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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master in Equity and
Special Circuit Court Judge

Appellate Case No. 2024-001127

Stax Building & Development, LLC

Appellant,

v.

HHI Yacht Club Ventures, LLC

Respondent.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUE(S) ON APPEAL

Did the Trial Court Err in Granting Respondent's Motion to Dismiss Appellant's Mechanic's Lien Pursuant to Section 29-5-15, S.C. Code Ann.?

STATEMENT OF THE CASE

Appellant is a construction company, and Respondent the owner of real property located in the Yacht Club area of Hilton Head Island. The parties entered into two separate contracts wherein Appellant agreed to build, and Respondent agreed to pay Appellant to build, condominium units (the "Project") (R. pp. 40-41). Appellant filed its initial mechanic's lien ("Initial Lien") in the Office of the Register of Deeds for Beaufort County on February 8, 2023, alleging it was owed \$252,179.38 by the Respondent (R. p. 3; R. pp. 11-13; R. p. 27). Appellant filed an Amended Lien ("Amended Lien") on March 31, 2023, alleging it was owed \$314,725.95 by the Respondent (R. pp. 3-4; R. p. 28). Appellant filed its second Amended Lien ("Second Amended Lien") on June 14, 2023, alleging it was owed \$422,222.78 by the Respondent (R. p. 4; R. p. 28; R. pp. 51-53). Appellant also filed the underlying non-jury action on June 14, 2023, seeking to foreclose its Second Amended Lien, and also pleading causes of action for breach of contract and unjust enrichment/quantum meruit (R. p. 4; R. pp. 38-44). Appellant filed its third Amended Lien ("Third Amended Lien") on July 13, 2023, in which the amount it alleged was owed remained the same but for the first time Appellant listed its license number on the lien (R. p. 4; R. pp. 14-16; R. p. 7). Several days later, on July 18, 2023, Appellant filed its Amended Complaint, seeking to foreclose the Third Amended Lien, while also pleading causes of action for breach of contract and unjust enrichment/quantum meruit (R. pp. 31-37). All of the filed liens, Complaint, and Amended Complaint allege Appellant's last day of providing labor and/or materials on the Project was January 12, 2023 (R. pp. 11-16; R. pp. 31-44).

After a short extension, Respondent timely filed its Answer on August 25, 2023, and alleged the mechanic's lien was invalid due to a failure to comply with Section 29-5-15(A), S.C. Code Ann., which requires that the mechanic's lien contains the contractor's license number (R. p. 4). Respondent filed its Motion to Dismiss the Mechanic's Lien on September 18, 2023, with a hearing being held on November 7, 2023, resulting in the order granting Respondent's motion being filed on January 25, 2024 (R. pp. 3-7). Appellant filed its Motion to Alter, Amend and Reconsider on February 5, 2024, with same being denied by order filed on May 24, 2024 (R. p. 25). Respondent filed its Release of Lien Bond on March 11, 2024, and Appellant mailed its Notice of Appeal on June 21, 2024.

There are no transcripts available for the hearing on the Motion to Dismiss Mechanic's Lien or the hearing on the Motion to Alter and Amend the trial court's Order Granting Motion to Dismiss Mechanic's Lien.

STANDARD OF REVIEW

The interpretation of a statute is a question of law for the Court to review de novo. *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*, 423 S.C. 295, 300, 814 S.E.2d 513, 516 (2018).

ARGUMENT

A. Plain Meaning

The Appellant, by its own admission, failed to comply with Section 29-5-15, S.C. Code Ann. (the "Statute"), which is set forth below, by not listing its state license number on the mechanic's lien(s) it filed. The Statute was amended in 2009 to require a contractor to provide proof of its licensure, and the amendment contains the word "must" two times in setting forth this requirement.

SECTION 29-5-15. Filing requirements; penalty for frivolous lien.

(A) To file a mechanics' lien, a contractor ***must*** provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor ***must*** record his contractor license number or registration number on the lien document when the lien document is filed.

(B) A contractor who files a frivolous lien is subject to a fine up to five thousand dollars, the loss of his registration or contractor license, or both.

HISTORY: 2009 Act No. 40, Section 2, eff June 2, 2009 [Emphasis added].

The Appellant, a licensed builder, failed to include its license number on the Initial Lien, Amended Lien, and Second Amended Lien, only including it on the Third Amended Lien, which was filed July 13, 2023, over six (6) months after Appellant last provided labor and/or materials on the Project. While other portions of Title 29, Chapter 5 (the “Mechanics’ Liens Statute”), S.C. Code, allow for information to be corrected or specified, such as Section 29-5-100, which states, in part, that “No inaccuracy in such statement relating to the property to be covered by the lien, if the property can be reasonably recognized, or in stating the amount due for labor or materials shall invalidate the proceedings”, the 2009 amendment to Section 29-5-15 makes clear that the contractor’s licensure information must be contained on the lien when filed.

Indeed, the first sentence of the phrase in question, “To file a mechanics' lien, a contractor must provide...”, is written in a basic grammatical structure where “must” indicates a requirement or necessity. The Mechanics’ Liens Statute does not list the licensure requirement when discussing what type of information the mechanic’s lien shall contain; rather, it states that *in order to file* a mechanic’s lien the filer *must* list the contractor’s license number on the lien. The language is abundantly clear. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. “Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court

has no right to impose another meaning." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (cited by *S.C. Pub. Interest Found. v. Calhoun Cty. Council*, 432 S.C. 492, 497, 854 S.E.2d 836, 838 (2021)).

B. Corrections to the Mechanic's Lien

Appellant's argument that the absence of a provision in the Mechanics' Liens Statute that specifically disallows one from amending a mechanic's lien means that one may be amended at any time for any reason, or that absence of such language renders said statute ambiguous, is incorrect. In fact, as set forth above, the Mechanics' Liens Statute allows, in Section 29-5-100, for corrections to the amount owed, or in order to better describe the property that is encumbered by the lien. Further, the fact that the Mechanics' Liens Statute specifically sets forth which items can be corrected implicitly concludes that items not so listed may not be changed. Contrary to Appellant's argument, such (allowed) corrections are not limited to being provided within the initial ninety (90) day window after labor and/or materials have been provided on a project; such corrections appear to be able to be provided anytime.

C. Legislative Intent/Lien Practice

While there is no documentation to support Appellant's arguments regarding the legislative intent associated with the amendment to the Statute, or the purported effects that the Circuit Court's ruling will have on lien practice in Beaufort County, Respondent does not believe that either argument should or does substantively apply to this matter. Appellant's arguments as to these subjects are supported by Appellant's counsel's undocumented discussion with one of the sponsors of the bill that ultimately resulted in the Amended statute, and said counsel's review of other liens filed in Beaufort County that purportedly do not comply with the amended Statute. Respectfully, whether others have complied with the amended Statute is immaterial, and given the plain and

unambiguous language of the statute, legislative intent is not necessary to study in the present matter. However, if it were, Appellant has provided no documentable evidence or support that suggests the legislative intent was in any way different from the plain meaning of the language of the amended Statute.

“The primary rule of statutory construction is to ascertain the intent of the General Assembly. *Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 583, 597, 757 S.E.2d 408, 416 (2014). "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). Accordingly, courts will "give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (citation omitted).”

S.C. Pub. Interest Found. v. Calhoun Cty. Council, 432 S.C. 492, 497, 854 S.E.2d 836, 838 (2021).

CONCLUSION

Given the facts of this matter and the plain and unambiguous language contained in the amended Statute, Respondent requests this Honorable Court affirm the trial court’s order granting Respondent’s Motion to Dismiss Lien.

Respectfully submitted,

s/Jason W. Ward

Jason W. Ward

S.C. Bar No. 72928

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Bluffton, South Carolina 29910

Attorney for the Respondent

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CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent's Final Brief complies with Rule 211(b), SCACR.

January 3, 2025

Respectfully submitted,

s/Jason W. Ward

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PROOF OF SERVICE

The undersigned did serve, on the 3rd day of January 2025, upon counsel for Appellant at the address below, a copy of the Respondent's Final Brief and Certificate of Counsel.

Michael W. Mogil, Esquire
Mogil Law Firm
PO Box 5925
Hilton Head Island, South Carolina 29938

January 3, 2025

Respectfully submitted,

s/Jason W. Ward

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January 3, 2025

THE HONORABLE CATHERINE HARRISON
Deputy Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Stax Building & Development LLC vs. HHI Yacht Club Ventures LLC
Appellate Case No.: 2024-001127
GW File No.: 3721.01

Dear Ms. Harrison:

Enclosed for filing in the above-referenced matter is one bound copy of Respondent's Final Brief, together with Respondent's Certificate of Counsel and Proof of Service, respectively.

Thanking you, and with best wishes, I am

Most sincerely,



Jason W. Ward

JWW/lm
Enclosures
cc: Michael W. Mogil, Esquire