

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4008621

C R Meyer And Sons Company

Custom Mechanical CSRA LLC

Presidential Financial Corporation

PLAINTIFF(S)

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 Court

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the 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
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 30 May 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Henry Pickett Wall

Francis Marion Mack
Emily Ruth Gifford
Robert L. Buchanan Jr.

Nekki Shutt
John Thomas Lay
Lindsay Anne Joyner

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

RECEIVED

AUG 15 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

C.R. Meyer and Sons Company,

Plaintiff/Petitioner,

VS.

Custom Mechanical CSRA, LLC,

Defendant/Respondent.

Custom Mechanical CSRA, LLC
Third-Party Plaintiff, Respondent

v.

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Presidential Financial Corporation; Norton Welding Supply, Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black;

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-8621

**ORDER GRANTING PRESIDENTIAL
FINANCIAL COMPANY AND
SECURITY FEDERAL BANK'S
MOTION FOR SUMMARY
JUDGMENT**

RICHLAND COUNTY
FILED
2013 MAY 28 PM 3:35
JEANETTE W. HERRIDGE
C.C.P. & G.S.

SCANNED

Thomas Brittingham; Arthur C. Carlson;
Leonard Wade Cliett; Christopher Cullipher;
David W. Cullipher; Joseph A. Doyle, Jr.;
Charles R. Ellzey; Brian Field; Clayton W.
Googe, Jr.; Martin Granger; William R.
Giffin, Jr.; Jack E. Hegler; George G. Lever;
Matt Lever; Ernest H. Lewis, III; Estate of
William R. McFerrin by and through its
duly-appointed Executrix, Nancy McFerrin;
Daniel Nichols; Kinda Phormmachanh;
Raleigh B. Roye; Nicholas Stewart; Timothy
P. Stock; James Waltemath; Al Tiska; Al
Carpenter; Bruce Pollock, Jr.; and Security
Federal Bank.

Third-Party Defendants.

Pending before the Court are two motions: (1) the Motion for Summary Judgment filed by Presidential Financial Corporation ("Presidential") and Security Federal Bank ("Security Federal") on January 24, 2013; and (2) the Motion for Summary Judgment filed by Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; Estate of William R. McFerrin by and through his duly-appointed Executrix, Nancy McFerrin; Daniel Nichols; Kinda Phormmachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr. (collectively "the Custom Employees") also filed on January 24, 2013. On March 19, 2013, the Court heard oral argument from counsel on both motions.

The Court has carefully reviewed and considered the pleadings, evidence, arguments of counsel, and relevant case law. For the reasons outlined below, the Court finds that Presidential

and Security Federal's Motion for Summary Judgment is due to be granted and the Custom Employees' Motion for Summary Judgment is due to be denied.

FACTUAL BACKGROUND

Defendant Custom Mechanical, CSRA, LLC ("Custom Mechanical") borrowed money from Security Federal and Presidential in order to fund its work pursuant to a subcontract with Plaintiff, C.R. Meyer & Sons Company ("C.R. Meyer"). In order to fund Custom Mechanical's work on the subcontract, Security Federal loaned Custom Mechanical Two Million One Hundred Fifty-One Thousand Five Hundred Ninety-Four Dollars (\$2,151,594.00) and Presidential loaned Custom Mechanical One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00). Both Security Federal and Presidential filed UCC-1 Financing Statements perfected their respective security interests in the accounts receivable from C.R. Meyer to Custom Mechanical. Custom Mechanical defaulted on its loans from both lenders.

In furtherance of the subcontract, Custom Mechanical provided union labor services through its sister company, Custom Industrial Services, LLC ("Custom Industrial"). Those laborers could participate in a voluntary payroll deduction plan offered through their employer and through their union—Plumbers & Steamfitters Local No. 150. The laborers could elect, through the union, to have five, ten, or fifteen percent of their weekly wages withheld by their employer, and the withholdings would be set aside into a vacation/holiday savings fund. If the laborers participated in the program, Custom Industrial was supposed to remit the withheld wage amounts to the union and the union would remit checks to the union members twice a year. Custom Industrial stopped remitting payments to the union fund and twenty-nine (29) of those laborers, now known as the Custom Employees, seek to collect the wages that were to be set aside in their vacation funds.

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PROCEDURAL BACKGROUND

C.R. Meyer and Custom Mechanical disputed the amounts owed by C.R. Meyer to Custom Mechanical for work done pursuant to the subcontract. They arbitrated their dispute and the arbitrators issued an award in favor of Custom Mechanical. C. R. Meyer initiated this matter to modify and/or vacate the arbitration award. Custom Mechanical filed a third party complaint alleging that the third party defendants in this action "may have an interest in the proceeds of the \$1,776,548.00 arbitration award because the total of all known claims exceeds the net proceeds of the arbitration award." Custom Mechanical asked the Court to require C.R. Meyer to pay the arbitration proceeds into the registry of the Court for distribution to the third party defendants.

The arbitration award was confirmed by the Trial Court on November 1, 2011. Rather than appeal, C.R. Meyer agreed to a settlement amount and, by court order, C.R. Meyer paid \$1,800,000 into the trust account of Custom Mechanical's attorneys - Richardson, Plowden & Robinson, P.A. -- to be held for the benefit of the creditors until their priority was determined by the Court. All of the third party defendants stipulated to dismissal except Presidential, Security Federal, and the Custom Employees. Upon the union's dismissal, all but \$325,000 was disbursed to Presidential and Security Federal. The three remaining parties continued to assert their priority to the arbitration award.

Presidential and Security Federal asserted a claim for declaratory judgment pursuant to South Carolina Code Annotated § 15-53-10, alleging priority over all other alleged liens of third party defendants and crossclaim defendants. Presidential and Security Federal's secured claims exceed the settlement award and encumber the entire balance. On August 1, 2012, the Custom Employees answered Presidential and Security Federal's Crossclaim with a Crossclaim and Counterclaim of their own. Under Section 15-53-10, the Custom Employees asserted a first lien

over the arbitration award under South Carolina Code Annotated § 29-7-10 and claimed they are entitled to the amount of their outstanding judgment of \$275,000.00 against Custom Mechanical as well as prejudgment interest and costs including attorney's fees.

STANDARD OF REVIEW

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Rule 56(c) SCRPC; See also Hurst v. East Coast Hockey League, Inc., 371 S.C. 33, 36, 637 S.E. 2d 560, 561 (2006). Rule 56(e) further provides:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Rule 56(e), SCRPC.

"A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Regional Medical Ct., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

FINDINGS OF FACT AND ANALYSIS OF LAW

The Custom Employees do not contest the fact that Presidential and Security Federal have recorded first liens. Pursuant to S.C. Code Ann. § 36-9-317, *et seq.*, the perfected security interests must take priority unless S.C. Code Ann. § 29-7-10 operates to establish a statutory lien in favor of the Custom Employees. The Custom Employees were "laborers" who were involved

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in the "erection, alteration, or repairing of buildings" under Section 29-7-10.¹ However, Section 29-7-10 does not establish a lien in this case for the following reasons:

The Custom Employees were employed by Custom Industrial and not by Custom Mechanical. It is Custom Mechanical who is a party to this litigation and who received the funds pursuant to an arbitration award between it and C.R. Meyer. The Custom Employees are not entitled to monies awarded to Custom Mechanical, a separate legal entity. See Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp., 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007) (citations omitted).

A lien under Section 29-7-10 only attaches if Custom Mechanical was paid pursuant to its contract with C.R. Meyer. See Morgan & Alston v. D. W. Alderman & Sons' Co., 70 S.C. 462, 50 S.E. 26, 27 (1905). No money has come into the hands of Custom Mechanical. Instead, the money was ordered by the Court to be paid into the trust account of Custom Mechanical's attorney for the benefit of the creditors. The case law construing Section 29-7-10 is clear that the statute must be strictly construed. See e.g., Bellsouth Telecomm., Inc. v. Dekalb Concrete Prod., Inc., 1995 WL 578191 (D.S.C. 1995) (citing Morgan & Alston v. D. W. Alderman & Sons' Co., 70 S.C. 462, 50 S.E. 26, 27 (1905)); Poinsett Constr. Co., Inc. v. Fischer, 301 S.C. 343, 344, 391 S.E.2d 875, 876 (Ct. App. 1990). Accordingly, by operation of law, a lien under Section 29-7-10 does not attach for the benefit of the Custom Employees. See Morgan & Alston, 70 S.C. 462, 50 S.E. 26.

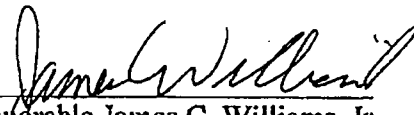
The unpaid vacation funds that the Custom Employees allege they are entitled to were owed to the employees' union, the Plumbers & Steamfitters Local #150. A claim by the union

¹ Even if a lien under S.C. Code Ann. §29-7-10 had attached in this case, the Court would only award such actual damages as could be proven.

for the unpaid vacation funds has already been litigated and resolved. The Custom Employees do not have an independent claim.

The Court hereby GRANTS Presidential Financial Corporation and Security Federal Bank's Motion for Summary Judgment. The Court hereby DENIES the Custom Employees' Motion for Summary Judgment.

AND IT IS SO ORDERED on this 28 day of May, 2013.


The Honorable James C. Williams, Jr.
Special Referee

