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Feb 01 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Clifton Newman, Circuit Court Judge
Walton J. McLeod, IV, Circuit Court Judge

Unpublished Opinion No. 2024-UP-022
Submitted November 1, 2023 – Filed January 17, 2024

Appellate Case No.: 2020-001406

ARM Quality Builders LLC d/b/a, ARM Quality Builders..... Appellant.

v.

Joseph A. Golson and Lycia B. Golson and Branch Banking and Trust Company Respondents.

AND

Joseph A. Golson and Lycia B. Golson..... Third-Party Respondents.

v.

Ahmad Mazloom..... Third-Party Appellant.

PETITION FOR REHEARING

The undersigned, as counsel for the Appellant ARM Quality Builders LLC d/b/a ARM Quality Builders and Third-Party Appellant Ahmad Mazloom (hereinafter referred to as “Appellant”), respectfully requests the Court to reconsider its following ruling:

Ruling 1. Appellant respectfully submits that the Record on Appeal does not evidence any waiver by the Appellant as to the issue of timeliness of the mechanic’s lien. Transcript of the motion hearing dated September 10, 2018 which is in the Record on Appeal, Volume II,

beginning at page 434. Appellant would further assert that in Appellant's motion to reconsider Judge Newman's Order arising out of the hearing on September 10, 2018, that on page 8 of Appellant's Brief, Appellant indicates that on a motion application, it shall be in writing and shall state with particularity the grounds therefore and that would be the relief that the moving party could seek and only that. Respondent's motion specifically did not raise an issue of timeliness. See SC Rules of Civil Procedure Rule 7(b)(1).

Ruling 2. Appellant would respectively assert that this Court overlooked the question as to whether the issue with the service of Appellant's mechanic's lien being dismissed was due to a mere technicality and, therefore, no attorney's fees should be awarded. This argument is cited on page 9 of Appellant's Brief citing *EFCO v. Renaissance of Charleston Harbor, LLC*, 370 S.C. 612, 635 S.E.2d 922.

Appellant would respectfully submit that Court overlooked the issue of attorney's fees for dismissal of the mechanic's lien should be limited to those attorney's fees that were specifically related to the validity of the mechanic's lien and that document's validity. *Keeney's Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 553, 548 S.E.2d 900, 901 (Ct. App. 2001).

Appellant respectfully submits that the Court did not indicate whether the circuit court had complied with the need for specific findings of fact as to the six factors in determining attorney's fees. *Collins v. Collins*, 239 S.C. 170, 122 S.E.2d 1 (1961). This question was raised in Appellant's Brief.

Ruling 3 and Ruling 4. The Appellant would respectfully submit that the main evidence against Appellant on the question of extracontractual work costs and the ruling on fraud was testimony by subcontractors as to cash payments to the subcontractor and testimony of the Respondents. This evidence is outweighed by the documentary evidence presented by Appellant as to work costs, which included written notations in his check register as to cash payment to the

subcontractors, receipts signed by the subcontractors as to cash payments, and documentary invoices of actual work performed. Appellant's actions, denoted on page 19 of its Brief does not indicate someone who was scheming to fraud the Respondents as evidenced by the good faith assistance made by the Appellant to the Respondents. See *Conran v. Joe Jenkins Realty, Inc.*, 263 S.C. 332, 334, 210 S.E.2d 309, 310 (1974).

Ruling 5. The Appellant would respectfully submit that this Court failed to address the circuit court not utilizing the case commonly known as the "Gamble" as to the award of punitive damages. Citing *Scott v. Porter*, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000). The circuit court's Order states conclusions as to a scheme of willful and wonton and reckless conduct but does not give the factual narrative for that basis using the eight factors in the "Gamble" case.

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BY: 

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February 1, 2024

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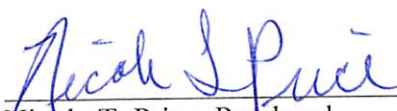
Ahmad Mazloom..... Third-Party Appellant.

PROOF OF SERVICE

I, Nicole T. Price, a paralegal with the law firm of DAVIS | FRAWLEY, LLC, do hereby certify that I have served the following with the foregoing **PETITION FOR REHEARING**, by electronic mail and depositing the same in the United States mail, with sufficient postage attached thereto, to them at the following address:

E. Wade Mullins, III, Esquire
Chelsea J. Clark, Esquire
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Attorneys for Respondent and Third-Party Respondents

on this 1st day of February, 2024 all in accordance with Rule 5 (b)(1) of the South Carolina Rules of Civil Procedure.



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February 1, 2024

VIA US MAIL AND ELECTRONIC MAIL

South Carolina Court of Appeals
Attn: The Honorable Jenny Abbott Kitchings
Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201


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RE: ARM Quality Builders, LLC, d/b/a ARM Quality Builders v. Joseph A. Golson and
Lycia B. Golson and Branch Banking and Trust Company
AND
Joseph A. Golson and Lycia B. Golson v. Ahmad Mazloom
Appellate Case No.: 2020-001406
Our File No.: 30909

Dear Ms. Kitchings:

Enclosed, please find an original of the Petition for Rehearing. I am enclosing with this letter the \$50.00 fee for the Motion. Please let me know if the Court requires anything further.

Sincerely,


Nicole T. Price
Paralegal

cc: E. Wade Mullins, III, Esquire
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