

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

C.A. No. 2019-CP-04-00760

Brock Landscape Contractors, LLC d/b/a Brock Landscape

Plaintiff,

vs.

Clyde E. Abernathy, Sharon M. Abernathy,
Linda M. Abernathy and Michael L. Abernathy,
individually and d/b/a Abernathy Welding &
Sandblasting

Defendants.

AND

Michael L. Abernathy d/b/a Abernathy Welding
and Sandblasting,

Third Party Plaintiff,

vs.

William Harold Brock, Jr.

Third Party Defendant.

ORDER

RECEIVED

Mar 10 2025

SC Court of Appeals

DATE OF TRIAL:	June 3-5, 2024
PRESIDING JUDGE:	J. Cordell Maddox, Jr.
PLAINTIFFS' ATTORNEY:	Joshua B. Raffini
DEFENDANTS' ATTORNEY:	G. Lee Cole
COURT REPORTER:	Elizabeth B. Harris (6/3) Hollie M. Jenkins (6/4) Cheryl Smith (6/5)

This matter came before the Court, non-jury, on June 3-5, 2024. Plaintiff initiated this mechanic's lien foreclosure action on April 19, 2019, by filing its Summons and Complaint, together with Lis Pendens regarding the property for which Plaintiff's lien attached and for which

Plaintiff sought foreclosure. Plaintiff alleged, through its principal Harold Brock, that it had completed hauling and grading work to improve the Defendant's property for which Defendants had not paid in full. Defendants answered and generally denied the substantive allegations of the Complaint. Defendants also asserted counterclaims. Defendant Michael Abernathy filed a Third-Party Complaint against Harold Brock, individually. The Defendants, and Third-Party Plaintiff, alleged 1) Plaintiff failed to pay for certain prior welding work performed by one or more of Defendants, 2) slander to title as to the real property at issue in Plaintiff's mechanic's lien. Plaintiff duly replied and denied the substantive allegations of the Counterclaims, and claiming it was entitled to set-off for any damages awarded. The parties participated in various pre-trial motions and trial in this matter was continued on numerous occasions. Reference is invited to the Court's file for the full procedural history of this matter.

At the call of the case, Plaintiff was present through its principal Harold Brock together with Plaintiff's counsel. Defendants Michael Abernathy and Linday Abernathy appeared together with their attorney. Both parties presented testimony and evidence in support of their respective positions. At the conclusion of trial, Plaintiff moved for a directed verdict as to claims regarding slander of title. That motion was denied. The Court took the matter under advisement.

Based on evidence and testimony presented, arguments of counsel, applicable law, and all matters appearing of record, the Court finds in favor of the Plaintiff and that Plaintiff shall be entitled to enforce its mechanic's lien. The Court also finds for the Defendant, Michael L. Abernathy, in part and that Plaintiff's mechanic's lien shall be set off by the amount due said Defendant on account of his Counterclaim/Third-Party Complaint. In support thereof, the Court makes the following findings of fact and conclusions of law derived therefrom:

FINDINGS OF FACT

1. I find that the Plaintiff is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, with its principal place of business in Anderson County, South Carolina.
2. I find that the Defendants are all citizens and residents of the County of Anderson, State of South Carolina, and are joined as Defendants by virtue of their interest in the real property (the "Property") that is the subject of this mechanic's lien foreclosure action, and more specifically described as follows:

ALL that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Anderson, being known and designated as Tract 2-D, containing 10.00 acres, more or less, on a plat made for AGTIM, In. by Dunn & Dunn, Inc., Barry K. Dunn, SCRLS #8857, dated October 25, 2001, recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Slide 1277 at Page 4-A. Reference is hereby made to the most recent survey for a more complete and accurate metes and bounds description thereof.

This being the same property conveyed unto Clyde E. Abernathy and Sharon M. Abernathy by deed of Mark L. Tanner and Sara T. Tanner dated December 20, 2006, and recorded December 28, 2006, in Record Book 7775 at Page 148 in the Anderson County, South Carolina Register of Deeds. SEE ALSO Deed of Clyde E. Abernathy and Sharon M. Abernathy to grantors and Michael L. Abernathy and Linda M. Abernathy for their joint lives with remainder the survivor, said deed recorded January 27, 2016 in Deed Bk 12154 at Pg 00054 in the Office of the Register of Deeds for Anderson County.

TMS No.: 261-00-02-008

Physical Address: 1280 Cannon Bottom Road, Belton, South Carolina 29627

3. I find that Plaintiff, with the express consent of Defendants, previously provided labor and materials to improve Defendants' Property.
4. I find that when Plaintiff was not paid for labor and materials furnished in the improvement of Defendants' Property, Plaintiff sent a certified demand to Defendants on or about December 14, 2018 pursuant to SC Code § 27-1-15. A copy of said letter was admitted into evidence at trial.

5. I find that when Plaintiff was not paid pursuant to demand, Plaintiff recorded and served the underlying mechanic's lien, said lien recorded on December 18, 2018 in Bk 55 at page 247.
6. I find that Plaintiff alleged through its final invoice, a copy of which was admitted into evidence, and statement of account recorded with mechanic's lien that the amount of \$16,711.31 was due and owing from the Defendants. I find that no further payments were made towards this balance subsequent to filing of the mechanic's lien.
7. I find that neither party made any pre-judgment offers of settlement in accordance with SC Code § 29-5-20 such that the Plaintiff's final offer was the amount of his lien and the Defendants' final offer was the amount of their counterclaim.
8. I find that, based on the testimony of the parties and witnesses for the parties, there are numerous undisputed facts. I find that the following facts were undisputed at the time of trial:
 - a. The parties, and in particular Harold Brock and Michael ("Mike") Abernathy, had a relationship prior to completion of the work referenced in the pleadings that was the subject of this mechanic's lien for the Property.
 - b. Harold Brock knew Mike Abernathy from previously hiring him to complete welding work as needed at his usual rate of \$95.00 per hour.
 - c. For prior work, Mike Abernathy would bill Harold Brock and Mr. Brock promptly paid invoices via check. Prior invoices and payments were introduced into evidence.
 - d. Plaintiff worked at Defendants' Property hauling dirt and grading in

anticipation of Defendants constructing a new shop.

- e. The parties did not discuss a set price for work performed prior to initiating the project.
 - f. Plaintiff obtained dirt from an adjoining property owner for use at Defendant's Property as opposed to having to pay for dirt required for grading.
 - g. Defendants paid a total of \$16,000.00 to Plaintiff towards work at their Property. This payment was in cash.
 - h. Plaintiff's lien was timely filed within ninety (90) days of last work on the Property.
 - i. The parties met in early October, 2018, for Plaintiff to deliver a final invoice to Defendants through Jacob Abernathy. The interaction was recorded by video taken on behalf of the Defendants. During this meeting, Mr. Brock provided an invoice to Defendants. The Defendants then provided Mr. Brock with an invoice reflecting that they were owed \$28,080 for welding work performed at various times at an hourly rate of \$195.00 per hour. Prior to this meeting, neither party had seen the invoice presented by the other party.
 - j. Defendants, in particular Michael Abernathy and his son Jacob Abernathy, provided some welding services for Plaintiff for which they have not yet been paid. Plaintiff did not dispute sufficient welding work which would entitle Defendants to payment in the amount of \$1,330.00, although Defendants claimed a substantially higher amount was due.
9. I find that the parties dispute the length of time Plaintiff worked on the Property, the

- total amount of work performed, when partial payment was made, and the amount of work Defendants performed for Plaintiff. Furthermore, Plaintiff disputed the rate charged for any work by Defendants which differed from prior practice between the parties.
10. I find that the Plaintiff presented credible testimony and evidence, including testimony by Harold Brock on behalf of Plaintiff, to substantiate the Plaintiff actually completed work at the Property as reflected on his final invoice. Testimony presented by the Plaintiff included explanation for how Plaintiff tracked time and expenses working at the Property, including but not limited to who actually performed work for Plaintiff and the manner in which time entries were maintained.
11. In contrast, I find that the testimony on behalf of Defendants was not wholly credible. Both Michael Abernathy and Jacob Abernathy testified they came to distrust Harold Brock and felt they were overcharged. However, neither witness could identify a reason for such lack of trust or explain the basis for any claim of being overcharged. More specifically, both of these witnesses claimed they felt they were overcharged prior to such time as they claimed to know what they were being charged.
12. Furthermore, I find that the testimony on behalf of Defendants was inconsistent in certain particulars. The Defendants presented testimony about cash payment to Plaintiff, but their account of the timing of such payment changed during the pendency of this action and neither witness could identify why cash payment- which they claim was withdrawn from the bank near the time of payment- was the appropriate method to document payment to someone they claim they could not trust.

13. I find that Plaintiff is entitled to payment for work performed at the Property in the full amount of the lien, specifically \$16,711.31, subject to offset as set forth herein below.
14. As to Defendants' Counterclaim and the Third-Party Complaint, I find that the invoice presented by Defendant Michael Abernathy is not credible. Defendants offered no reasonable explanation for why the hourly rate doubled from prior work performed for Plaintiff. Furthermore, Defendants provided contradictory testimony about how hours were allegedly logged for work performed. Defendants did not offer any explanation for why Plaintiff was not billed for work, as he had been in the past, as opposed to presentment of a single, large invoice after Defendants owed Plaintiff for work performed at the Property.
15. I find that, based on Plaintiff's admission, Defendant/Third-Party Plaintiff Michael Abernathy is entitled to payment in the amount of \$1,330.00, which represents fourteen (14) hours of work performed at the rate of \$95.00 per hour. I find that this amount shall be an offset against the amount of Plaintiff's lien.
16. Accordingly, I find that Plaintiff is entitled to \$15,381.31 in accordance with his lien as reduced by the offset for the amount the Court determined is due on the Counterclaim and Third-Party Complaint.
17. I find that, in order to accomplish payment, Plaintiff's lien shall be foreclosed, subject to any senior liens on the Property, and the proceeds disbursed in accordance with this Order.

CONCLUSIONS OF LAW

I conclude that this Court has jurisdiction over the parties and the subject matter of this

action. Venue is proper in Anderson County.

Plaintiff has complied with all conditions precedent for perfecting and foreclosing its mechanic's lien in accordance with § 29-5-10, et seq. Furthermore, I conclude that Plaintiff provided labor and materials actually used in improvement of Defendants' Property, that amounts due have not been paid as required, and that foreclosure of Plaintiff's lien is appropriate pursuant to statute.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Plaintiff's mechanic's lien shall be foreclosed.
2. The subject Property, identified herein above, shall be sold subject to any senior liens on the Property, with the net proceeds applied as follows:
 - a. Costs of sale and of this action, to be determined at the judicial sale by subsequent Order;
 - b. Payment of attorney's fees, if awarded by subsequent Order;
 - c. Payment of the net amount of Plaintiff's lien, to wit, \$15,381.31.
 - d. Any remaining surplus shall be held pending further Order to resolve any claims to such surplus.
3. In order to effectuate sale, this matter shall be referred to the Master in Equity for Anderson County for purposes of completing a judicial sale. However, such referral shall be stayed for ten (10) days to allow the parties to submit post-trial motions, including any motions for attorney's fees. This stay shall continue until resolution of any post-trial motions filed within the requisite period. Upon expiration of such period, the matter shall then be referred for judicial sale as follows

- a. FOR CASH: The Master in Equity for Anderson County will require, at the time of the bid, a deposit of five (5%) percent on the amount of the bid (in cash or equivalent) same to be applied on the purchase price if compliance is made; but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to Plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at the time of bid or comply with the other terms of the bid within twenty (20) days, then the property may be re-sold on the same terms and conditions on some subsequent sales day, but at the risk of the defaulting bidder(s).
- b. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.

4. That Master in Equity for Anderson County, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within twenty (20) days after date of sale, then the undersigned Master in Equity for Anderson County may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

5. That the undersigned Master in Equity for Anderson County will apply the proceeds of sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further Order of this Court.

11. That Plaintiff shall have judgment of foreclosure on its lien.

12. In the event the successful bidder is other than the Defendant in possession herein, upon the presentation of a Writ of Assistance, the Sheriff of Anderson County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession. Pursuant to Rule 70, SCRPC, the Clerk, upon application of the successful bidder is hereby directed to execute a Writ of Assistance. All valid tenant rights pursuant to Protecting Tenants at Foreclosure Act of 2009 shall be protected.

13. That the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Clerk of Court in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity for Anderson County, who executes such deed as grantor.

16. The Master in Equity for Anderson County, shall direct the Clerk of Court to release of record the mechanic's lien being foreclosed, after the Order Confirming Sale and Disbursements has been executed and filed, which such lien recorded on December 18, 2018 in Bk 55 at page 247.

17. The Master in Equity for Anderson County will retain jurisdiction to do all the necessary acts incident to this foreclosure including, but not limited to, the issuance of a Supplemental Order to evidence additional debt incurred if the sale of the property is delayed by the filing of a bankruptcy petition, or an attempt of the parties to reach a settlement, the issuance

of a Supplemental Order to correct a harmless error in the action that does not substantially affect the rights of the parties, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71(c), SCRCP, and hearing any issues involving appraisal proceedings under §29-3-680 et seq of the South Carolina Code of Laws (1976) as amended.

18. Property to be sold by the Master in Equity for Anderson County is more full described as follows:

ALL that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Anderson, being known and designated as Tract 2-D, containing 10.00 acres, more or less, on a plat made for AGTIM, In. by Dunn & Dunn, Inc., Barry K. Dunn, SCRLS #8857, dated October 25, 2001, recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Slide 1277 at Page 4-A. Reference is hereby made to the most recent survey for a more complete and accurate metes and bounds description thereof.

This being the same property conveyed unto Clyde E. Abernathy and Sharon M. Abernathy by deed of Mark L. Tanner and Sara T. Tanner dated December 20, 2006, and recorded December 28, 2006, in Record Book 7775 at Page 148 in the Anderson County, South Carolina Register of Deeds. SEE ALSO Deed of Clyde E. Abernathy and Sharon M. Abernathy to grantors and Michael L. Abernathy and Linda M. Abernathy for their joint lives with remainder the survivor, said deed recorded January 27, 2016 in Deed Bk 12154 at Pg 00054 in the Office of the Register of Deeds for Anderson County.

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IT IS SO ORDERED this _____ day of _____, 202__.

J. Cordell Maddox, Jr.
Presiding Circuit Court Judge

Anderson, South Carolina



Anderson Common Pleas

Case Caption: Brock Landscape Contractors LLC c/o William H. Brock Sr. , plaintiff,
et al VS Clyde E Abernathy , defendant, et al

Case Number: 2019CP0400760

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.