

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Elite Construction, Inc.,)

Plaintiff,)

vs.)

Doris E. Tummillo and Georgia)
Bank and Trust Company of)
Augusta,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CA No. 2009-CP-02-958

ORDER ON MOTION

STATE OF SOUTH CAROLINA
TO AMEND OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

RECEIVED

JUL 25 2013

JUN 24 2013

SC Court of Appeals


C.C.P. & G. A., Aiken County, S.C.

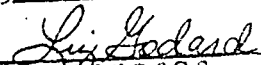
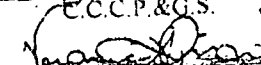
Deputy Clerk

After entry of judgment in favor of the plaintiff by Order dated September 5, 2012, Defendant, Doris E. Tummillo, [hereafter sometimes referred to as "Tummillo"] timely filed a Motion to Amend Judgment. While Tummillo filed her Motion pursuant to Rule 52(b), South Carolina Rules of Civil Procedure, I will also consider it pursuant to Rule 59(e). For the reasons set forth below, however, I deny the motion.

As part of her Motion to Amend Judgment Tummillo requests that the judgment issued by this Court be altered or amended in the following respects. First, she argues that the amount of the Plaintiff's judgment should be reduced to reflect a monetary credit for the number of finished stalls in the barn which fail to meet the size requirements set forth in the Parties' contract. Second, Tummillo urges that the judgment should be amended to reflect that the delay in completing the barn is attributable to the Plaintiff, thereby allowing her to recover under her counterclaim. Finally, Tummillo contends that this Court erred in allowing the Plaintiff to supplement the record for this matter with respect to recovery of attorney's fees.

A. Stall Size. Plaintiff agreed to construct "12 by 12" stalls for Tummillo. The testimony of certain witnesses, including the Plaintiff's expert witness, which I find to me more credible than conflicting evidence of other witnesses, shows that the term "12 by 12", as used in the construction and equestrian industry, does not refer to actual measurements, but rather to

1


FILED 6:24 2013

C.C.P. & G.S.

Deputy Clerk

nominal dimensions. The term "12 by 12" is used to describe stalls of an approximate, but not exact, size. While it is undisputed that a number of the stalls constructed by the Plaintiff do not actually measure "12 feet by 12 feet" there is nothing in the Parties' written agreement which sets forth a requirement that the stalls be so precisely constructed.

B. Timely completion. The written agreement did not contain a deadline for the project's completion. As noted in my September 5, 2012 Order, in the absence of anything to the contrary, the law implies that the agreement should be completed within a reasonable period of time.

The evidence taken as a whole indicates that the Plaintiff was not able to commence construction of the barn until the building site was fully prepared and a building permit was obtained. Tummillo was responsible for satisfying these requirements, both of which were delayed to some degree. There is no credible evidence that would lead me to conclude that once construction commenced the Plaintiff failed to move forward deliberately and reasonably in its performance.

Further, Tummillo was unable to establish with credible evidence that she sustained any damages as a result of her claimed delay in completion of the project. From this Court's perspective her testimony, and the remaining evidence offered to support her claim for damages, fails to meet those legal standards set forth in the September 5, 2012 Order.

C. Attorneys Fees. There is no basis to grant Tummillo's request to disallow the Plaintiff's claims for attorney's fees, costs and expenses in this case. Having determined that the Plaintiff is entitled to recover attorney fees, costs and expenses this Court has the discretion to retain jurisdiction and allow additional submissions and evidence to support such a claim.

For the above stated reasons Tummillo's Motion to Amend Judgment is denied.

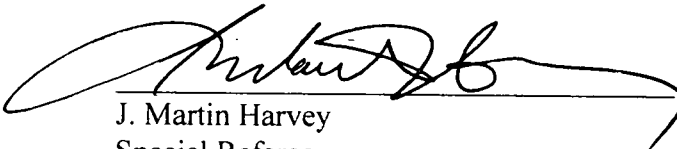
With respect to the Plaintiff's claim for attorney's fees, costs and expenses I have reviewed the affidavit of its Counsel, with attachments. The Parties previously agreed that neither Counsel would be required to submit or offer testimony to support or verify the amount claimed or reasonableness of any fees, costs and expenses.

Upon review of the affidavit and attachments submitted by Counsel for the Plaintiff I find

that the Plaintiff's claim for fees, costs and expenses in the amount of \$19,794.40 is fair and reasonable, is representative of the time and labor required to perform legal services such as those presented in this case and is representative of the fees, costs and expenses customarily charged for similar legal services in the venue where this action is pending. Now, therefore IT IS ORDERED, that the motion to Amend Judgment filed by Defendant, Doris Tummillo, be and hereby is, DENIED.

FURTHER ORDERED, that the Plaintiff is awarded attorney's fees, costs and expenses incurred in pursuit of this matter in the amount of \$19,794.40, and judgment is awarded and entered accordingly.

AND IT IS SO ORDERED.



J. Martin Harvey
Special Referee

Barnwell, South Carolina

Dated: June 17, 2013

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-02-958

ELITE CONSTRUCTION, INC.

DORIS E. TUMMILLO

PLAINTIFF(S)

GEORGIA BANK AND TRUST COMPANY OF AUGUSTA
DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

FILED 6.24 2013

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : MECHANIC'S LIEN FORECLOSURE

Liz Hodard
C.C.C.P.&G.S.
8:30am
Deputy Clerk

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
ELITE CONSTRUCTION INC.	DORIS E. TUMMILLO	\$99,998.50
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
4201 SHILOH CHURCH RD AIKEN SC TMS 101-00-02-002

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

Judge Code _____ Date June 17 2013

For Clerk of Court Office Use Only

This judgment was entered on **June 24, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **June 24, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Clarke W. McCants III PO Box 2881 Aiken, SC 298022881

James Samuel Murray PO Box 1495 Augusta, GA 309031495

Neal W. Dickert PO Box 1564 Augusta, GA 309031564

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by [Signature]

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

