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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JUL 23 2013

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2011-CP-10-5099

South Carolina Electric & Gas Co., .....Respondent,

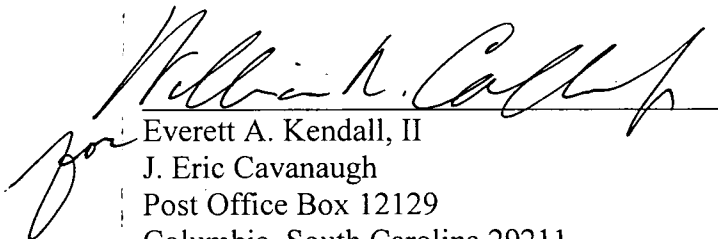
v.

Anson Construction Co., .....Appellant.

NOTICE OF APPEAL

Anson Construction Company ("Anson"), appeals the July 23, 2013 Order of the Honorable J.C. Nicholson, Jr., granting partial summary judgment to Respondent. The Order deprives Anson of a defense presented by its Answer to Respondent's claims. Immediate appeal is, therefore, provided for in S.C. CODE ANN. §14-3-330 (1) and (2). A copy of the Order is attached.

July 23, 2013



Everett A. Kendall, II  
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Attorneys for Appellant

Other Counsel of Record:

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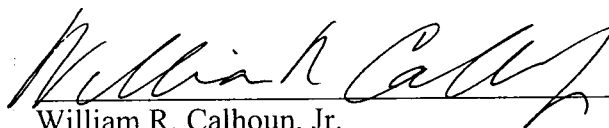
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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on South Carolina Electric and Gas Company by depositing a copy of it in the United States Mail, postage prepaid, on July 23, 2013, addressed to its attorney of record, John A. Massalon, Post Office Box 859, Charleston, South Carolina 29402.

July 23, 2013



William R. Calhoun, Jr.  
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(803)256-2233  
Attorney for Appellant



SWEENY WINGATE & BARROW P.A.

July 23, 2013

Reply to: Main Office

Everett A. Kendall, II  
(803) 217-3447  
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**VIA HAND DELIVERY**

Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

RE: SCE&G v. Anson Construction Co., Inc.  
Civil Action No.: 2011-CP-10-5009  
Our File: 1395-7955

Dear Ms. Kitchings:

Enclosed for filing please find the original and two copies of Appellant's Notice of Appeal, the Proof of Service on Respondent and a filing fee check in the amount of \$100.00. This firm appeared in the trial court on behalf of Appellant Anson Construction Company.

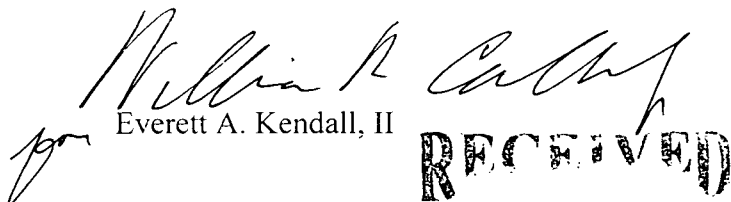
I would appreciate your filing the original and returning the clocked copies to me via our courier.

Should you have any questions or concerns, please do not hesitate to give me a call.

I remain,

Yours truly,

**SWEENY, WINGATE & BARROW, P.A.**

  
Everett A. Kendall, II

EAK/bcr  
Encl.  
cc: John A. Massalon, Esquire

**RECEIVED**  
JUL 23 2013

**SC Court of Appeals**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 South Carolina Electric & Gas Co., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Anson Construction Company, Inc., )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 CASE NO.: 11-CP-10-5009

**ORDER GRANTING  
 PLAINTIFF'S MOTION FOR  
 PARTIAL SUMMARY JUDGMENT**

FILED  
 2013 JUL 23 AM 11:48  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY

On July 18, 2013, the parties to the above-captioned matter appeared before undersigned for a hearing on the Motion for Partial Summary Judgment Motion of Plaintiff South Carolina Electric & Gas Co. ("SCE&G"). John Massalon and Ryan Neville appeared on behalf of SCE&G. Everett A. Kendall, II and J. Eric Cavanaugh appeared on behalf of Defendant Anson Construction Company, Inc. ("Anson"). Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure the Motion for Partial Summary Judgment is granted for the reasons set forth herein.

**FACTS**

Having reviewed the deposition transcripts and documents provided by the parties, all of which have been placed into the record, the Court finds that there is not issue of material fact as the following:

1. SCE&G is a South Carolina Corporation organized and existing under the laws of the State of South Carolina.
2. Anson is a South Carolina Corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County.
3. In June of 2007, the City of Charleston ("the City") closed the Dock Street Theater ("the Theater") to begin an extensive renovation.
4. At that time, an electric transformer owned by SCE&G that served the Theater and several homes in the immediate area was located inside the Theater.
5. In the fall of 2007, SCE&G contacted Anson Construction Co., Inc. ("Anson") and requested a proposal to install a pre-cast concrete underground vault across the street from the Theater in

*ACM*

the sidewalk adjacent to French Huguenot Church ("the Church") so that SCE&G could relocate its transformer to that location.

6. On or about December 13, 2007, Anson sent SCE&G a Quotation to install the vault as more particularly described in said Quotation, which is hereby incorporated by reference herein verbatim and marked as Court's Exhibit 1.
7. Mr. Stuttzman testified in his deposition that he prepared the Quotation and that no one at SCE&G helped him prepare the Quotation. (Stuttzman Deposition July 18, 2012, p. 58, l. 25 - p. 59, l. 4.)
8. Paragraph 2 of the Quotation, stated "[t]his proposal is subject to execution of a non-modified AIA form or subcontractor approved equal."
9. On January 3, 2008, an itemized cost breakdown was added to the bottom of the Quotation.
10. On January 4, 2008, SCE&G signed the Quotation to agree as to the price set forth therein and that other documents would be forthcoming that would also govern the Parties' relationship.
11. Also on January 4, 2008, Anson received a Purchase Order from SCE&G. Said Purchase Order is hereby incorporated by reference herein verbatim and marked as Court's Exhibit 2.
12. The Purchase Order stated in pertinent part that "Anson Construction Company, Inc. ("Contractor") shall provide all labor, supervision, equipment and materials required to complete the installation of the concrete vault for the Dock Street Theater project (herein after "Work") for South Carolina Electric and Gas Company."
13. The Purchase Order further specifically provided that the work would be performed "in accordance with ...[SCE&G 's] General Terms and Conditions dated 02/28/2006...". Said General Terms and Conditions are hereby incorporated by reference herein verbatim and marked as Court's Exhibit 3.
14. Additionally, the Purchase Order stated that "The Work shall be performed at the Contractor's quoted Price indicated below and in Contractor's quotation dated December 11, 2007."
15. According to paragraph 1:09 of the General Terms and Conditions Anson agreed to protect the property of third parties from damage during its performance of the work contemplated by the Contract.
16. Pursuant to paragraph 1:26 of the General Terms and Conditions, Anson agreed to "save, defend, indemnify, and hold harmless [SCE&G] from any and all liabilities, claims, suits,

actions, proceedings, fines, penalties, forfeitures, losses, damages, and the cost and expenses incident thereto (including but not limited to costs of investigation, defense, settlement, and attorney's fees) arising directly or indirectly out of any act or failure to act on [Anson]'s part, or the part of any agent, servant, or subcontractor, of [Anson], whether independent or otherwise, in connection with the work undertaken under the Contract."

17. Paragraph 1:30 provides that "[SCE&G] and [Anson] shall be bound by this contract and its terms and conditions when Anson executes and returns the unaltered, purchase order acknowledgement or when [Anson] renders for [SCE&G] any of the services or delivers to [SCE&G] and of the items required herein."
18. Anson began work on the project on or about January 7, 2008 as contemplated in Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions.
19. The City of Charleston issued a stop work order on or about January 9, 2008.
20. Anson later submitted Invoices to SCE&G for the work it performed. Said Invoices reference the Purchase Order and are hereby incorporated by reference herein verbatim and marked as Court's Exhibit 4.
21. SCE&G paid Anson for the work it was able to perform as contemplated in Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions, and Anson accepted said payment without reservation of right.
22. Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions were all entered into about the same time.
23. Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions all relate to the same subject matter.
24. The provisions of Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions limit, explain, and/or otherwise affect the provisions of said documents.
25. When read together, Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions are unambiguous.
26. Mr. Stuttsman conceded in his deposition that the Purchase Order was generally part of the contract with SCE&G. (Stuttsman Deposition July 18, 2012, p. 75, ll. 19-25g.).
27. Mr. Stuttsman conceded in his deposition and acknowledges that he received the Purchase Order and General Terms and Conditions as part of the package of documents for the subject

- job. (Stuttsman Deposition July 18, 2012, p. 75 ll. 19-25c.).
28. The Anson Quotation was a bid for the work at the Theater, but it could not be the “subcontractor approved equal” described in Paragraph 2 of the same document.
  29. Anson did not sign the Quotation, the Purchase Order, or the General Terms and Conditions.
  30. The pleadings, depositions, answers to interrogatories, and admissions on file, Court Exhibits to this Order, together with any affidavits, show that there is no genuine issue as to any material fact with regards to the contractual terms between the parties.
  31. Defendant did not come forward with specific facts showing that evidence exists to support its position, and that there is a genuine issue for trial with regard to the contractual terms between the parties.
  32. The material facts as to the contractual terms are not in dispute.

#### CONCLUSIONS OF LAW

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33. This Court has personal jurisdiction over the Parties, subject matter jurisdiction over this action, and venue is proper in Charleston County, South Carolina.
  34. This Court viewed all evidence in the light most favorable to Anson.
  35. The construction of an unambiguous written contract is a question of law for the court. *J.T.M. Co. v. Vane*, 323 S.E.2d 794 (S.C. Ct. App.1984).
  36. Where one construction makes the provision unusual or extraordinary and another construction which is equally consistent with the language employed would make it reasonable, fair and just, the latter construction must prevail. *Farr v. Duke Power*, 218 S.E.2d 431 (1975).
  37. The intent and purport of a written contract must be gathered from the contents of the entire agreement and not from any particular clause or portion of the contract. *Bruce v. Blalock*, 127 S.E.2d 439 (1962)
  38. In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties. *Superior Automobile Insurance Co. v. Maners*, 199 S.E.2d 719 (1973); *Farr v. Duke Power*, 218 S.E.2d 431 (1975).
  39. When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense. *Warner v. Weader*, 311 S.E.2d 78, 79 (1983).

40. Extrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible. *Superior Automobile Insurance Co. v. Maners*, 199 S.E.2d 719 (1973).
41. It is not necessary, in order to give validity to a contract, that it should be signed because it is sufficient if it is accepted, held, and acted upon by the Parties. *Peddler, Inc. v. Rikard*, 221 S.E.2d 115 (S.C. 1975).
42. The fact that one of the parties has signed the contract does not require that the other party should do likewise. *Gladden v. Keistler*, 140 S.E. 161 (S.C. 1927); *Bulwinkle v. Cramer*, 3 S.E. 776 (S.C. 1887).
43. A written contract, which is not required to be in writing, is valid upon acquiescence to it. *Id.*
44. Acceptance of a contract by assenting to its terms, holding it and acting upon it, is the equivalent to a formal execution. *Id.*
45. When a party accepts and adopts a written contract, even though it is not signed, it is deemed to have assented to the contract's terms and conditions and to be bound by them. *Id.*
46. Where instruments entered into by the same parties at different times relate to the same subject matter, the instruments will be construed together to determine the entire agreement between the parties. *Wilbur Smith & Associates v. National Bank of South Carolina*, 263 S.E.2d 643 (S.C. 1980).
47. If the provisions of one instrument limit, explain, or otherwise affect the provisions of the other, they will be given effect to accomplish the entire agreement between the parties. *Id.*
48. Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. *Southern Ry. Co. v. Springs Mills, Inc.*, 625 F. 2d 496 (4th Cir. 1980) (applying South Carolina law); *Costas v. First Fed. Sav. & Loan Ass'n*, 321 S. E. 2d 51 (S.C. 1984). *Toomer v. Norfolk Southern Ry. Co.*, 544 S.E.2d 634 (S.C. Ct. App. 2001)..
49. Contractual indemnity involves a transfer of risk for consideration, and the contract itself establishes the relationship between the parties. *Rock Hill Telephone Co., Inc. v. Globe Communications, Inc.*, 611 S.E.2d 235 (S.C. 2005).
50. Even in the light most favorable to Anson, there is no genuine material issue of fact as to what documents make up the contract between SCE&G and Anson.
51. Although Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and

Conditions were entered into at different times, these documents relate to the same subject matter, and as such, these documents should be construed together to determine the entire agreement between the parties.

52. The Parties performed obligations under Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions.
53. Anson requested and accepted payment pursuant to Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions.
54. Anson has argued that the sum and substance of its agreement with SCE&G is contained in the Quotation, but such an interpretation is extraordinary and not supported by a plain reading of the terms of the Quotation
55. If the Court were to adopt Anson's reading of the Quotation, the Court would be required to give no effect to paragraph 2 of that document.
56. The only reasonable interpretation of the Quotation which takes into account all of the terms of that document is that paragraph 2 of the Quotation referred to the Purchase Order which clearly and unequivocally incorporates the Terms and Conditions, which in turn clearly provides for indemnity from Anson in favor of SCE&G.
57. The terms and provisions of these documents, which include a valid indemnification clause, bind Anson to indemnify SCE&G an amount of money to be determined at the trial of this matter including, but not limited to, what SCE&G spent remediating damages Anson caused, defending the prior lawsuit, settling the prior lawsuit, and pursuing its claims against Anson in this lawsuit because although Anson did not sign the Purchase Order, it assented to its terms, held it, and acted upon it thereby binding it as if it was formally executed.
58. Therefore, SCE&G is entitled to an Order of Partial Summary Judgment in its favor that Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions make up the Parties' contract, and that Anson is liable to SCE&G in an amount to be determined at the trial of this matter.

Accordingly, based on the foregoing it is:

ORDERED, that the Plaintiff's Motion for Partial Summary Judgment is granted in so much as this Court has concluded as a matter of fact and a matter of law that Defendant is contractually obligated to indemnify Plaintiff for damages to be determined at a trial of this matter.

AND IT IS SO ORDERED.

*J. C. Nicholson Jr.*  
The Honorable J. C. Nicholson, Jr  
Presiding Judge

23 day of JULY, 2013  
Charleston, South Carolina

IT BEGINS A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P. & G.S.  
*Julie J. Armstrong*  
DEPUTY CLERK