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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2020-CP-23-05689

JE&MA Enterprises, LLC,

Appellant,

v.

WB Services, Inc. and Diamond Jubilee Pelham, LLC,

Defendants,

of whom

Diamond Jubilee Pelham, LLC is

Respondent.

INITIAL BRIEF OF RESPONDENT DIAMOND JUBILEE PELHAM, LLC

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT PROPERLY DENY APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT BECAUSE THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION TO DETERMINE THAT APPELLANT'S MECHANIC'S LIEN WAS ILLEGAL AND UNENFORCEABLE BECAUSE IT WAS PREPARED AND FILED BY A NON-LAWYER WHICH THE SOUTH CAROLINA SUPREME COURT HAS DEEMED TO BE THE UNAUTHORIZED PRACTICE OF LAW?

STATEMENT OF THE CASE

Appellant JE&MA Enterprises LLC (“JEMA”) filed this action on December 14, 2020 against Respondent Diamond Jubilee Pelham, LLC (“Diamond Jubilee”) for foreclosure of its mechanic’s lien and breach of South Carolina Code Ann. § 27-1-15. It also asserted various claims against Defendant WB Services, Inc. (“WB”). [Complaint]. Diamond Jubilee moved to dismiss and compel arbitration in lieu of filing an answer under Rule 12(b), SCRCP. [Motion to Dismiss or Stay]. Thereafter, a Consent Order was entered staying JEMA’s claims against Diamond Jubilee pending a determination of WB’s claims under its contract with Diamond Jubilee via arbitration. [March 3, 2021 Order].

After the arbitration concluded, Diamond Jubilee answered JEMA’s complaint on March 17, 2023 and asserted counterclaims for declaratory judgment and slander of title. [Diamond Jubilee Answer and Counterclaims]. Diamond Jubilee’s declaratory judgment cause of action sought to determine whether JEMA’s mechanic’s lien was unenforceable because it was prepared and recorded by a non-lawyer, who was an employee of a Louisiana-based lien generation software company named Levelset.

On April 14, 2023, JEMA filed a motion for summary judgment on Diamond Jubilee’s counterclaims. [Motion for Summary Judgment]. A motion hearing was held before the Honorable R. Lawton McIntosh on June 27, 2023, and on July 10, 2023, the Court issued its Form 4 Order denying JEMA’s motion and determining that JEMA’s mechanic’s lien was stricken. [July 10, 2023 Order]. On August 23, 2023, the Court issued a formal Order stating that JEMA’s mechanic’s lien was void and unenforceable as a matter of law because it “was prepared, executed, and recorded by an individual not licensed to practice law in any jurisdiction, let alone South Carolina.” [August 23, 2023 Order].

Instead of filing a Rule 59(e) Motion to Alter or Amend a Judgment, JEMA waited almost eight months (until April 14, 2024) to file a motion for relief from judgment under Rule 60(b)(4), SCRCP (the “Rule 60 Motion”). There, JEMA argued that the Court lacked subject matter jurisdiction to determine that JEMA’s mechanic’s lien was void and unenforceable as the unauthorized practice of law (“UPL”) because only the South Carolina Supreme Court has jurisdiction to make such a finding. [Motion for Relief]. On August 5, 2024, the Honorable R. Lawton McIntosh denied JEMA’s Rule 60 Motion and JEMA subsequently filed this appeal. [August 5, 2024 Order].

STATEMENT OF FACTS

In 2018, Diamond Jubilee entered into a contract with WB, wherein WB agreed to serve as the general contractor for the construction of Diamond Jubilee’s Comfort Suites hotel in Greenville, South Carolina (“the Project”). In turn, WB subcontracted with various trades and suppliers, including JEMA, to complete certain scopes on the Project. During the Project, issues arose relating to the work of WB and its subcontractors, including delays, defective work, and fraudulently submitted lien waiver and pay applications. Due to non-payment by WB, the Project became encumbered by nearly \$2,000,000 in mechanic’s liens that were filed by WB’s subcontractors and suppliers including JEMA’s mechanic’s lien (“JEMA Lien”), which was recorded on September 3, 2020. [Response in Opp. to JEMA’s MSJ, Ex. A].

The JEMA Lien was prepared and recorded by a lien generation software company based in Louisiana that does business under the name Levelset. [Response in Opp. to JEMA’s MSJ, Ex. B]. All pertinent portions of the JEMA Lien were executed by a non-lawyer employee of Levelset, Charles Henson, who was deposed in connection with the aforementioned arbitration. [Response in Opp. to JEMA’s MSJ, Ex. B at 8:15-17; 22:2-22:10]. The Levelset software generated the

mechanic's lien form, which was filled in by JEMA. [*Id.* at 11:7-12:8]. Henson caused the JEMA Lien to be recorded in the Office of the Greenville County Register of Deeds without reviewing any of the information provided by JEMA. [*See generally id.* at 17:7-32:10]. Errors caused the amount of the JEMA Lien to be overstated by nearly 100%. [Diamond Jubilee Answer and Counterclaims ¶ 21; *see also* Response in Opp. to JEMA's MSJ, Ex. A, page entitled "VERIFIED STATEMENT OF ACCOUNT"]. Despite not bothering to verify (let alone review) the critical portions of the lien, Levelset's Henson nevertheless recorded the JEMA Lien which thereby encumbered Diamond Jubilee's real property with a debt exceeding \$500,000. [Response in Opp. to JEMA's MSJ, Ex. A; Ex. B at 17:7-32:10].

STANDARD OF REVIEW

Under S.C. Code Ann. § 15-53-10, *et seq.*, courts have the power to declare rights, status, and other legal relations. S.C. Code Ann. § 15-53-20. To state a cause of action for declaratory judgment, a party must demonstrate a justiciable controversy which is real, substantial, ripe, and appropriate for judicial determination. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462 (2004). A justiciable controversy exists when there is a definite assertion of legal rights and a positive legal duty. *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970).

Declaratory judgments are reviewed in the same manner as other orders, judgments, and decrees. S.C. Code Ann. § 15-53-110. The standard of review for a declaratory judgment "is based on the issue raised by the request for the judgment." *J & W Corp. of Greenwood v. Broad Creek Marina of Hilton Head, LLC*, 441 S.C. 642, 664, 896 S.E.2d 328, 340 (Ct. App. 2023); *see also Bundy v. Shirley*, 412 S.C. 292, 301, 772 S.E.2d 163, 168 (2015) ("Declaratory judgments are neither legal nor equitable. The standard of review for a declaratory judgment action is, therefore, determined by the nature of the underlying issue." (citations omitted)). A proceeding for the

enforcement of a mechanic's lien is legal in nature. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 127, 631 S.E.2d 252, 255 (2006).

“If [a declaratory judgment] action is at law, it retains this character, and the Court of Appeals must affirm where there is any evidence to support the judge's findings.” *Loadholt v. S.C. State Budget & Control Bd.*, 339 S.C. 165, 169, 528 S.E.2d 670, 672 (Ct. App. 2000) (citing *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991)); *see also Butler*, 369 S.C. at 127, 631 S.E.2d at 255-56 (“[T]he trial court’s findings of fact will not be disturbed on appeal unless wholly unsupported by the evidence or unless it clearly appears the findings were influenced or controlled by an error of law.”); *Jordan v. Judy*, 413 S.C. 341, 348, 776 S.E.2d 96, 100 (Ct. App. 2015) (“We may not consider the case based on our view of the preponderance of the evidence, but must construe the evidence presented to the [trial court] so as to support [its] decision wherever reasonably possible.”) (alterations in original) (quoting *Sheek v. Crimestoppers Alarm Sys.*, 297 S.C. 375, 377, 377 S.E.2d 132, 133 (Ct. App. 1989)). “We must look at the evidence in the light most favorable to the respondents and eliminate from consideration all evidence to the contrary.” *Id.* (quoting *Sheek*, 297 S.C. at 377, 377 S.E.2d at 133).

ARGUMENT

- I. THE TRIAL COURT CORRECTLY DENIED APPELLANT’S MOTION FOR RELIEF FROM JUDGMENT BECAUSE THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION TO DETERMINE THAT APPELLANT’S MECHANIC’S LIEN WAS ILLEGAL AND UNENFORCEABLE BECAUSE IT WAS PREPARED AND FILED BY A NON-LAWYER.

The South Carolina Supreme Court has expressly held that a non-lawyer preparing and recording a lien that encumbers real property constitutes the unauthorized practice of law. *Rogers Townsend & Thomas, PC v. Peck*, 419 S.C. 240, 247-48, 797 S.E.2d 396, 400 (2017). Lien documents that encumber real property are considered legal instruments, and “[p]reparing and

recording legal instruments constitutes the unauthorized practice of law” in South Carolina. *Id.* (citing *State v. Robinson*, 321 S.C. 286, 290, 468 S.E.2d 290, 292 (1996) (“This Court has defined the practice of law to include the preparation and filing of legal documents....”); *State ex rel. Daniel v. Wells*, 191 S.C. 468, 473-74, 5 S.E.2d 181, 183 (1939) (“According to the generally understood definition of the practice of law ... it embraces ... the preparation of legal instruments of all kinds....”)). The South Carolina Supreme Court has also held that a trial court has the “inherent” authority to vacate a wrongfully filed mechanic’s lien. *See Sea Pines Co. v. Kiawah Island Co.*, 268 S.C. 153, 157, 232 S.E.2d 501, 502 (1977).

This case is controlled by the South Carolina Supreme Court’s recent ruling in *U.S. Bank National Assoc. v. Mack*, No. 2022-001147, 2025 WL 274731 (S.C. Jan. 23, 2025). While JEMA cited *Mack* in its initial brief, it made no attempt to explain how the preparation and recording of a mechanic’s lien by a non-lawyer employee of Levelset “involves a novel issue regarding what constitutes the unauthorized practice of law” such that only the South Carolina Supreme Court may resolve the issue in its original jurisdiction. *Id.* at *2. JEMA simply declared that the facts here are “novel” without further explanation and asked the Court of Appeals to reverse the trial court’s ruling. This is unsurprising, because *Mack* completely sinks JEMA’s grounds for appeal and shows that the trial court properly ruled that the preparation and recording of JEMA’s mechanic’s lien by a non-lawyer constituted the unauthorized practice of law based on clear South Carolina Supreme Court precedent.

In *Mack*, the Supreme Court clarified that the *In re Unauthorized Practice of Law Rules Proposed by South Carolina Bar* decision cited by JEMA “do[es] not alter the subject matter jurisdiction of the circuit courts to determine civil causes of action that may include allegations of conduct involving the unauthorized practice of law. *Id.* at *1 (citing *In re Unauthorized Practice*

of Law, 309 S.C. 304, 305, 422 S.E.2d 123, 124 (1992)). The Court explained the *In re Unauthorized Practice of Law* decision was not meant to grant it “exclusive subject matter jurisdiction over any cause of action that included allegations of the unauthorized practice of law” but was merely a signal that “it would accept a declaratory judgment action in [its] original jurisdiction when the action involves a novel issue regarding what constitutes the unauthorized practice of law.” *Mack*, 2025 WL 274731, at *2.

Mack holds that “circuit courts have subject matter jurisdiction to hear civil causes of action that include factual allegations of the unauthorized practice of law.” *Id.* at *3. If those factual allegations “reflect conduct that [the Supreme Court has] previously deemed the unauthorized practice of law, the trial court shall proceed and resolve the case like any other.” *Id.* The Supreme Court also took the trouble to explain that, while a “novel question” about whether conduct constitutes the unauthorized practice of law should be resolved in its original jurisdiction, “[w]e anticipate such novel questions will rarely arise, given the ample precedent available to guide our trial courts.” *Id.* (emphasis added).

Here, the trial court properly relied on the “ample precedent available” in ruling that the preparation and recording of JEMA’s mechanic’s lien by a non-lawyer constituted the unauthorized practice of law. As discussed above, there is clear South Carolina Supreme Court precedent holding that the preparation and recording of legal instruments, such as liens, by a non-lawyer is considered the unauthorized practice of law. *See Peck*, 419 S.C. at 248, 797 S.E.2d at 400; *Robinson*, 321 S.C. at 290, 468 S.E.2d at 292; *Wells*, 191 S.C. at 473-74, 5 S.E.2d at 183. In its Order denying JEMA’s motion for relief from judgment, the trial court referenced this precedent by stating that the

South Carolina Supreme Court has already explained that this conduct amounts to UPL, and therefore, this Court had the inherent power (under *Sea Pines*) to issue a declaration that the JEMA lien was invalid, and had subject matter jurisdiction to

apply the binding precedent handed down by the South Carolina Supreme Court to in this case where the facts were identical in every material way to the facts in *Peck*.

[August 5, 2024 Order at 7-8]. JEMA makes no attempt to rebut the trial court’s reasoning and factual findings. Nor has JEMA proffered anything to distinguish the facts at hand to demonstrate how this case presents a “novel fact pattern” that can only be resolved in the South Carolina Supreme Court’s original jurisdiction.

It is undisputed that JEMA’s mechanic’s lien was a legal instrument that was prepared, executed, and recorded by a person who was not authorized to practice law in South Carolina, or in any jurisdiction for that matter. JEMA cannot escape the ample precedent of the South Carolina Supreme Court holding that this conduct constitutes the unauthorized practice of law and the *Mack* decision that unequivocally holds that trial courts have subject matter jurisdiction to hear and resolve these cases where such precedent is available. The trial court properly referenced and relied on South Carolina Supreme Court precedent in ruling that JEMA’s mechanic’s lien was invalid because it was the product of the unauthorized practice of law, and the court’s ruling should be affirmed.

CONCLUSION

For the reasons stated herein, this Court should affirm the declaratory judgment of the circuit court finding that JEMA’s mechanic’s lien was void and unenforceable as the unauthorized practice of law.

Signature Page to Follow

March 11, 2025

Respectfully submitted,

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