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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

Case No. 2022-000636

South Atlantic Forest Products, Inc. d/b/a Gaster Lumber & Hardware,Appellant,

v.

GMK Associates Design Build Division, Inc.,Respondent.

RESPONDENT’S INITIAL BRIEF

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TABLE OF CONTENTS

Table of Authorities
Statement of Issues on Appeal.....
Statement of the Case.....
Standard of Review.....
Arguments.....
Conclusion

TABLE OF AUTHORITIES

Cases

Baron Data Syst. v. Loter, 297 S.C. 382, 377 S.E.2d. 296 (1989).....

Burton v. York County Sheriff’s Department, 358 S.C. 339,
594 S.E.2d. 888 (Ct. App. 2004).....

EFCO Corp. v. Renaissance on Charleston Harbor, LLC 370 S.C.612,
635 S.E.2d. 922 (Ct. App. 2006).....

Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 176,
557 S.E.2d 708, 710 (Ct. App. 2001)

Horton v. Jasper County School District, 423 S.C. 325, 815 S.E.2d. 442 (2018).....

Keeney’s Metal Roofing, Inc. v. Palmieri, 345 S.C.550, 548 S.E.2d. 900
(Ct. App. 2001)

Kiriakides v. Sch. Dist. of Greenville County, 382 S.C. 8, 20, 675 S.E.2d
439, 445 (2009).....

Laser Supply & Servs., Inc. v. Orchard Park Assocs. 382 S.C. 326, 340,
676 S.E.2d 139, 147 (Ct. App. 2009)

Layman v. State, 376 S.C.434, 658 S.E.2d. 320 (2008).....

Smith v. Smith, 264 S.C.624, 216 S.E.2d. 541 (1975)

Statutes

S.C. Code Ann. § 29-5-20(a).....

STATEMENT OF ISSUES ON APPEAL

- 1. DID THE TRIAL COURT ERR WHEN IT AWARDED APPELLANT \$24,885.25 IN REASONABLE ATTORNEY'S FEES AND COSTS?**

- 2. DID THE TRIAL COURT ERR WHEN IT AWARDED DEFENDANT FRANK GOLSON \$7,000.00 IN REASONABLE ATTORNEY'S FEES AND COSTS?**

STATEMENT OF THE CASE

This is an appeal of an award of attorney's fees concerning two claims, breach of contract and mechanic's lien arising out of the construction of a residential house in Beaufort, South Carolina. Appellant, South Atlantic Forest Products, Inc., claims the trial court abused its discretion in awarding \$24,885.24 in attorney's fees and costs associated with the aforementioned claims which resulted in a recovery to Appellants of \$24,885.24. (Verdict Form and Form 4; R. ____).

Appellant South Atlantic Forest Products, Inc. d/b/a Gaster Lumber & Hardware (hereinafter, "South Atlantic") filed this action against Respondent GMK Associates Design Build Division, Inc. (hereinafter, "GMK") seeking, in part, an award of attorney's fees. (Summons and Complaint and Exhibits; R. ____). South Atlantic is a supplier of lumber and other materials and was responsible for supplying GMK for the construction of the residence in Beaufort. GMK was the contractor responsible for building the residence in Beaufort. The owner of the property, Percy M. Berry, III ("Owner"), was not a party to the litigation. Appellant filed a mechanic's lien in the amount of \$24,885.24 ("Lien") after GMK failed to make a payment. The Lien was later bonded off by the Owner pursuant to S.C. Code Ann. §29-5-110 for \$33,097.38 ("Bond") by Traveler's Casualty and Surety Company of America ("Bonding Company"). On November 3, 2017, Appellant brought this action against GMK, GMK's Treasurer, Frank Golson ("Golson"), and the Bonding Company alleging breach of contract and enforcement of the mechanic's lien. (Summons and Complaint and Exhibits dated November 3, 2017; R. ____). In response, on November 22, 2017, Respondent filed an Answer and Counterclaim alleging breach of contract and resulting damages based upon the delivery of the wrong siding, structural roof components, and three sliding doors, and the expense in obtaining the Bond. (Respondent's Answer and Counterclaim; R. ____).

Judge Robert J. Bonds presided over the trial the week of January 20, 2022. The Trial Court granted Defendants Golson and the Bonding Company's motions for directed verdict and dismissed both parties. (Order granting Golson's Motion for Directed Verdict; R. ___) (Designated January 28, 2022 Trial Transcript Covering Directed Verdict Motion, R. ____). The jury found for the Appellant in the amount of \$24,885.24 actual damages, the full unpaid balance of the materials listed in the Complaint and the amount claimed under the Mechanic's Lien. The jury awarded no interest. (Jury Verdict and Form 4; R. ___). Further, the Jury awarded zero dollars for Respondent's Counterclaims. (Jury Verdict and Form 4; R. ___).

After the Trial, all parties filed Motions for Attorney's Fees and Costs. (Respondent and Defendant's Motions for Attorney's Fees and Costs dated February 20, 2022; R. ___) (Appellant's Motion for Attorney's Fees and Costs dated February 7, 2022; R. ___). Appellants submitted an affidavit seeking attorney's fees in the sum of \$156,235.28, roughly three times the combined amount of all three Respondents' attorney's fees affidavit and over 5 times the amount of the verdict returned by the jury. (Appellant's Affidavit of Attorney's Fees and Costs; R. ___) (Jury Verdict and Form 4; R. ___).

Subsequently, a hearing on the Motions for Attorney's Fees and Costs was held on February 11, 2022. (Transcript of February 11, 2022 Hearing on Attorney's Fees and Costs and Exhibits; R. ___). On March 10, 2022, the Trial Court granted Appellant's Motion for Attorney's Fees in the amount of \$24,855.25. Likewise, Golson's Motion for Attorney's Fees was granted in the amount of \$7,000.00. GMK and Bonding Company's Motion for Attorney's Fees and Costs were denied. (Order Awarding Attorney's Fees dated March 10, 2022; R. ___).

On March 21, 2022, Appellant filed a Motion to Reconsider the Order Awarding Fees, requesting a reconsideration on both the Appellant's \$24,885.25 award in attorney's fees, and the

\$7,000.00 award for fees to Golson. (Appellant’s Motion to Reconsider and Revise Order Awarding Attorney’s Fees and Costs, dated March 21, 2022; R. ___) (Respondent’s and Defendant’s Response to Motion to Reconsider and Revise Order Awarding Attorney’s Fees and Costs dated April 4, 2022; R. ____). This Motion was heard by the Trial Court on April 8, 2022. (Transcript of Hearing, April 8, 2022; R. ____). The Trial Court denied Appellant’s Motion to Reconsider on April 27, 2022. (Order Form 4 Denying Motion to Reconsider of Attorney’s Fees and Costs dated April 27, 2022; R. ____). In denying the Appellant’s Motion, the Trial Court held that the award of \$24,885.24 in Attorney’s Fees was a collective one which was not dependent on whichever cause of action Appellant’s recovery was based. (Order Denying Appellant’s Motion for Reconsideration; R. ____). Instead the Court’s Order awarded Attorney’s Fees it deemed reasonable to the entire action, irrespective of whether or not the Appellant prevailed on a single cause of action or both causes of action. (Order Denying Appellant’s Motion for Reconsideration. R. ____). Appellant then filed this appeal on May 11, 2022, appealing the Trial Court’s Order Awarding Attorney’s Fees and Costs and the Order Denying Reconsideration. (Appellant’s Notice of Appeal and Exhibits; R. ____).

STANDARD OF REVIEW

“In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract. There is no common law right to recover attorney's fees.” *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 176, 557 S.E.2d 708, 710 (Ct. App. 2001). “The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion.” *Kiriakides v. Sch. Dist. of Greenville County*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009) (citing *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008)). “Similarly, the specific amount of attorneys' fees awarded pursuant to a statute

authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion.” *Id.* “Where there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown.” *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989) (citing *Smith v. Smith*, 264 S.C. 624, 216 S.E.2d 541 (1975)). “An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions.” *Kiriakides v. Sch. Dist. of Greenville County*, 675 S.E.2d at 445 (quoting *Layman*, 376 S.C. at 444, 658 S.E.2d at 325).

ARGUMENT

The Circuit Court’s order should not be disturbed because there was no abuse of discretion. The Circuit Court’s initial Order and the Court’s subsequent Order denying Appellant’s Motion for Reconsideration were carefully reasoned and were not based on unsupported factual conclusions or on an error of law. Instead, the trial court correctly awarded attorney’s fees to both parties based on the applicable case law and the six factors of the *Dedes* Test. Appellant’s failure to establish that either Order was the result of an abuse of discretion on the part of the Trial Court. Judge Bond’s Order should be affirmed by this Court.

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT AWARDED REASONABLE ATTORNEY’S FEES TO THE APPELLANT IN THE SUM OF \$24,885.25.

Appellant South Atlantic was awarded reasonable attorney’s fees as to this case in its entirety pursuant to the *Dedes* test; therefore, there was no abuse of discretion. “Where the contract provides for “reasonable” attorneys' fees without specifying a rate or amount, the issue of attorneys' fees is left to the discretion of the trial judge and will not be reversed on appeal unless there is a showing of abuse of discretion.” *Dedes v. Strickland*, 307 S.C. 155, 160, 414 S.E.2d 134, 137

(1992). *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E. 2d. 659 (1993). The six factors that are considered by the trial court in exercising its discretion are: (1) The nature, extent and difficulty of the legal services rendered; (2) The time and labor necessarily devoted to the case; (3) The professional standing of counsel; (4) The contingency of compensation; (5) The fee customarily charged in the locality for similar legal services; and (6) The beneficial results obtained.” *Id.* The Supreme Court of South Carolina has also noted that none of the six factors are controlling. *Horton v. Jasper Cnty. Sch. Dist.*, 423 S.C. 325, 330, 815 S.E.2d 442, 444–45 (2018) (citing *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989)). The trial court should make specific findings of fact on the record for each of the six factors. *Burton v. York Cnty. Sheriff's Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004). On appeal an award of attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993). Moreover, the *Dedes* test is also used in determining reasonable attorney’s fees under South Carolina’s mechanic’s lien statute. *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 621, 635 S.E.2d 922, 926–27 (Ct. App. 2006). “The determination of the amount of attorney fees that should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court.” *EFCO Corp.*, 370 S.C. at 621, 635 at 926 (Ct. App. 2006). Finally, the fee and the court costs may not exceed the amount of the lien. S.C. Code Ann. § 29-5-20(a).

In *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, the Court of Appeals of South Carolina faced a similar situation. Renaissance on Charleston Harbor, LLC hired a general contractor to develop a condominium project. The general contractor, in turn, hired multiple subcontractors who purchased supplies and materials from EFCO for the construction of a portion of the project. EFCO filed two mechanic’s liens in the amount of \$772,841.00 and \$793,428.48

for materials and labor furnished pursuant to an agreement with one of the subcontractors. Both debt collection actions were consolidated into one matter. Renaissance filed a motion for summary judgment alleging that the first lien should be dissolved because EFCO failed to bring an action to foreclose within the six-month statutory requirement period. The circuit court agreed and granted Renaissance summary judgment for the first lien and awarded Renaissance attorney's fees and costs in the amount of \$10,434.00. The South Carolina Court of Appeals held that the circuit court considered each of the six requisite factors, and the record supported the court's findings. Moreover, the Court of Appeals determined that \$10,434.00 was a reasonable award for defending a mechanic's lien claim of \$772,841.00 based on the detailed time sheet outlining the time spent on the case, the nature of the work performed, the beneficial result performed, and the locality and customary fee charged for similar services.

In the present case, Judge Bonds, the Trial Judge, in exercising his discretion like the Court in *EFCO corp. v. Renaissance on Charleston Harbor, LLC*, examined each of the six factors from *Dedes* to determine reasonable attorney's fees. For the first factor, nature, extent and difficulty of legal services rendered, Judge Bonds believed that it was a "fairly mundane" case involving a mechanic's lien and a claim for breach of contract that spiraled out of control as a result of both parties. (February 11, 2022 Transcript of Hearing, Page 69, Line 18- Page 70, Line 15, R. ____). Judge Bonds found that, "it was clear to the Court that there was a breakdown in communication between attorneys in this matter and that breakdown greatly added to the complexity of the case." Judge Bonds found that as a result, counsel for both parties, "made this case more complicated than it had to be." (Order of Judge Bonds dated March 10, 2022; R. ____) (Order Denying Appellant's Motion for Reconsideration; R. ____).

As for the time and labor devoted to the case, Judge Bonds noted the extreme and excessive nature of the hourly billing from the Appellant's counsel after reviewing roughly 80 pages of bills. (February 11, 2022 Transcript of Hearing, Page 70, Line 20- Page 71, Line15; R. ____). Judge Bonds noted that what might be considered "reasonable" for purposes of billing a client would not be considered "reasonable" when under review by the Court. (Order Denying Appellant's Motion for Reconsideration; R. ____). Judge Bonds believed it was excessive to have two attorneys trying this type of case where the clients were billed 20 hours per day for five days of court. (February 11, 2022 Transcript of Hearing, Page 71, Line 20- Page 72, Lines, 5-20; R. ____) (Order of Judge Bonds dated March 10, 2022; R. ____). In his Order denying Appellant's Motion for Reconsideration, Judge Bonds further recognized that the bills that he reviewed reflected Attorneys charging for work that could have been done by paralegals. (Order Denying Appellant's Motion for Reconsideration; R. ____).

On the third factor, professional standing of counsel, Judge Bonds, recognized both of Trial Counsel Patterson's and Moore's distinct reputations in the legal community. (February 11, 2022 Transcript of Hearing, Page 72 Line 23- Page 73, Line 18, R. ____) (Order of Judge Bonds dated March 10, 2022; R. ____). In regard to the fourth factor, contingency of compensation, Judge Bonds held that it was clear to the Court (despite not being provided with a fee agreement) that representation was based on an hourly billing arrangement pursuant to a Fee Agreement and not based on a contingency arrangement. (February 11, 2022 Transcript of Hearing, Page 74, Lines 3-8; R. ____). (Order of Judge Bonds dated March 10, 2022; R. ____).

As to the fees customarily charged in the locality of similar services, Judge Bonds found and held both Attorney Patterson and Attorney Moore charged reasonable rates given the services provided and the locale of the practices. (February 11, 2022 Transcript of Hearing, Page 74, Lines

8-24; R. ____). (Order of Judge Bonds dated March 10, 2022; R. ____). Finally, with respect to the beneficial result analysis, Judge Bonds recognized that Appellant was a “winner” and received a beneficial result; in fact, the jury awarded the full amount of the unpaid materials. (February 11, 2022 Transcript of Hearing, Page 75, Lines 4-17, R. ____) (Order of Judge Bonds dated March 10, 2022; R. ____). (Verdict Form; R. ____). The Court also noted, however, that while there are several cases that allow for attorney’s fees to exceed the amount of recovery, it seemed unreasonable to award \$153,235.28 in attorney’s fees when the client’s recovery was only \$24,855.25. (February 11, 2022 Transcript of Hearing, Page 78, Lines 1-12, R. ____) (Order of Judge Bonds dated March 10, 2022; R. ____).

The award of Attorney’s fees are guided by the discretion of the court in awarding what is fair, appropriate and reasonable. (February 11, 2022 Transcript of Hearing, Page 78, Lines 5-12; R. ____). The Attorney’s fees awarded by the Court were fair and reasonable and clearly supported under the tests articulated under South Carolina Law. Judge Bonds, who heard the case, reached his conclusion after careful consideration of each of the *Dedes* factors. Regardless of which cause of action the jury awarded damages, the Mechanic’s Lien cause of action, the breach of contract or this case in its entirety, the Trial Court applied the correct test in determining what Attorney’s fees were reasonable in this case. While Appellant may disagree as to the amount of Attorney’s Fees awarded by Judge Bonds, they have failed to show or establish that Judge Bonds’ award was an abuse of discretion. Therefore, this Court should find that the trial court did not abuse its discretion in awarding \$24,855.25 in attorney’s fees.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DISMISSED, AND SUBSEQUENTLY AWARDED REASONABLE ATTORNEY'S FEES TO FRANK GOLSON IN THE SUM OF \$7,000.00.

The Trial Court determined that Frank Golson was a prevailing party in this case and awarded him \$7,000.00 in reasonable Attorney's Fees. (March 10, 2022 Order Awarding Attorney's Fees, R. ___) (Order Denying Appellant's Motion for Reconsideration, R. ___). The trial court did not abuse its discretion in awarding Defendant Frank Golson reasonable attorney's fees because he was dismissed on a motion for a directed verdict. Hence, Frank Golson is a prevailing party under South Carolina's mechanic's lien statute. "If the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court. The fee and the court costs may not exceed the amount of the lien." S.C. Code Ann. § 29-5-20. Further, "a party may recover attorney's fees and costs under § 29-5-20(A) as a "prevailing party" even though the party obtained a dismissal via a procedural rule, provided the dismissal was not due to mere technicality." *Keeney's Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 556, 548 S.E.2d 900, 903 (Ct. App. 2001).

In *Keeney's Metal Roofing, Inc. v. Palmieri*, the Court of Appeals of South Carolina examined whether a party to a lawsuit involving a mechanic's lien may recover attorney's fee when that party obtained a dismissal via a procedural rule. Brian Palmieri hired a general contractor, Cohn Development Group, Inc. ("Cohn") to construct a building on his property. Cohn then subcontracted with Kenney Metal Roofing, Inc., ("Keeney") to complete part of the building. Keeney later filed a mechanic's lien, claiming Cohn owed Keeney for the labor and materials used in constructing the building. Cohn posted a surety bond, issued by American Manufacturers Mutual Insurance Company, after the lien was filed and Keeney sought foreclosure on the lien. The Circuit Court dismissed Palmieri, Cohn, and American Manufacturers pursuant to Rule

12(b)(6) because the bond posted by Cohn discharged the lien on the property. Following the dismissal, Palmieri, Cohn, and American Manufacturers filed a motion for attorney's fees pursuant to SC Code section 29-5-20, asserting they had defended and prevailed against Keeney's mechanic's lien. The Circuit Court refused to grant attorney's fees, citing that the mechanic's lien statutes do not contemplate or award procedurally dismissed parties with attorney's fees. Palmieri, Cohn, and American Manufacturers appealed. On appeal, the South Carolina Court of Appeals reversed the trial court and held that the Appellants prevailed as a matter of law, not a mere technicality, and thus, satisfied the ordinary meaning of "prevailing parties" within the statute.

Like Palmieri, Cohn, and American Manufacturers in *Keeney's Metal Roofing, Inc. v. Palmieri*, Frank Golson was dismissed by the trial court on a motion for directed verdict. Directed verdicts are governed by Rule 50 of the SCRCP. Like the *Keeney* Court, dismissal pursuant to a procedural rule is not a dismissal based on a mere technicality; instead, the prevailing party is victorious as a matter of law. Judge Bonds granted Frank Golson's Motion for Directed Verdict on January 28, 2022. Hence, Frank Golson was a prevailing party under the mechanic's lien statute, and was entitled to reasonable attorney's fees. Going through the same *Dedes* analysis that he applied to the award of Attorney's fees to Appellant, Judge Bonds determined that Frank Golson's reasonable attorney's fees were in the amount of \$7,000.00 as that was 1/3 of the attorney's fees accumulated by Attorney Jake Moore in defending each of the respondents. *Dedes v. Strickland*, 307 S.C. 155, 160, 414 S.E.2d 134, 137 (1992). *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E. 2d. 659 (1993). (March 10, 2022 Order Awarding Attorney's Fees; R. ___) (Order Denying Appellant's Motion for Reconsideration; R. ___) The trial court did not abuse its discretion in awarding Frank Golson attorney's fees in the sum of \$7,000.00 and the Court's Order awarding fees to Frank Golson should be affirmed by this Court.

CONCLUSION

The issue of attorney's fees is left to the sound discretion of the trial court. The trial court had every opportunity to observe the facts of the case and to judge the merits of each party's arguments. Hence, because this a matter discretion, Respondent believes the trial court followed all the applicable statutes and case law, and thus, properly exercised its discretion in awarding reasonable attorney's fees to both South Atlantic and Frank Golson.

For these reasons set forth above, Respondent GMK respectfully asks this Court to affirm the Circuit Court's orders dated March 10, 2022 and March 21, 2022, granting reasonable attorney's fees and costs to South Atlantic and Frank Golson, and then denying reconsideration of the previously granted attorney's fees and costs for both.

Respectfully submitted,

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