from the record that Julius Builders filed for Chapter 7 bankruptcy in 2007.

<sup>4</sup> The record contains an affidavit of James Julius dated September 2, 2010, in which he describes himself as the “owner and managing officer of Julius Builders, LLC.”

<sup>5</sup> The “Purchase Contract” in the record reveals a series of five “draws,” or payments, to be made based upon the degree of completion of the home.

On August 29, 2006, Julius Builders filed a Mechanic's Lien with the Office of the Clerk of Jefferson County and, thereafter, filed an action in the circuit court against Ms. Boccia claiming that it was owed significant sums of money and seeking to recover those sums through a mechanic's lien enforcement action. Ms. Boccia filed a counterclaim against Julius Builders claiming that the home was poorly constructed and that Julius Builders was liable to her for damages. Ms. Boccia also filed a third-party complaint against Mr. Julius and Mr. Leather asserting claims for breach of contract, breach of warranties, constructive fraud, negligence *per se*, and wanton and reckless endangerment.

Mr. Julius filed a motion for summary judgment on the third-party complaint. Mr. Julius states that Ms. Boccia alleged no facts specifically against him and merely asserted, in her prayer for relief, that he was individually responsible for the debts and obligations of Julius Builders. On July 19, 2010, the circuit court entered a sixteen-page order granting Mr. Julius's motion for summary judgment.

The circuit court found that the third-party complaint contained no allegations against Mr. Julius individually and, instead, all allegations were against Julius Builders. The circuit court further found that there was no evidence to support Ms. Boccia's claims of breach of contract and breach of warranties against Mr. Julius, individually; that there was no dispute of the material fact that Ms. Boccia was in exclusive privity of contract with Julius Builders and not its individual member, Mr. Julius; and that it was "axiomatic that James Julius cannot be held liable for any breach of contract or breach of warranty arising from the Contract." The circuit court further found that all payments for work performed on the home were made directly to Julius Builders and that Ms. Boccia communicated with Mr. Julius in his capacity as a representative member of Julius Builders.

Regarding Ms. Boccia's constructive fraud claim, the circuit court found that her allegations provided "nothing more than Boccia's opinion" and merely restated her breach of contract claim alleged against Julius Builders. The circuit court further found that Ms. Boccia lacked evidence sufficient to make a *prima facie* case against Mr. Julius and noted that the only false statement she testified about during her deposition was a statement made by Mr. Julius to the West Virginia Contractor's Licensing Board more than a year after Julius Builders ceased to be present at the job site of the home and upon which she did not rely. The circuit court concluded that it was "impossible to guess how Boccia could prove fraud in light of the allegations made and the evidence developed."

Regarding Ms. Boccia's negligence *per se* and wanton and reckless endangerment claims, the circuit court again found that there were no allegations or facts that implicated James Julius individually. The circuit court found that all allegations were directed toward

Julius Builders<sup>6</sup> and its alleged failure to correct defects with the home—not Mr. Julius.

“A circuit court's entry of summary judgment is reviewed *de novo*.” Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). After considering the record, the arguments of counsel, and the circuit court’s order, this Court concludes that there was no error in the circuit court’s entry of summary judgment in favor of third-party defendant James Julius. Accordingly, we affirm.

Affirmed.

**ISSUED:** May 13, 2011

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman  
Justice Robin Jean Davis  
Justice Brent D. Benjamin  
Justice Thomas E. McHugh

**DISSENTING:**

Justice Menis E. Ketchum

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<sup>6</sup> The record contains an order entered by the circuit court on August 6, 2010, granting summary judgment in favor of Julius Builders, LLC, and against Ms. Boccia. The record also contains Julius Builders, LLC’s response to Ms. Boccia’s motion for reconsideration, although the motion itself is not in the record nor is there any order in the record ruling on the motion for reconsideration. Although the instant petition for appeal was filed in the circuit court on November 18, 2010, the last entry in the record is dated September 29, 2010.