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Dec 04 2023

SC Court of Appeals

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
MECO, INC. OF AUGUSTA,)
Plaintiff,)
vs.)
ALEX SAYED a/k/a ARSHAD M.)
SAYED a/k/a ARSHED SAYED; NEPA)
VENTURES LLC; NEPA TRADING &)
INVESTMENTS LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO. 2022-CP-42-03123

ORDER

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This matter came before the Court for hearing on September 14, 2023, on the Defendants’ Motion for Summary Judgment. MECO, Inc. of Augusta (“MECO”) filed this action against the Defendants, Alex Sayed a/k/a Arshad M. Sayed a/k/a Arshed Sayed; NEPA Ventures, LLC and Nepa Trading & Investments, LLC (collectively hereinafter “Defendants”), seeking judgment on a debt arising from an alleged breach of contract. Defendants timely answered the Complaint and asserted counterclaims.

After considering the pleadings, the affidavit, exhibits attached to the motion, and accompanying briefs, as well as arguments presented at the hearing, this Court finds that the Plaintiff had notice of the alleged failure by Defendants to pay sums owed under the contract and failed to bring its action within the applicable statutes of limitations. Accordingly, there are no genuine issues of material facts, and Defendants are entitled to judgment as a matter of law.

FINDINGS OF FACT

Sayed hired the plaintiff, MECO, Inc. of Augusta, to renovate and upgrade a gas station known as the “Westar Travel Plaza,” which is located at 175 Truck Stop Road, Cowpens, South Carolina in May of 2018 (the “Project”). The work at the Project was performed pursuant to a

contract between MECO and Alex Sayed (the “Contract”). The Project was to complete the scope of work contained within the Contract.

Work on the Project began in August 2018 following payment of a deposit by Sayed to MECO. As work by MECO progressed, MECO was required to “furnish [Sayed] with an invoice at the end of each week for the value of materials stored and/or the value of work completed to date.” Sayed was required to pay each invoice “within thirty (30) days of invoice date or completion of the Project.” Further, the Contract provides that “All amounts Buyer does not pay when due shall accrue interest at the rate of 1.5% a month until paid.” After payment of the deposit, MECO began its work and began sending invoices as required by the Contract. On February 15, 2019, Sayed made a second, final payment and has made no further payments since that time.

The Project proceeded in two phases and the second and final phase ended in late April or early May 2019. At some point a dispute arose between MECO and Sayed regarding the amount owed on the Project. In August 2019, MECO sent a list of all invoices it claimed were owed by Sayed (the “Spreadsheet”). A review of the Spreadsheet reveals two undisputed facts. First, the latest invoice for work performed on the Project is dated July 2, 2019. This fact is confirmed by an email sent by Roger Carpenter, a sales representative for MECO, to Sayed dated July 17, 2019. In that email, Mr. Carpenter attaches all of the invoices shown on the Spreadsheet with the following message: “Alex, here are the outstanding invoices which we need to get resolved...”. Second, MECO has received no payments from Sayed on any of these outstanding invoices.

On August 7, 2019, Mr. William Burke of MECO sent an email to Sayed providing the Spreadsheet and stating:

I have attached spreadsheets with contract amounts, invoices, payments made and outstanding invoices. I have attached the contracts and what you agreed to. I have attached service tickets that have not been paid and all finance charges for breach of contract. I don’t want to go to court over this. I want payment made by the end

of business tomorrow 8-8-10 through wire transfer for the full amount owed or you will hear from my lawyer on Friday.

Sayed responded the same day explaining his position and asking about coming up with an amicable solution. Mr. Burke responded and again affirmed that all of the amounts shown on the Spreadsheet were past due as of the date of these emails: “I’m giving you a chance to pay what you agreed to and giving you the ability to work with me. You have not called me and know this money has been outstanding.” The Spreadsheet itself also confirms Burke’s email, as the final line of the Spreadsheet showing the total owed states in all bold, all caps:

TOTAL DUE BY 8/8/19 OR LAWYERS WILL TAKE OVER FROM HERE

(emphasis in original). When questioned about this email and spreadsheet, Burke testified:

Q: At this point in time, had you received any payment from the defendants since the February \$70,000?

A: No, I had not.

...

Q: An easier way of saying it would be to say – or what I’m – what I’m trying to ask is that it was MECO’s position that as of August 8, 2019, my clients owed this amount on page two pursuant to the contract?

A: Not pursuant to the ---

Q: I mean, pursuant to their agreements with MECO?

A: To all agreements and all the work that had been done, not just the original contract.

Q: And it was not – it was not like you were sending this saying, hey this amount of money is coming due or this amount of money may be due in the future. It was due right now?

A: It was way past due.

Q: Way past due?

A: Months and months and months past due.

Q: Under the defendants' obligation to MECO?

A: Correct.

Q: They were in breach of it?

A: In all of them.

Q: Breach of their obligation to pay you?

A: Correct. In every – in every single line item.

Following this email, Burke and Sayed had one more conversation around the time of this email and then have not spoken since.

In sum, MECO testified that all amounts claimed in this lawsuit were past due as of August 8, 2019. MECO further testified that it has received no payment from Sayed, or anyone acting on his behalf, after February 2019. Finally, MECO confirmed that in its last conversation with Sayed, it received no promises to pay or other assurance of payment. MECO did not file this lawsuit until August 23, 2022, more than three years after it sent its final invoice on the contract and more than three years after demanding payment for all sums due in this lawsuit. When it finally did bring its lawsuit, it brought actions for breach of contract, quantum meruit, promissory estoppel, and “recovery of costs of collection and attorneys’ fees,” which is not a cause of action recognized by South Carolina law. All three causes of action are time-barred.

CONCLUSIONS OF LAW

A motion for summary judgment shall be granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Staubes v. City of Folly Beach*, 500 S.E.2d 160 (1998); *Summer v. Carpenter*, 492 S.E.2d 55 (1997). When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be

viewed in the light most favorable to the non-moving party.” *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). A party opposing a properly supported motion for summary judgment may not rest on the mere allegations or denials of the pleading but must set forth or point to specific facts showing there is a genuine issue of material fact. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). “[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Id* citing *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

Each of MECO’s causes of action arise from the contract between MECO and Sayed. Contract actions in South Carolina are subject to a three-year statute of limitations. In general, South Carolina has two statutes that must be examined to determine the length of time a plaintiff has to bring a claim for breach of contract. The first is found in S.C. Code § 15-3-530 and provides a three-year statute of limitations for nearly all contract claims. The second is found in the South Carolina Uniform Commercial Code (the “UCC”) at S.C. Code § 36-2-725 and applies only to contracts for the sale of goods. Goods are defined by the UCC as “all things...which are moveable at the time of identification to the contract for sale...”

South Carolina applies the “predominant factor” test to determine whether a contract that calls for the sale of both goods and services is subject to the UCC. In determining the predominant factor of the contract, courts are directed to look at a variety of factors, including (1) the language of the contract, (2) the nature of the business of the supplier, and (3) the intrinsic worth of the materials involved.

Here, the Contract is one for services, not goods. The Contract uses language typical to a construction services contract to identify the parties to the contract, referring to Sayed as “Owner” and to MECO as “Contractor.” The contract states explicitly why Sayed is paying MECO: “Owner

shall pay the Contractor for the performance of the work,” language typically used in a construction services contract. The Contract also makes clear that its subject is “work,” not “goods” throughout. For example, it describes what is being provided by MECO as “Work” in paragraph 3 of the Contract, refers to a “Scope of Work,” and then states that “Seller (a) will install the Equipment... [and] (b) Will install all safety equipment...” The word “goods” does not appear anywhere in the Contract, whereas the word “work” appears twenty-two (22) times. Similarly, the Contract refers to itself as an “Installation Agreement” in paragraphs 2 and 3. The Contract also contains other provisions typical of a construction services contract, dealing with issues such as “Performance Bonds,” “Workers Compensation Insurance,” “Contractor’s Liability Insurance,” terms related to “Digging and Excavating,” “Environmental Indemnity,” and “Permits.” *Id.* None of these provisions would have any applicability to a contract for the sale of goods. Even where it does address “Materials,” it makes clear that these are incidental to the contract stating explicitly: “Any materials or equipment incidental to the installation or to be installed as part of this contract...”

The second factor also shows that this was a services contract. MECO admits in their brief that they are in the business of “supplying materials and installing them” not manufacturing or distributing equipment. MECO’s 30(b)(6) representative testified that MECO does not manufacture any goods and compared its business to a contractor building a house. Applying the predominant factor test to the facts at issue, the Court finds that the predominant factor of this contract was services, not goods, and the three-year statute of limitations applies.

Turning to the plaintiff’s causes of action, because each of the plaintiff’s causes of action arise out of either an express contract (breach of contract) or an implied contract (quantum meruit and promissory estoppel), the statute of limitations period applicable to contracts applies to all of Plaintiff’s actions. S.C. Code Ann. § 15-3-530 provides that “an action upon contract, obligation,

or liability, express or implied...” must be brought within three years of the time the cause of action accrues. South Carolina's statute of limitations requires. South Carolina applies the discovery rule to breach of contract actions, which provides that an action accrues on the date the aggrieved party either discovered or could or should have discovered the breach through the exercise of reasonable diligence.

Here, there can be no dispute that the MECO's causes of action against Defendants are time-barred. Pursuant to the Contract, payment was net 30, meaning that Defendants were required to make payment on each invoice thirty (30) days after it was submitted. The Spreadsheet shows that the latest unpaid invoice for work performed on the Project is dated July 2, 2019, making payment on the latest invoice due on or before August 1, 2019. If there was any confusion about this, it was cleared up by Burke's email dated August 7, 2019 and corresponding testimony. MECO had a cause of action for breach of contract against Defendants thirty (30) days after the date of each invoice submitted to Sayed, meaning that any action for all of the invoices shown on the Spreadsheet is long since time barred.

There are two ways to revive a time-barred claim for breach of contract, neither of which apply here. First, a claim can be revived by a “new promise to pay the debt.” MECO testified at length that it has not spoken to Defendants since around the time of the August 7, 2018 email and that conversation ended without any promise by Defendants to pay the debt. Second, a claim can be revived by partial payment on the debt. Here, MECO confirmed it has not received any payment on the debt since February 2019.

One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. MECO became aware of its alleged cause of action not later than August 8, 2019, when it sent a communication to defendants demanding immediate

payment and threatening legal action. It is clear from that communication that as of that date, MECO's cause of action for payment of the past due invoices had accrued. The statute of limitations on a breach of contract action is three years. This action commenced on August 23, 2022, after the passage of three years from the alleged breach and the plaintiff's knowledge of it.

THEREFORE IT IS ORDERED that the Defendants' Motion for Summary Judgment should be and is GRANTED and the plaintiff's actions against Defendants are dismissed with prejudice;

IT IS FURTHER ORDERED, that the Court's Form 4 indicating that the Court's judgment ends the case is vacated as the defendants brought counterclaims that remain pending. The clerk of court is directed to enter an amended Form 4 showing that this judgment does not end the case.

AND IT IS SO ORDERED.

J. Derham Cole, Circuit Court Judge



Spartanburg Common Pleas

Case Caption: Meco, Inc. Of Augusta VS Alex Sayed , defendant, et al

Case Number: 2022CP4203123

Type: Order/Summary Judgment

IT IS SO ORDERED!

s/J. Derham Cole 2053