

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-01108

BALFOUR BEATTY CONSTRUCTION,
LLC,

Plaintiff,

v.

LIBRARY ASSOCIATES, LLC; and
METROPOLITAN LIFE INSURANCE
COMPANY, a New York Corporation,

Defendants.

LIBRARY ASSOCIATES, INC.,

Defendant/Third-Party
Plaintiff,

v.

LITHKO CONTRACTING, LLC; GUY M.
BEATY, INC.; BERNARD MMC, LLC;
GULF STREAM CONSTRUCTION
COMPANY, INC.; PRECISION WALLS,
INC.; PALMETTO AUTOMATIC
SPRINKLER COMPANY, INC.; COOK &
BOARDMAN, LLC; 1ST CHOICE GLASS,
INC.; STRONG TOWER
CONSTRUCTION, LLC d/b/a KOCH
CORPORATION; WATSON ELECTRICAL
CONSTRUCTION CO., LLC; TRIMARK
FOODCRAFT, LLC; PLEASANT PLACES,
INC.; DAVID ALLEN COMPANY, INC.;
PREMIER EXTERIORS, LLC; ROBERT
THOMAS IRON DESIGN, LLC; WARCO
CONSTRUCTION, INC.; OLD NORTH
STATE MASONRY, LLC; TOM
ROCHESTER & ASSOCIATES d/b/a
SOUTHEASTERN ARCHITECTURAL
SYSTEMS; FORTON COMPANY, LLC;
LOWCOUNTRY CASE & MILLWORK,

RECEIVED

May 13 2024

SC Court of Appeals

**ORDER GRANTING WATSON
ELECTRICAL CONSTRUCTION CO.,
LLC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

INC.; QUANTUM COATINGS, LLC;
BALFOUR BEATTY CONSTRUCTION
GROUP, INC.,

Third-Party Defendants.

This matter came before the court pursuant to Rule 56, SCRPC, on Watson Electrical Construction Co., LLC's ("Watson") motion for summary judgment, or alternative motion for partial summary judgment, filed August 20, 2021, under its breach of contract cause of action against Balfour Beatty Construction, LLC ("BBC"). Present at this hearing were, Don R. Terry, attorney for Watson; Thomas C. Hildebrand, Jr. and Robert C. Byrd, attorneys for BBC; and Walter H. Bundy, Jr. and Michael B. McDonald, attorneys for Library Associates, LLC. Watson sought damages in the amount of \$1,859,359, plus interest, costs, and attorneys' fees. For the reasons set forth below, Watson's motion is GRANTED in the amount of \$921,671.39 plus prejudgment interest, post-judgment interest, costs and attorneys' fees.

UNDISPUTED FACTS

This civil action relates to the construction of the Hotel Bennett ("Project"), a hotel in downtown Charleston, South Carolina, owned by Library Associates, LLC (the "Owner"). BBC was the construction manager for the project, under a contract with the Owner. Watson was a subcontractor of BBC under a written agreement ("Subcontract"), pursuant to which Watson was responsible for the installation of certain electrical systems for the Project. The completion of the Project was delayed. BBC blames the Owner for the Project delays. The Owner blames BBC for the Project delays. Despite the Owner blaming BBC for Project delays, Watson offered the deposition testimony of BBC, the Owner, and Tim Spano, BBC's senior project manager for the Project, to show that Watson did not delay the completion of the Project. Additionally, despite the Owner blaming Project delays on BBC, BBC did not blame Watson for the Project delays. BBC

failed to offer any facts though affidavit, deposition testimony or otherwise in opposition to Watson's motion that would show this court that there is a genuine issue of material fact about whether Watson delayed completion of the Project.

Through its motion, Watson sought damages in the amount of \$1,859,359, which was supported by the affidavit of Mr. Carroll Lipscombe. Watson submitted the Rule 30(b)(6) deposition of BBC, to show that BBC failed to pay Watson for the labor, materials and services Watson performed at the Project. Watson also submitted portions of the deposition transcript of Mr. Timothy Spano, BBC's senior project manager for the Project, to show that the only reason the BBC did not pay Watson was that the Owner did not pay BBC. BBC did not show any facts, which could create a genuine issue of material of fact, in opposition to Watson's damages amount.

LEGAL DISCUSSION

A party opposing summary judgment "must set forth or point to specific facts showing that there is a genuine issue of material fact." *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct.App.1994) (quoting *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct.App.1991)). See also *Humana Hosp.-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991) ("Where a [a party] relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by [the moving party], he was entitled to judgment as a matter of law.").

It is undisputed that Watson and BBC entered into a contract, and undisputed that BBC failed to pay Watson solely because the Owner failed to pay BBC. It is similarly undisputed that Watson did not delay the completion of the Project. Watson presented this Court with an affidavit

to show that BBC owes Watson \$1,859,359, and BBC did not present anything to show that the amount Watson claims is incorrect.

Instead of showing facts through affidavit, deposition testimony or otherwise in opposition to Watson's motion, BBC argued that genuine issues of material fact exist because the Owner's representatives and experts might, at trial, allege damages for delays or for defective construction that should be passed through BBC to Watson, therefore this Court cannot arrive at a figure owed to Watson. This Court disagrees because the Owner's Rule 30(b)(6) testimony, which is binding on the Owner, clearly establishes that the Owner is not aware of any delays Watson caused to the Project. This Court also disagrees with Balfour because this case is in excess of two years old, and it is beyond the discovery deadline. (see Order extending deadlines, May 10, 2021). The parties have taken the depositions of all of the Owner's representatives and experts, and BBC has had the opportunity to flesh out all alleged issues of fact in the numerous depositions of the people who may take a position with respect to Watson. Despite the extensive discovery in this case, including the depositions of the Owner and all its experts, BBC was unable to offer any competent evidence that could show that Watson delayed the completion of the Project, failed to complete its work, or performed defective work. If evidence exists that could show this Court that there is a genuine issue of material fact about whether Watson delayed the Project, or whether Watson performed defective work, BBC failed to show this Court.

For all of the above reasons, BBC has failed to present a genuine issue of material fact in opposition to Watson's motion, Watson performed the work it was required to perform under the Subcontract, Watson's work was accepted by BCC and the Owner, and Watson is entitled to

judgment as a matter of law against BBC in the amount of \$921,671.39 on its breach of contract claim.¹

As to prejudgment interest, Watson is entitled to prejudgment interest at the statutory rate of 8.75% per year. S.C. Code Ann. 34-31-20(A). Watson was made a party to this consolidated action on May 15, 2019. This Court, therefore, awards prejudgment interest to Watson at the rate of 8.75%, on \$921,671.39, from May 15, 2019, to the date that this Court verbally awarded Watson summary judgment, August 31, 2021, totaling \$185,375.89.

As to post-judgment interest, the rate is set annually by the South Carolina Supreme Court. S.C. Code Ann. § 34-31-20(B). “[F]or the period January 15, 2021, through January 14, 2022, the legal rate of interest for judgments and money decrees is 7.25% compounded annually.” S.C. Supreme Court Order 2021-01-04-01. Therefore, Watson will be entitled to post-judgment interest on \$921,671.39, at the rate of 7.25%, compounded annually, beginning on the date this Order is issued and continuing to accrue at that rate until the judgment is paid in full.

“The general rule is that attorney’s fees are not recoverable unless authorized by contract or statute.” *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) (citing *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989); *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978); *Collins v. Collins*, 239 S.C. 170, 122 S.E.2d 1 (1961)). “When there is a contract, the award of attorney’s fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown.” *Id.*

Article 10.D. of Watson’s subcontract with BBC, which addresses disputes resolved by litigation, states, “The prevailing party will be entitled to recover its reasonable attorneys’ fees and

¹ This court holds as a matter of law, that Watson must provide additional evidence in support of the amount of damages it seeks from BBC above the \$921,671.39 granted herein.

court costs in connection with any such litigation.” (Id.). This Court, therefore, finds that the contract contains a provision entitling Watson to an award of attorneys’ fees.

To award attorneys’ fees, this Court must look to the following “six factors to consider in determining an award of attorney’s fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained.” *Blumberg* at 494, 660.

Because these cases were consolidated and referred to this Court, it has had the opportunity to observe all filings and hearings, as opposed to cases on the general docket, which could be heard by numerous judges over the life of a litigation. This Court understands the complexity of this case. Based on this Courts’ knowledge and the affidavit of counsel for Watson, this Court finds that, guided by the six factors set forth in *Blumberg*, Watson is entitled to an award of attorneys’ fees and costs in the amount of \$253,189.30.

As to the first and second factors, again, this Court is keenly familiar with these actions, which involve the construction of a luxury hotel over the course of several years. Multiple cases were originally filed individually, and all have been consolidated. Needless to say, there has been a considerable effort keeping tabs on the status of parties and the various cases which were consolidated. After consolidation and referral to this Court, it has been established through motions and oral arguments at a multitude of hearings that the cases have required the exchange of hundreds of thousands, if not millions, of documents in discovery; the taking of approximately forty depositions; the involvement of experts in fields ranging from cost analysis and delays to contract interpretation and lost profits; the filings of dozens of motions on almost all facets of the rules of procedure; the difficult task of scheduling depositions and hearings among dozens of

attorneys and firm staff; and the exchange of communications between attorneys and the court regarding all of the above. And this is just what the Court sees, which does not consider the time and effort that all attorneys, including Watson's attorneys, have expended in wading through the project in an effort to pare down the facts and position for a potential trial. The trial itself is currently expected to run four weeks, which is an indication of the complexity of these cases. In his affidavit, Watson's counsel indicated that his firm expended 646.4 attorney hours, and 504 paralegal hours on these cases. Based on this Court's understanding of these cases, that figure is very reasonable.

As to the third factor, Watson's attorneys are part of a firm that specializes in construction law and litigation, including delay claims. Members of their firm appear frequently before Courts throughout the southeast and are well respected.

The fourth factor is not relevant to this discussion, as the affidavit provided by counsel for Watson does not indicate that fees are contingent on success in these actions.

As to the fifth factor, the affidavit of counsel for Watson states that the hourly rate for the attorneys on these cases is between \$225.00 per hour and \$350.00 per hour for attorneys, and between \$100 per hour and \$175 per hour for paralegals. This Court routinely hears requests for fees and is very familiar with the rates charged by lawyers in the Charleston area. Watson's attorney's rates are reasonable and are below the rates of other attorneys in this case.

Lastly, with respect to the sixth factor, Watson's counsel was able to achieve a partial judgment prior to trial, which could last up to four weeks. Watson was able to achieve a judgment for a substantial amount of its claim for amounts that BBC did not show facts in dispute. Obtaining a judgment on summary judgment and, depending on what Watson elects to do with respect to the remainder of its claim, potentially avoiding a month-long trial is a beneficial result.

Based on the contractual language, the Court's knowledge of these actions, the affidavit submitted by counsel for Watson, the complexity of these actions, the time that Watson had to invest to get this result, and the successful result achieved by Watson's counsel, the Court finds that the *Blumberg* factors weigh in favor of awarding attorneys' fees and costs in the amount of \$253,189.30, as sworn to in the affidavit. In light of the *Blumberg* factors, these fees are reasonable. It should be noted that the contractual provision calls for fees to be awarded to the "prevailing party." Watson's claims were made, together with a mechanic's lien foreclosure action. The Court would be remiss if it did not look to the mechanics' statute for some level of guidance. For the purpose of awarding fees, South Carolina's mechanics' lien statutes consider the prevailing party as the party who obtains a verdict closer to the amount he claims in the actions, considering counterclaims and offers of settlements prior to trial. S.C. Code Ann. § 29-5-10 and 29-5-20. Under the statutes, attorneys' fees can be awarded up to the value of the lien. *Id.* Watson made an offer under the statute, and amount of this partial summary judgment is for the exact amount of the offer of settlement Watson made and served, which would have made Watson the prevailing party under the mechanic's lien statute.

For all these reasons, this Court awards attorneys' fees and costs to Watson in the amount of \$253,189.30.

CONCLUSION AND AWARDS

Based on the absence of genuine issues of material fact, Watson is entitled to judgment as a matter of law in the amount of \$921,671.39 against BBC, plus attorneys' fees and costs in the amount of \$253,189.30, and prejudgment interest in the amount of \$185,375.89 against BBC.

Lastly, this Court awards Watson post-judgment on \$921,671.39 at the rate of 7.25%, compounded annually, accruing from the date this order is issued until the judgment is paid in full by BBC.

This Order shall be entered as a judgment in this case in favor of Watson and against Balfour Beatty in the total amount of \$1,360,236.58.

IT IS SO ORDERED!



Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC ,
defendant, et al
Case Number: 2019CP1001108
Type: Order/Other

So Ordered

s/Mikell R. Scarborough 3062