

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

JUL 08 2024  
SC Court of Appeals

Honorable William H. Seals, Jr., Circuit Court Judge

Case No. 2023-CP-26-00053

Paint Design, LLC, .....Appellant,

v.

Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.  
and RNR Construction, LLC, .....Respondents.

---

**INITIAL BRIEF OF APPELLANT**

---

Howell V. Bellamy, III (SC Bar # 66575)  
[hbellamyiii@bellamylaw.com](mailto:hbellamyiii@bellamylaw.com)  
Bellamy, Rutenberg, Copeland,  
Epps, Gravely & Bowers, P.A.  
1000 29th Ave. N.  
Myrtle Beach, SC 29577  
843-448-2400 Phone  
843-448-3022 Facsimile

***ATTORNEY FOR APPELLANT***

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES.....ii**  
**STATEMENT OF THE ISSUES ON APPEAL.....4**  
**STATEMENT OF THE CASE.....4, 5**  
**STANDARD OF REVIEW.....5, 6**  
**STATEMENT OF FACTS.....6, 7**  
**ARGUMENT.....8, 9, 10, 11, 12, 13, 14, 15, 16**  
**CONCLUSION.....17**

- I. THE COURT ERRED TO THE EXTENT IT FOUND THAT GRANTING APPELLANT’S MOTION TO AMEND ITS COMPLAINT, PURSUANT TO THE CRITERIA OF RULE 15(a) AND THE APPLICABLE CASE LAW, PREJUDICED THE RESPONDENT WESTGATE.
- II. THE COURT ERRED TO THE EXTENT IT FOUND THAT THE APPELLANT’S CAUSE OF ACTION FOR QUANTUM MERUIT FAILS AS A MATTER OF LAW.
- III. THE COURT ERRED IN ITS INTERPRETATION AND RELIANCE UPON A COURT OF APPEALS OPINION TO THE EXTENT THAT THE OPINION IS CONTRARY TO SUPREME COURT OPINIONS.
- IV. THE COURT ERRED IN REQUIRING THE APPELLANT TO PROCEED ONLY ON ITS BREACH OF CONTRACT ACTION AGAINST RNR RATHER THAN PERMITTING AN ELECTION OF REMEDIES AT THE TIME OF THE TRIAL.

**TABLE OF AUTHORITIES**

**Cases**

Cap. Corp. of Am., Inc. v. Teays River Invs., LLC, No. CV 6:11-2796-HMH, 2012 WL 13006190 (D.S.C. Feb. 1, 2012) .....12

Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259, 440 S.E.2d 129 (1994) ..... 14, 12

Daniels v. City of Goose Creek, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (1993) .....13, 15

Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 703 S.E.2d 221 (2010).....10, 12, 14

Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962) .....6

Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 368 S.E.2d 462 (1988) .....10, 11, 14

Gillins v. Celadon Trucking Servs., Inc., No. 2:16-CV-00795-DCN, 2016 WL 4455018 (D.S.C. Aug. 24, 2016).....12

Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235-236,754 S.E.2d 714, 719-720 (Ct. App. 2014)..... 8

JASDIP Properties SC, LLC v. Estate of Richardson, 395 S.C. 633, 720 S.E.2d 485 (Ct. App. 2011) .....12

Johnson v. Oroweat Foods Co., 785 F.2d 503 (4th Cir. 1986) ..... 8

Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005).....6

Patton v. Miller, 420 S.C. 471, 804 S.E.2d 252 (2017), reh'g denied (Sept. 27, 2017).....6, 8, 9, 10, 11

Pioneer Civ. Constr., LLC v. Ingevity Arkansas, LLC, No. 1:22-CV-1034, 2023 WL 2353146 (W.D. Ark. Mar. 3, 2023) (citing Franke Assocs. by Simmons, 368 S.E.2d at 464-65) .....14

Pool v. Pool, 329 S.C. 324, 328-29, 494 S.E.2d 820, 822 (1998).....8

Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 826 S.E.2d 585 (2019) .....10, 11

Soil & Material Eng’rs, Inc. v. Folly Assocs., 293 S.C. 498, 361 S.E.2d 779 (Ct. App. 1987) ....8

South Carolina State Highway Dept. v. Rural Land Co., 250 S.C. 12, 156 S.E.2d 333 (1967) ....8

Stanley v. Kirkpatrick, 357 S.C. 169, 592 S.E.2d 296 (2004) ..... 8

Tanner v. Florence Cty. Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999) ..... 6

Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 734 S.E.2d 177 (Ct. App. 2012).....12, 13, 14, 15

**Rules**

Rule 8, SCRCP.....11

Rule 15, SCRCP.....5, 6, 8, 9

Rule 52 SCRCP.....5

Rule 59 SCRCP.....5

### **STATEMENT OF THE ISSUES ON APPEAL**

- I. DID THE COURT ERR TO THE EXTENT IT FOUND THAT GRANTING APPELLANT’S MOTION TO AMEND ITS COMPLAINT, PURSUANT TO THE CRITERIA OF RULE 15(a) AND THE APPLICABLE CASE LAW, PREJUDICED RESPONDENT WESTGATE?
- II. DID THE COURT ERR TO THE EXTENT IT FOUND THAT THE APPELLANT’S CAUSE OF ACTION FOR QUANTUM MERUIT FAILS AS A MATTER OF LAW?
- III. DID THE COURT ERR IN ITS INTERPRETATION AND RELIANCE UPON A COURT OF APPEALS OPINION TO THE EXTENT THAT THE OPINION IS CONTRARY TO SUPREME COURT OPINIONS?
- IV. DID THE COURT ERR IN REQUIRING APPELLANT TO PROCEED ONLY ON ITS BREACH OF CONTRACT ACTION AGAINST RNR RATHER THAN PERMITTING AN ELECTION OF REMEDIES AT THE TIME OF THE TRIAL?

### **STATEMENT OF THE CASE**

Appellant brought this action on January 5, 2023. Appellant then filed an Amended Complaint on March 3, 2023. Respondent Westgate subsequently brought a Motion to Dismiss. In its Motion to Dismiss, Respondent Westgate argued that Appellant’s cause of action for Quantum Meruit must be dismissed because it was not pled in the alternative. The Motion to Dismiss was heard by the Honorable William H. Seals, Jr. (“the Court”) on May 9, 2023. On May 10, 2023, the Court issued a Form 4 Order granting Westgate’s Motion to Dismiss.

On June 8, 2023, the Court entered a more detailed Order which dismissed Appellant’s Quantum Meruit cause of action against Respondent Westgate without prejudice. The Court’s Order based the dismissal of this claim on Respondent’s argument that Appellant did not plead its Quantum Meruit cause of action in the alternative. On May 22, 2023, the Appellant filed a Motion to Amend its Complaint to plead its Quantum Meruit cause of action in the alternative.

On August 14, 2023, the Honorable William H. Seals, Jr. heard Appellant's Motion to Amend its Complaint to plead its Quantum Meruit cause of action in the alternative and took the matter under advisement.

On August 15, 2023, the Honorable William H. Seals, Jr. issued a Form 4 Order denying Appellant's Motion to Alter and/or Amend its Complaint to plead its Quantum Meruit cause of action in the alternative.

On August 24, 2023, the Appellant filed a Motion for Reconsideration, pursuant to Rules 59(e) and 52, SCRCF, of the Court's Form 4 Order denying Appellant's Motion to Alter and/or Amend its Amended Complaint to plead its Quantum Meruit cause of action in the alternative.

On September 27, 2023, the Honorable William H. Seals, Jr. issued a more detailed Order denying the Appellant's Motion to Amend its Complaint to plead its Quantum Meruit cause of action in the alternative.

On October 5, 2023, the Appellant filed a Motion for Reconsideration, pursuant to Rules 59(e) and 52, SCRCF, of the Court's more detailed Order denying Appellant's Motion to Alter and/or Amend its Amended Complaint to plead its Quantum Meruit cause of action in the alternative.

On January 3, 2024, the Honorable William H. Seals, Jr. denied Appellant's Motion for Reconsideration filed on October 5, 2023 without holding a hearing.

#### **STANDARD OF REVIEW**

A party may amend its pleading by leave of court, which shall be freely given when justice so requires and does not prejudice any other party. Rule 15, SCRCF. Rule 15(a) sets forth the criteria for amendment of pleadings. In addressing a motion to amend the pleadings, the Court is required to consider the standard of Rule 15(a) and not its perception of the merits of an amended claim. Patton v. Miller, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017), reh'g denied (Sept. 27,

2017) (citing Tanner v. Florence Cty. Treasurer, 336 S.C. 552, 558-60, 521 S.E.2d 153, 156-57 (1999). "[Rule 15] strongly favors amendments, and the court is encouraged to freely grant leave to amend." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005). "Rule 15(a) is substantially the same as the Federal Rule, Rule 15(a), SCRPC notes, and the Supreme Court of the United States has referred to the Rule's 'freely given' provision as a 'mandate' that 'is to be heeded.'" Patton v. Miller, 420 S.C. at 490, 804 S.E.2d at 262 (quoting Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962)).

### **STATEMENT OF FACTS**

On or about October 25, 2021, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd. ("Project Owner" or "Westgate") entered a prime contract with Defendant RNR Construction, LLC ("General Contractor" or "RNR Construction") for the purpose of hiring said general contractor to furnish labor, materials, equipment and/or other services to the project. On or about October 22, 2021, RNR Construction entered a subcontract with the Appellant Paint Design as permitted by the Project Owner Westgate. Specifically, Paint Design agreed to furnish labor, materials, equipment and/or other services to the project in consideration for the sum of One Hundred Twenty-Six Thousand Nine Hundred Dollars and 00/100ths (\$126,900.00). In accordance with the above, Appellant Paint Design was entitled to be paid within ten (10) days following general contractor's receipt of its request for payment on or before 25<sup>th</sup> of each calendar month. Pursuant to the subcontract agreement with RNR Construction, Appellant Paint Design agreed to provide the following scope of work which included:

- a. Paint 24 rooms on the 2<sup>nd</sup> floor being converted to guest rooms;
- b. Texture walls of 24 rooms on the 2<sup>nd</sup> floor being converted to guest rooms;
- c. Paint 8 rooms between the 3<sup>rd</sup> and 6<sup>th</sup> floors being converted to guest rooms; and
- d. Texture walls of 8 rooms between the 3<sup>rd</sup> and 6<sup>th</sup> floors being converted to guest rooms.

At all times pertinent hereto, Respondent Westgate had actual knowledge of the improvements being made to the project property by Appellant Paint Design, its agents, employees, and representatives, and consented to such improvements being made pursuant to the terms of the subcontract between Paint Design and RNR Construction. At no time did Respondent Westgate object to Appellant Paint Design's scope of work.

Between the dates of January 18, 2022, through May 7, 2022, Appellant Paint Design at the special insistence and request of RNR Construction and including the project owner, furnished equipment, services and labor and/or materials for painting which were actually used in the construction, alteration of improvements of a structure situated on, or otherwise improving the real property.

On June 23, 2022, Appellant Paint Design provided notice to Respondent Westgate with respect to the equipment, services, and labor and/or materials furnished by it including their reasonable value in the principal amount of Seventy-Six Thousand Nine Hundred Dollars and 00/100ths (\$76,900.00). The record indicates that Appellant Paint Design's notice, mechanic's lien, and certificate were filed on July 8, 2022, in Lien Book 284, at page 1382 in the Office of the Register of Deeds for Horry County, South Carolina, and subsequently filed an Amended Notice and Certificate of Mechanics Lien in Lien Book 284, at page 1678 in the Office of the Register of Deeds for Horry County, South Carolina, on July 19, 2022, being within ninety (90) days of the last performance of services and/or delivery of labor and/or materials. However, Appellant Paint Design's Mechanics Lien enforcement action is time barred because it failed to foreclose the lien within six months after it had ceased to furnish labor and materials to the project on May 7, 2022. Considering the above, Appellant Paint Design has abandoned its mechanic's lien foreclosure action in favor of pursuing its quantum meruit claim against Respondent Westgate.

## ARGUMENT

### **I. THE COURT ERRED TO THE EXTENT IT FOUND THAT GRANTING APPELLANT’S MOTION TO AMEND ITS COMPLAINT, PURSUANT TO THE CRITERIA OF RULE 15(A) AND THE APPLICABLE CASE LAW, PREJUDICED RESPONDENT WESTGATE.**

“The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” Pool v. Pool, 329 S.C. 324, 328-29, 494 S.E.2d 820, 822 (1998) (citing Soil & Material Eng’rs, Inc. v. Folly Assocs., 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987)). Courts have found that such prejudice exists when a proposed amendment is offered shortly before or during trial. See Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235-236, 754 S.E.2d 714, 719-720 (Ct. App. 2014); see also Johnson v. Oroweat Foods Co., 785 F.2d 503, 510 (4th Cir. 1986) (finding prejudice can result when a proposed amendment is offered shortly before or during trial and raises a new legal theory that would require gathering and analysis of facts not already considered by opposition). Otherwise, amendments should be allowed to promote justice. See generally South Carolina State Highway Dept, v. Rural Land Co., 250 S.C. 12, 22-23, 156 S.E.2d 333, 338 (1967).

Respondent Westgate has not and cannot establish prejudice under Rule 15, SCRPC, which is its burden to prove. Stanley v. Kirkpatrick, 357 S.C. 169, 175, 592 S.E.2d 296, 298 (2004) (“The burden is ... on the party opposing the motion to show how it is prejudiced.”); See Patton v. Miller, 420 S.C. at 493, 804 S.E.2d at 263 (holding the circuit court erred in not allowing the amendment because the record contained no basis for a conclusion the Respondents would have been prejudiced by allowing the amendment). The type of prejudice contemplated by Rule 15, SCRPC,

is not that Respondent Westgate must continue to defend a claim with which it disagrees.<sup>1</sup> See Patton v. Miller, 420 S.C. at 491, 804 S.E.2d at 262-263 (“The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim”). “Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.” Patton v. Miller, 420 S.C. at 491, 804 S.E.2d at 262-263.

Here, the Appellant simply seeks to amend its Complaint so that it may plead its Quantum Meruit cause of action in the alternative as instructed by the Court. This claim was already included in the Appellant’s original pleading so Westgate will not suffer any prejudice. Respondent Westgate claims that it will be prejudiced by having to spend money to defend this cause of action. As set forth above, this is not the type of prejudice envisioned by Rule 15, SCRCP. Since no prejudice exists in this case which would preclude the amendment, the Court should have granted the Appellant’s amendment for the reasons set forth above.

Furthermore, the Court’s Order did not analyze whether Respondent Westgate would be prejudiced by the amendment. For example, in Patton v. Miller, 420 S.C. at 490, 804 S.E.2d at 262, a similar matter was addressed, and the Supreme Court analyzed the trial court’s decision to deny a Motion to Amend. In its opinion, the Supreme Court explained:

In this case, the circuit court never considered Rule 15(a). While we have consistently held that a circuit court’s ruling on a Rule 15 motion to amend is within its discretion, a court’s failure to exercise its discretion is itself an abuse of discretion. State v. Hawes, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (quoting Samples v. Mitchell, 329 S.C. 105, 114, 495 S.E.2d 213, 218 (Ct. App. 1997)). Under Rule 15(a), the circuit court should have considered whether the

---

<sup>1</sup> See (Westgate’s Memorandum in Opposition to the Appellants Notice of Motion and Motion to Amend its Amended Complaint, p. 4, 4, last sentence: “Westgate will be prejudiced by the fact that it must spend money to defend a claim that necessarily fails as a matter of law”). (Emphasis added).

Respondents were prejudiced by the amendment, or whether there was some other substantial reason to deny it. Id. at 262.

Similarly, in this case, the Court has not conducted an analysis under Rule 15(a) to determine whether Respondent Westgate is prejudiced by the Amendment. This may be due to the fact that in its Memorandum in Opposition to Appellant's Previous Motion to Reconsider, Respondent Westgate conceded that it would not suffer any prejudice from the amendment. Just as in Patton, the record contains no basis for a finding of prejudice under Rule 15(a) because Respondent Westgate has conceded the issue and this Court has not conducted a prejudice analysis. See Id. The Supreme Court in Patton ultimately held that "Because the record contains no basis for a conclusion the Respondents would have been prejudiced by allowing Patton to amend her complaint, we find the circuit court erred in not allowing the amendment." Id. at 263. Similarly, in this matter, the Court erred in not allowing Appellant's amendment.

Based upon the foregoing reasons, the Court erred in denying the Appellant's motion to amend its Complaint to the extent it found Respondent Westgate was prejudiced by the proposed amendment. Accordingly, the Court should have granted Appellant's motion to amend its Complaint to plead its Quantum Meruit cause of action in the alternative as instructed by the Court.

## **II. THE COURT ERRED TO THE EXTENT IT FOUND THAT THE APPELLANT'S CAUSE OF ACTION FOR QUANTUM MERUIT FAILS AS A MATTER OF LAW.**

While it is not appropriate to address the merits of the Amended Complaint at this time,<sup>2</sup> the Quantum Meruit claim does not fail as a matter of law. The Court's findings to this effect do not accurately interpret the law in South Carolina. The facts and law that the Court rely upon are

---

<sup>2</sup> See Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 183, 826 S.E.2d 585, 589 (2019).

distinguishable from the case at hand and incongruous with the law as set forth by the Supreme Court of South Carolina.

The Supreme Court has held that breach of contract claims and quantum meruit claims can be alternative rather than inconsistent remedies. See Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988) (“[W]e find in this instance that the breach of contract claim and quantum meruit claim are alternative rather than inconsistent remedies.”); Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010) (“While the circuit court did find there was a contract between the two parties in this action, it never awarded damages because of a breach of that contract. Rather, the circuit court chose the theory of quantum meruit as an alternate remedy”). The Circuit Court followed this holding in its Order dated September 27, 2023 dismissing Appellant’s Quantum Meruit Claim without prejudice, stating “courts allow quantum meruit claims to continue if pled in the alternative to a claim for breach of contract.” That is precisely what Appellant seeks to do in its Amended Complaint.

Since Respondent Westgate has conceded it would not suffer prejudice, the only basis to deny the amendment would be if the amendment is clearly futile. It is not.

In rare cases a trial court may deny a motion to amend if the amendment would be clearly futile. Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. at 182, 826 S.E.2d at 589. If a proposed amendment is not clearly futile, then denial of leave to amend is improper. Id.

The Court’s Order states that pleading a claim for quantum meruit relief in the alternative to a breach of contract claim and/or a mechanic’s lien enforcement action requires more than simply using the words “in the alternative,” and that it requires pleading inconsistent facts resulting from Appellant’s uncertainty about what evidence will prove. These assertions are not supported by South Carolina rules, statutes, or case law. Instead, Rule 8, SCRCF plainly states that relief in

the alternative or of several different types may be demanded. The Rule requires nothing more. To deny Appellant any recovery against Respondent Westgate based on the manner in which Appellant pleads “in the alternative” is contrary to South Carolina law. The South Carolina Supreme Court has stated “The ... Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” Patton v. Miller, 420 S.C. at 493, 804 S.E.2d at 263.

Furthermore, in each case cited by the Court’s Order, the contract which exists to potentially preclude the quantum meruit recovery exists between the Appellant and that specific Respondent Westgate. That is not the case here. There exists no contract between Appellant and Respondent Westgate. The Court’s Order holds that since a contract exists between Appellant and Defendant RNR Construction, Respondent Westgate is insulated from any remedy against it for the enrichment it has unjustly received. This is contrary to South Carolina law. See Franke Assocs. by Simmons v. Russell, 295 S.C. at 332, 368 S.E.2d at 465; Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. at 617, 703 S.E.2d at 225; See also, Gillins v. Celadon Trucking Servs., Inc., No. 2:16-CV-00795-DCN, 2016 WL 4455018 (D.S.C. Aug. 24, 2016) (finding that “Celadon's argument that a claim for breach of contract and a claim for quantum meruit, or unjust enrichment, are mutually exclusive of one another is without merit. While a plaintiff certainly cannot recover under both theories, he may plead in the alternative. See Skelly, 734 S.E.2d at 181 (providing that, under South Carolina law, ‘[a] breach of contract claim and quantum meruit claim can be alternative rather than inconsistent remedies’ (quoting JASDIP Props. SC, LLC v. Estate of Richardson, 720 S.E.2d 485, 488 (S.C. Ct. App. 2011))” Cap. Corp. of Am., Inc. v. Teays River Invs., LLC, No. CV 6:11-2796-HMH, 2012 WL 13006190 (D.S.C. Feb. 1, 2012) (“Respondent maintains that it is

undisputed that a contract existed among the parties, and therefore, Appellants are unable to plead unjust enrichment as an alternative theory of relief. South Carolina courts, however, have expressly rejected this proposition, holding that Appellants may pursue a claim for unjust enrichment notwithstanding the existence of a contract between parties. JASDIP Props. SC, LLC v. Estate of Richardson, No. 4878, 2011 WL 3803564, at \*3 (S.C. Ct. App. 2011) (‘A breach of contract claim and quantum meruit claim can be alternative rather than inconsistent remedies.’). Consequently, the court denies Defendant's motion to dismiss Plaintiffs’ claim for unjust enrichment”).

This Court’s ruling, instead, is more akin to the Dissent in JASDIP. The existence of a contract with RNR construction cannot preclude an equitable remedy against the Respondent Westgate when Westgate has also been unjustly enriched by the Appellant to the Appellant’s detriment.

The only way that Respondent Westgate could show that a quantum meruit claim against Westgate would be futile is if Westgate could show that it had paid its general contractor, RNR Construction, in full. This is the only way by which Appellant could not pursue legal or equitable recourse against Respondent Westgate. See Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 262–63, 440 S.E.2d 129, 131 (1994) (“Courts addressing a claim of unjust enrichment by a subcontractor against a property owner have typically denied recovery where the owner in fact paid on its contract with the general contractor”). There is no evidence in the record to support this and therefore, the Amendment is not clearly futile. Justice requires the Appellant be granted leave to amend. Accordingly, the Court erred in not granting the Appellant’s leave to amend.

### III. THE COURT ERRED IN ITS INTERPRETATION AND RELIANCE UPON A COURT OF APPEALS OPINION TO THE EXTENT THAT THE OPINION IS CONTRARY TO SUPREME COURT OPINIONS.

The Court's Order relies upon the Court of Appeals' Opinion of Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 734 S.E.2d 177 (Ct. App. 2012) to support its refusal to allow Appellant to plead quantum meruit in the alternative to its breach of contract claim against RNR. To the extent that this Court found that its citation to Williams Carpet supports its ruling, the Appellant respectfully contends that the Court's interpretation and reliance upon Williams Carpet<sup>3</sup> in this matter is inconsistent with the unanimous decisions of the Supreme Court to the extent that it would exclude a quantum meruit cause of action which is pled in the alternative to a breach of contract action. It is well established that "The decisions of the Supreme Court bind the Court of Appeals as precedents." Daniels v. City of Goose Creek, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (1993); S.C. Const. Art. V, § 9. The Court of Appeals nor the Circuit Court can modify or limit established Supreme Court Opinions. See Id.

The Court's interpretation and reliance upon Williams Carpet contradicts the Supreme Court Opinions of Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259, 440 S.E.2d 129 (1994); Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 368 S.E.2d 462 (1988); and Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 703 S.E.2d 221 (2010).

---

<sup>3</sup> However, "*if the tasks the Appellant is seeking compensation for under a quantum meruit theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the Appellant may not recover under quantum meruit.*" Swanson, 350 S.C. at 122, 564 S.E.2d at 120." Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 328, 734 S.E.2d 177, 181 (Ct. App. 2012). Swanson is a Court of Appeals Opinion. Compare, "Johnston v. Brown, 290 S.C. 141, 148, 348 S.E.2d 391, 395 (Ct.App.1986), *rev'd on other grounds*, 292 S.C. 478, 357 S.E.2d 450 (1987) (*While a recovery may be had in quantum meruit for services fully performed under an express contract, the Appellant's recovery is limited to the amount the parties agreed should be paid for the services.*" (citations omitted), quoting from Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 328-29, 734 S.E.2d 177, 182 (Ct. App. 2012).

In Columbia Wholesale, the Supreme Court examined cases from across the country addressing the issue of whether a subcontractor can recover against an owner in quantum meruit. The Court concluded simply that “Courts addressing the issue whether a subcontractor can recover against an owner in quantum meruit focus on whether the enrichment to the owner is *unjust*.” Columbia Wholesale Co., Inc., 312 S.C. at 261, S.E.2d at 130. In the matter at hand, the enrichment to the Respondent Westgate is clearly unjust.

In Franke Assocs., the Supreme Court held that the Appellant could proceed on its causes of action for breach of contract and quantum meruit and should not have been forced to elect between these theories of recovery because the claims were alternative rather than inconsistent remedies. Franke Assocs. by Simmons, 295 S.C. at 332, 368 S.E.2d at 465. In support of its holding in Franke Assocs., the Supreme Court found “no patent inconsistency between the breach of contract and quantum meruit claims in this case. There would be inconsistency only if appellant were to prevail under both causes of action for a single injury and double recovery were permitted. *See* 5A Corbin, Contracts § 1223 (1964)” Franke Assocs. by Simmons v. Russell, 295 S.C. at 332, 368 S.E.2d at 465 (1988).

In analyzing the Supreme Court’s Opinion in Franke Assocs., the United States District Court in Arkansas stated, “There is no inherent inconsistency in alleging alternative claims of breach of contract and quantum meruit under the same factual circumstances.” Pioneer Civ. Constr., LLC v. Ingevity Arkansas, LLC, No. 1:22-CV-1034, 2023 WL 2353146 (W.D. Ark. Mar. 3, 2023) (citing Franke Assocs. by Simmons, 368 S.E.2d at 464-65). “That Respondents will not be able to recover under both this claim and their alleged breach of contract claim does not make their pleading of both claims impermissible.” Id.

In Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010), the Supreme Court affirmed the Circuit Court's decision to award damages under the theory of quantum meruit even though the Circuit Court had found there was a contract between the parties. The Supreme Court held, "While the circuit court did find there was a contract between the two parties in this action, it never awarded damages because of a breach of that contract. Rather the circuit court chose the theory of quantum meruit as an alternate remedy." Id.

To the extent the Court's Order ignores the law set forth by the unanimous decisions of Supreme Court cited above and instead interprets Williams Carpet as contrary law and controlling, this Court has erred. As Chief Justice Toal states in her treatise on South Carolina appellate practice, "the Court of Appeals is an error-correction court, whereas the Supreme Court is a law-giving court. The decisions of the Supreme Court bind the Court of Appeals." Toal, Vafai & Muckenfuss, *Appellate Practice in South Carolina*, at 12 (2d ed.2002). *See also* S.C. Const., art. V, § 9 (establishing the jurisdiction of the court of appeals and explaining the binding effect of supreme court opinions); Daniels v. City of Goose Creek, 314 S.C. 494, 498, 431 S.E.2d 256, 260 (Ct.App.2003) (holding that any modification of supreme court case law must be undertaken by the supreme court).

It is also important to note that the Appellant Paint Design ("subcontractor") and Westgate ("Owner") in the case at hand are not in direct privity like the parties in Williams Carpet 400 S.C. at 324, 734 S.E.2d at 179 ("Williams Carpet sued Ruonala and Company, Skelly, and M.S. Industries for breach of contract, quantum meruit, negligent misrepresentation, and violations of the Unfair Trade Practices Act. At trial, just after the selection of the jury, Williams Carpet dismissed its breach of contract claim, without objection").

**IV. THE COURT ERRED IN REQUIRING APPELLANT TO PROCEED ONLY ON ITS BREACH OF CONTRACT ACTION AGAINST RNR RATHER THAN PERMITTING AN ELECTION OF REMEDIES AT THE TIME OF THE TRIAL.**

The Court's Order requires Appellant to elect, prior to the submission of the case to the jury, between the remedies for breach of contract and quantum meruit. This is a clear error in contradiction of the Supreme Court Opinion of Franke Assocs. ("Next, appellant argues that the trial court erred by requiring them to elect, prior to the submission of the case to the jury, between the remedies for breach of contract and quantum meruit. We agree"). Franke Assocs. by Simmons, 295 S.C. at 332, 368 S.E.2d at 463. "If a party pleads different causes of action but seeks only one recovery, he need not elect between causes of action." Id. at 464.

Based upon the foregoing, the Court committed an error in requiring the Appellant to elect, prior to the submission of the case to the jury, between the remedies for breach of contract and quantum meruit.

**CONCLUSION**

Based on the foregoing reasons and cited evidence before the Court, and upon such other arguments and submissions of counsel as may be reviewed by the Court and reviewing the evidence and all reasonable inferences to be drawn in the light most favorable to the Appellant, the Circuit Court's Orders involved in denying Appellant's Motion to Amend its Complaint should be reversed, and the matter remanded in full to the Circuit Court.

Respectfully Submitted,

BELLAMY, RUTENBERG, COPELAND,  
EPPS, GRAVELY & BOWERS, P.A.

/s/ Howell V. Bellamy, III

Howell V. Bellamy, III (SC Bar # 66575)

hbellamyiii@bellamylaw.com

1000 29th Ave. N.  
Myrtle Beach, SC 29577  
843-448-2400 Phone  
843-448-3022 Facsimile  
*Attorney for Appellant*

Myrtle Beach, South Carolina

Date: July 5, 2024

HOWELL V. BELLAMY, JR.  
EDWARD B. BOWERS, JR.\*  
M. EDWIN HINDS, JR.  
DAVID B. MILLER+  
C. WINFIELD JOHNSON, III  
DOUGLAS M. ZAYICEK  
MARTIN C. DAWSEY\*  
ROBERT S. SHELTON+  
HOWELL V. BELLAMY, III  
GEORGE W. REDMAN, III + \*\* ++  
BENJAMIN A. BAROODY + \*\*\*\*

\* LLM TAXATION  
\*\* LICENSED IN SC & NC  
+ CERTIFIED MEDIATOR  
++ CERTIFIED ARBITRATOR



THE  
**BELLAMY**  
LAW FIRM

OFFICES IN MYRTLE BEACH & PAWLEYS ISLAND

WWW.BELLAMYLAW.COM

PHILLIP H. ALBERGOTTI\* \*\*  
HAYES K. STANTON + \*\*  
KARA J. KEITH \*\*  
HOLLY M. LUSK  
LAUREN BREARLEY BENTON  
JON CRAIG HOWELL, JR.  
ZACHARY J. CROWL\*\*  
BRICE A. BERTSCHIN  
ALLIE BARTH TILLER

RETIRED:  
JOHN K. RUTENBERG (1939-2012)  
JOHN E. COPELAND  
CLAUDE M. EPPS, JR.  
DAVID R. GRAVELY  
JILL F. GRIFFITH  
BRADLEY D. KING

1000 29<sup>TH</sup> AVENUE NORTH • P.O. BOX 357 • MYRTLE BEACH, SC 29578  
TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

July 5, 2024

**VIA OVERNIGHT FEDERAL EXPRESS DELIVERY**

Jenny A. Kitchings  
Clerk of South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

**RECEIVED**

JUL 08 2024

SC Court of Appeals

RE: **PROOF OF SERVICE**  
Paint Design v. Westgate Myrtle Beach, LLC et al.  
Case No.: 2023-CP-26-00053

Dear Ms. Kitchings:

Enclosed please find the Appellant's Initial Brief and Designation of Matter for filing in the above-referenced matter. By copy of this letter to all counsel of record, we are also serving them with copies of the same.

Should you have any questions or require any additional information, please do not hesitate to contact our office.

With kindest regards, I am

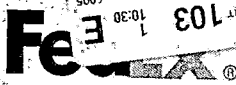
**BELLAMY, RUTENBERG, COPELAND  
EPPS, GRAVELY & BOWERS, P.A.**

s/ Howell V. Bellamy, III  
Howell V. Bellamy, III (SC Bar # 66575)  
[hbellamyiii@bellamylaw.com](mailto:hbellamyiii@bellamylaw.com)

HVBiii/tba  
Enclosures  
cc: Don R. Terry

04/23/24 20:30

80 LO 5069  
701 24  
00:01 103  
103 AH



This envelope is only for FedEx  
You can help us get your package  
items securely. Need help? Go to  
fedex.com

FedEx  
8180 5907 6905

MUN - 08 JUL AA  
PRIORITY OVERNIGHT

28 USCA

29201  
SC US  
CAE



513885 45312824 NYNA 501G7/2810/CE58

Check your FedEx Express s

00106  
00300

FedEx Package  
Express US Airbill 8180 5907 6905

1 From  
Date 7/23/24

Sender's Name  
Dwight V. Linn III Phone 543 442-2400

Company  
WELLMAN LAW FIRM

Address  
1800 29TH AVE N.

City MYSTLE BEACH State SC Zip 29577-3171

2 Your Internal Billing Reference  
54054-4456-22

3 To  
Recipient's Name  
KIM A. KITCHENS Phone 803 724-1970

Company  
Court of Appeals of SC

Address  
1200 Senate Street

City Columbia State SC Zip 29201

4 Express Package Service

Next Business Day  
 FedEx First Overnight  
 FedEx Priority Overnight  
 FedEx Standard Overnight

2 or 3 Business Days  
 FedEx 2Day A.M.  
 FedEx 2Day  
 FedEx Express Saver

5 Packaging  
 FedEx Envelope  
 FedEx Pak  
 FedEx Box  
 FedEx Tube  
 Other

6 Special Handling and Delivery Signature Options  
 Saturday Delivery  
 No Signature Required  
 Direct Signature  
 Indirect Signature

Does this shipment contain dangerous goods?  
 No  
 Yes  
 Dry Ice  
 Cargo Aircraft

7 Payment Advice  
 Sender  
 Recipient  
 Third Party

fedex.com 1800.fedex 1800.463.3339



8180 5907 6905

Insert shipping document here.