

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Knox McMahon
Circuit Judge

Case No.: 2011-CP-32-01369

RECEIVED

AUG 21 2013

SC Court of Appeals

Carolina Refrigeration Services, Inc.

Respondent

v.

Claude L. Leitzsey, Sr., Claude L.
Leitzsey, Jr., Lisa M. Leitzsey and
Branch Banking and Trust Company

Defendants

of whom

Claude L. Leitzsey, Sr., Claude L.
Leitzsey, Jr. and Lisa M. Leitzsey
are

Appellants

RETURN TO MOTION

Respondent Carolina Refrigeration Services, Inc. makes its return to Appellants' motion to strike certain items designated by Respondent to be included in the record on appeal as follows:

Respondent believes that the four items sought to be stricken from the record by Appellants are properly included in the record. This appeal is from an order holding Appellants in default in failing to answer a complaint to foreclosure a mechanic's lien.

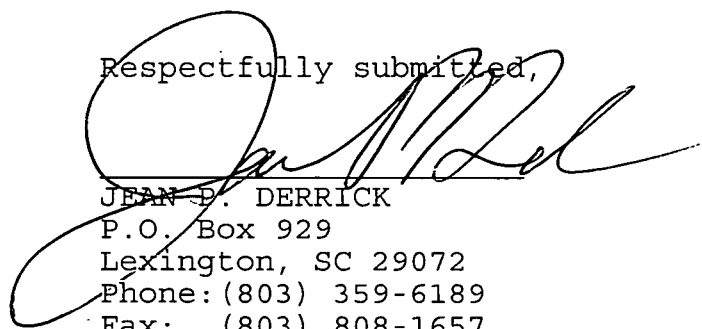
The proceedings before the lower court therefore have been relatively brief--two hearings have been held on the record at which each counsel has filed affidavits, and made extensive arguments of law and fact. During these hearings before Judge McMahon, the correspondence designated by Respondent to be included in the record was referenced. For example, item 11, sought to be stricken by Appellants, is an email from Respondent's counsel to Judge McMahon himself, copied of course to Appellants' counsel also. Specifically, this correspondence was referred to by counsel for Respondent in arguments to Judge McMahon on September 8, 2011 on page 6, when counsel was advising the court of her efforts to obtain payment from Appellants.

Attached are copies of the items sought to be stricken, which merely show repeated demands for payment by Respondent to Appellants.

The authenticity of these items is of course uncontested, and uncontestable. These items are included in the Record on Appeal solely in support of Respondent's Statement of Facts, and are not referred to in argument. Respondent believes these items are properly included in the Record on Appeal, and will assist this court by providing a concise history of the proceedings, insofar as necessary to give this Court an understanding of the appeal, without containing contested matters, pursuant to Appellate Rule 208 SCACR.

Therefore, Respondent would respectfully request that this court deny Appellants' motion.

Respectfully submitted,



JEAN P. DERRICK

P.O. Box 929

Lexington, SC 29072

Phone: (803) 359-6189

Fax: (803) 808-1657

Attorney for Respondent

August 19, 2013

LAW OFFICES OF

Jean Perrin Derrick, LLC

ATTORNEY AT LAW

205 WEST MAIN STREET
P.O. BOX 929
LEXINGTON, SOUTH CAROLINA 29072

TELEPHONE
(803) 359-6189
FAX NO. 808-1657
jderrick@windstream.net

July 13, 2011

Via Fax: 765-0085
Gerald D. Jowers, Esq.
1802 Sumter Street
Columbia, SC 29201

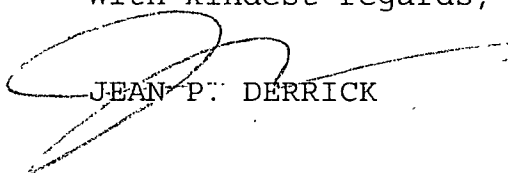
Re: Carolina Refrigeration Services, Inc. vs. BB&T

Dear Gerald:

Enclosed please find a email between Chris Hutnyak and Claude Leitzsey, on February 4, 2011, which is 48 hours after you say that the owners received notice of the default of the contractor Steve Baudo, at which time there remained to be paid on the contract price approximately \$53,000. I am also enclosing copies of correspondence I wrote the next month, again notifying the owner of the debt.

I think the owners have notice of the \$16,100 bill of Carolina Refrigeration, and I think they need to pay the bill, as well as the attorney's fees and filing fees incurred to date to collect this just debt.

With kindest regards,


JEAN P. DERRICK

JPD/sss
Enclosure
cc: Mr. Chris Hutnyak, w/Encl.

carolinarefrigeration

From: LexClaude@Hotmail.com
Sent: Friday, February 04, 2011 2:13 PM
To: carolinarefrigeration
Subject: Re: hello

Chris,
Please call me at 803-403-4626

Claude Leitzsey

----- Reply message -----

From: "carolinarefrigeration" <carolinarefrigeration@windstream.net>
Date: Fri, Feb 4, 2011 1:46 pm
Subject: hello
To: <lexclaude@hotmail.com>

Claude,

I hope this e-mail finds you well. I am the Hvac contractor on your house and wanted to touch base with you regarding the job. I was wondering if Baudo Homes has received the draw for the hvac. I have talked with several other contractors and the picture I am getting is not good. Likewise, I had Steve build my house and have found out that he has not paid the electricians or the plumbers. We will be finishing your house within the next several weeks, just the start up is left. Thank you for your time and I look forward to hearing from you.

God bless,

Chris

Carolina Refrigeration Services Inc.

LAW OFFICES OF

Jean Perrin Derrick, LLC

ATTORNEY AT LAW

205 WEST MAIN STREET
P.O. BOX 929
LEXINGTON, SOUTH CAROLINA 29072

TELEPHONE
(803) 359-1189
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March 24, 2011

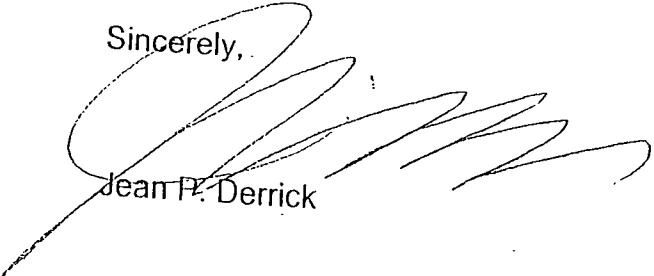
Claude Leitzsey
336 Calypso Road
Gilbert, SC 29054

RE: Carolina Refrigeration Services, Inc. vs. Baudo & Associates Home
Builders, Inc. and Claude Leitzsey

Dear Mr. Leitzsey:

I represent Carolina Refrigeration Services, Inc., who is owed \$16,100 in connection with the HVAC system installed on the property you own at 1588 Spence Island Drive, Lexington, SC. The amount owed remains due and unpaid, and I am in the process of filing a mechanic's lien. This letter constitutes notice to you of the unpaid balance owed to Carolina Refrigeration Services, Inc. I would appreciate your representative contacting me about this.

Sincerely,


Jean P. Derrick

JPD/shl

cc: Chris Hutnyak
Carolina Refrigeration Services, Inc.

LAW OFFICES OF

Jean Perrin Derrick, LLC

ATTORNEY AT LAW

205 WEST MAIN STREET
P.O. BOX 929
LEXINGTON, SOUTH CAROLINA 29072

TELEPHONE
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March 24, 2011

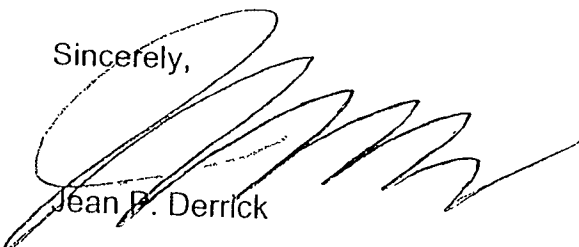
Claude Leitzsey
1588 Spence Island Drive
Lexington, SC 29072

RE: Carolina Refrigeration Services, Inc. vs. Baudo & Associates Home
Builders, Inc. and Claude Leitzsey

Dear Mr. Leitzsey:

I represent Carolina Refrigeration Services, Inc., who is owed \$16,100 in connection with the HVAC system installed on the property you own at 1588 Spence Island Drive, Lexington, SC. The amount owed remains due and unpaid, and I am in the process of filing a mechanic's lien. This letter constitutes notice to you of the unpaid balance owed to Carolina Refrigeration Services, Inc. I would appreciate your representative contacting me about this.

Sincerely,



Jean P. Derrick

JPD/shl

cc: Chris Hutnyak
Carolina Refrigeration Services, Inc.

Sandra Shaw

To: kmcmahonj@sccourts.org; kmcmahonlc@sccourts.org
Cc: LCOMER@LEX-CO.COM; Gerald Jowers
Attachments: image659.pdf; image661.pdf

LAW OFFICES OF

Jean Perrin Derrick, LLC

ATTORNEY AT LAW

205 West Main Street
P.O. BOX 929
Lexington, South Carolina 29072

Telephone
(803) 359-6189
Fax No.: 808-1657
Email: jderrick@windstream.net

January 20, 2012

Hon. R. Knox McMahon

Re: Carolina Refrigeration Services, Inc. vs. Leitzsey, et.al.
2011-CP-32-1369

Dear Judge McMahon:

Attached please find a Motion to inspect the computers of Claude L. Leitzsey, Jr. and Lisa M. Leitzsey, and Kenneth E. Ormand, Jr. Your Honor will recall you earlier held Defendants in default. However, Defendants have filed a 59(e) Motion, and attached to it a new affidavit which contains new allegations, regarding the inspection of computers solely within the control of Defendants or their attorney.

I called defense attorney Gerald Jowers and requested that my computer expert, William Boling, have access to these computers, but Mr. Jowers declined. Thus the Motion.

I would respectfully request that your Honor hear and determine my present Motion for inspection, prior to entertaining arguments on the 59(e) Motion. The State Supreme Court very timely this week, Graham Law Firm vs. Mohamed Makawi (Opinion attached) opined that it is proper to allow the parties to conduct discovery on these pretrial issues.

Thank you for your Honor's consideration of this request.

Sincerely,
JEAN P. DERRICK

JPD/sss

Attachment

Cc: Lisa Comer

Gerald G. Jowers, Esq., w/Attachment

Kenneth E. Ormand, Jr., Esq., w/Attachment

Mr. Christopher Hutnyak, w/Attachment

GERALD D. JOWERS
Attorney at Law
1802 Sumter Street
Columbia, South Carolina 29201
Telephone (803) 765-9620
Facsimile (803) 765-0085

February 16, 2012

VIA FACSIMILE

Jean Perrin Derrick, Esq.
205 West Main Street
Lexington, SC

Re: Carolina Refrigeration v Leitzsey

Dear Jean:

This is in response to your motion and to your telephone conversation.

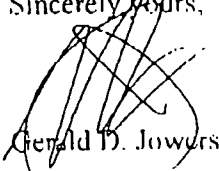
I will consent to your computer technician examining computers at the Office of Kenneth Ormand. The stipulations are these:

1. The time must be convenient to Mr. Ormand and me.
2. I may choose to be present.
3. Mr. Ormand may have his own computer tech present.
4. Copies will be made only of documents pertinent to this case. Your computer tech will sign a confidentiality agreement prepared by Mr. Ormand.

I also will consent to you having your tech remotely access Mr. Leitzsey's Hotmail account. I will enter the password and he can review the material that Ryan Brown reviewed and found for me as stated in his affidavit.

If the forgoing is acceptable, please cancel the hearing.

Sincerely yours,



Gerald D. Jowers

GDJ/mr

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Knox McMahon
Circuit Judge

Case No.: 2011-CP-32-01369

Carolina Refrigeration Services, Inc.

Respondent

v.

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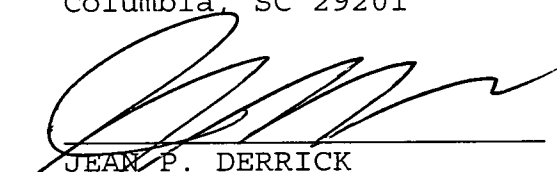
Claude L. Leitzsey, Sr., Claude L.
Leitzsey, Jr. and Lisa M. Leitzsey
are

Appellants

CERTIFICATE OF SERVICE

I, Jean P. Derrick, attorney for Respondent, hereby certify that I served, upon the person named below at the address given, by placing in the United States mail, with proper postage affixed, a copy of the Return to Motion dated August 19, 2013.

Gerald D. Jowers, Esq.
1802 Sumter Street
Columbia, SC 29201



JEAN P. DERRICK
August 19, 2013

LAW OFFICES OF

Jean Perrin Derrick, LLC

ATTORNEY AT LAW

205 WEST MAIN STREET
P.O. BOX 929
LEXINGTON, SOUTH CAROLINA 29072

TELEPHONE
(803) 359-6189
FAX NO. 808-1657
jderrick@windstream.net

August 19, 2013

Jenny Abbott Kitchens, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

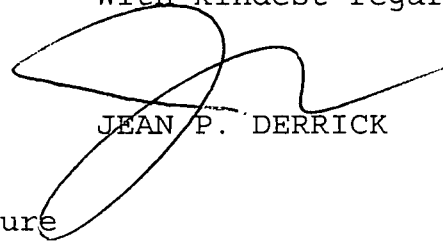
Re: Carolina Refrigeration vs. Claude Leitzsey
Appellate Case No. 2013-000002

Dear Clerk Kitchens:

Enclosed please find the original and 6 copies of Respondent's Return to Appellants' Motion to Strike, together with a Certificate of Service upon opposing counsel.

Thank you very much for your courtesy in allowing me an extension in which to file this Return.

With kindest regards,



JEAN P. DERRICK

JPD/sss
Enclosures
cc: Gerald Jowers, Esq., w/Enclosure
Mr. Chris Hutnyak, w/Enclosure

RECEIVED

AUG 21 2013

SC Court of Appeals