THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Hon. G.D. Morgan, Master-in-Equity

Case No. 2021-CP-30-00473
Appellate Case No.

A.R. Foods, Inc., Appellant.

v.

Carolina South Shore Construction, Inc., Respondent.

INITIAL BRIEF OF RESPONDENT

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I. STATEMENT OF THE ISSUES ON APPEAL

1) DID THE COURT ERR IN CONCLUDING THAT APPELLANTS LACK ANY EVIDENCE THAT REPAIRS WERE NECESSITATED OR PROXIMATELY CAUSED BY THE NEGLIGENCE, BREACH OF CONTRACT OR BREACH WARRANTY OF THE RESPONDENT?

II. STATEMENT OF THE CASE

This case arises out of the alleged improper design or installation of HVAC ducts during the upfit of a retail property located at 1818 Augusta Street in Greenville, South Carolina. Appellant A.R. Foods, Inc. ("A.R. Foods") filed a complaint with the Greenville County Magistrate Court on December 27, 2021. A.R. Foods alleges that it contracted with Abri Design Studio, Inc. ("ADS") and Ray Group Consulting Engineers, Inc. ("RGCE") to prepare and provide drawings regarding an HVAC system to be installed at the Property. It further alleges that it contracted with Respondent, Carolina South Shore Construction, Inc. ("CSSC"), to install the HVAC ductwork. After the ductwork was installed, the HVAC system allegedly malfunctioned, and it was discovered that the HVAC system was installed improperly.

A.R. Foods alleged that the HVAC system that was installed was defective and violated industry standards and warranties. Specifically, they claimed a two (2) ton unit was installed where a four (4) ton unit should have been installed, and the ductwork was undersized for the four (4) ton unit, which caused the unit to freeze up. CSSC alleged that the design and the drawings were incorrect, and that the HVAC system was installed pursuant to the design and the drawings.

A.R. Foods filed suit against CSSC and included ADS and RGCE, the designer and engineer that prepared the Design and Drawings. The suit alleged causes of action for (1) breach of contract; (2) negligence/gross negligence; and (3) breach of warranty. On May 3, 2024, CSSC filed a Motion for Summary Judgment to all claims asserted by A.R. Foods against it. On August 9, 2024, the circuit court granted CSSC's Motion for Summary Judgment.

As discussed below, the original drawings prepared by ADS and RGCE showed the ductwork improperly reversed for the two and four ton units. After CSSC installed the ductwork pursuant to ADS and RGCE's design, a subsequent plan was prepared modifying and correcting the size of the ductwork going to the respective units. Because CSSC performed its work in

accordance with the original drawings prepared by ADS and RGCE, which were inaccurate and reversed the sized duct work going to each HVAC unit, and because there is no evidence of actionable negligence by CSSC, the circuit court properly granted CSSC's Motion for Summary Judgment and the circuit court's decision should be affirmed.

III. STANDARD OF REVIEW

Summary judgment is warranted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ." NationsBank v. Scott Farm, 320 S.C. 299, 302-03, 465 S.E.2d 98, 100 (Ct. App. 1995). "When a party makes no factual showing in opposition to a motion for summary judgment, the trial 'court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary judgment as matter of law." S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc., 283 S.C. 182, 189, 322 S.E.2d 453, 457 (Ct. App. 1984). "[T]o resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial." NationsBank, 320 S.C. at 303, 465 S.E.2d at 100; see also Rule 56(e), SCRCP ("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. If he does not so respond, summary judgment, if appropriate, shall be entered against him.").

IV. ARGUMENT

A. It Is Undisputed That The Original Duct Design Plan By ADS and RGCE Was Inaccurate. CSSC is entitled to Rely on the Plans, and There is No Evidence CSSC Installed the System Contrary to the Original Design and Drawings.

It is undisputed that the original design and drawings for the ductwork given to CSSC for installation were inaccurate. (Appellant's Initial Brief, Page(s) 1). The original design shows a 2-ton system designated AHU-1 (Carrier 58STA070 indoor furnace, CU-1 = Carrier 24ABR324 condensing unit) serving the Prep Area and a 4-ton system designated AHU-2 (Carrier 58STA110 indoor furnace, CU-2 = Carrier 24ABR348 condensing unit) serving the Serving Line. Id. These plans were used by CSSC to install the ductwork in the building. Id. There is no evidence that CSSC performed any work contrary to the original design and drawings. Pursuant to the Spearin Doctrine, "when a party supplies plans and specifications for use by a contractor to follow in constructing a project, said party impliedly warrants the sufficiency of the plans and specifications to construct the project." United States v. Spearin, 248 U.S. 132 (1918). CCSC had the right to rely on the design and drawings when it completed its work.

After A.R. Foods, which operates a Jersey Mike's subway sandwich shop, discovered that the system was not cooling the interior properly, it eventually went back to ADS and RGCE for assistance. At that point, ADS and RGCE recognized that the original design and drawings were incorrect and provided A.R. Foods with a modified plan. Notably, the modified plan required: (1) the disconnect of two supply diffusers at serving line from AHU-1 and extending and reconnecting them to AHU-2; and (1) the addition of a dedicated outside air duct and intake louver for AHU-1 to increase the size of the connection from AHU-2 to the existing duct. In essence, ADS and RGCE recognized that the original design and drawings had the ductwork reversed to the outdoor units. Its modified plan corrected this deficiency.

B. A.R. Foods Has No Evidence of Actionable Negligence, Breach of Contract, Breach of Warranty or Resulting Damages

A.R. Foods has not provided any evidence to support their claims asserted against CSSC of Negligence, Breach of Contract, Breach of Warranty, or Resulting Damages. "The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." S. Glass & Plastics Co. v. Kemper, 399 S.C. 483, 491–92, 732 S.E.2d 205, 209 (Ct.App.2012). To establish a cause of action in negligence, three essential elements must be proven: (1) duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. Rickborn v. Liberty Life Ins. Co., 321 S.C.291, 468 S.E.2d 292 (1996).

Negligence is not actionable unless it is a proximate cause of the injury. Hanselmann v. McCardle, 275 S.C. 46, 267 S.E.2d 531 (1980). Proximate cause requires proof of both causation in fact and legal cause. Oliver v. S.C. Dep't of Highways and Public Transportation, 309 S.C. 313, 422 S.E.2d 128 (1992). Causation in fact is proved by establishing the injury would not have occurred "but for" the defendant's negligence. Id. Legal cause is proved by establishing foreseeability. Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 443 S.E.2d 392 (1994).

Turner Hill ("Mr. Hill") testified on behalf of the plaintiff, A.R. Foods for the 30(b)(6) deposition of A.R. Foods. Mr. Hill does not hold any construction licenses. Hill Depo. 8:22-8:23. He does not have any construction training either by way of certification or on-the-job training and has no experience or background in the HVAC or mechanical engineering industries. Hill Depo. 8:24-9:3. Nonetheless, he was designated to testify on behalf of A.R. Foods. Id. Mr. Hill testified that CSSC served as the general contractor for the upfit of the store location. However, he did not know if A.R. Foods had a contract with CSSC. Hill Depo. 16:24-17:25. According to Mr. Hill, the building is not owned by A.R. Foods. Rather, it is owned by Hotzfam Trust. Hill Depo. 24:9-24:13.

Mr. Hill did not know who paid the bills when the HVAC system was discovered to be freezing up. Hill Depo. 28:1-28:24. He testified that he did not know who called Professional Heating & Cooling; that is, whether it was A.R. Foods, or the landlord Hotzfam Trust. Id. However, it was Professional Heating & Cooling which discovered the issue was the duct design. Hill Depo. 30:1-31:5; 36:20-36:25. Eventually, the ductwork was modified by CF Mechanical. Hill Depo. 38:11-38:17.

Mr. Hill was questioned regarding A.R. Foods' answers to interrogatories and the identification of witnesses including Dave Bockstahler. He testified:

> Q. [I]t says, Mr. Bockstahler, has knowledge of the facts and issues regarding the Jersey Mike's HVAC project performed by the defendant and the resulting damages. Do you see that? A. I do. Q. Do you know what A.R. Food, Inc.'s resulting damages are?
>
> A. I don't.
>
> Q. Do you know who else at A.R. Foods would know that?
>
> A. I don't.

Hill Depo. 43:12-43:23. Later, we questioned Mr. Hill about his own knowledge of A.R. Foods' damages. He testified:

> Q. Do you have knowledge -- it says, Mr. Hill has knowledge of the facts and issues regarding the Jersey Mike's HVAC project performed by defendants and the resulting damages. Do you see that?
>
> A. I do see that.
>
> Q. Do you know what A.R. Food's resulting damages are in this case?
>
> A. I do not.

Hill Depo. 44:11-44:19. Mr. Hill was unable to testify as to what CSSC did wrong. He testified:

> Q. Mr. Hill, on behalf of A.R. Foods what did my client, Carolina South Shore Construction, do wrong.
>
> A. I don't know.

Hill Depo. 59:3-59:6.

Accordingly, the circuit court properly held that Appellant presented no evidence to support its claims against CCSC.

C. CSSC Did Not Breach Their Duty Because the Doctrine of *Res Ipsa Loquitur* is Not Recognized in South Carolina.

To establish a prima facie case for negligence under South Carolina law, a plaintiff must show that: (1) defendants owed them a duty of care; (2) defendants breached this duty of care by a negligent act or omission; (3) defendants' breach was the proximate cause of their injuries; and (4) they suffered injury or damage. Dorrell v. S.C. Dep't of Trans., 361 S.C. 312, 318, 605 S.E.2d 12, 15 (2004) (citation omitted). "The plaintiff has the burden of proving each element of negligence, including the defendant's lack of due care." Snow v. City of Columbia, 305 S.C. 544, 555, 409 S.E.2d 797, 803 (Ct. App. 1991). "This burden of proof cannot be met by relying on the theory that the thing speaks for itself or that the very fact of injury indicates a failure to exercise reasonable care." *Id. (citing* King v. J.C. Penney Co., 238 S.C. 336,120 S.E.2d 229 (1961); Gilland v. Peter's Dry Cleaning Co., 195 S.C. 417, 11 S.E.2d 857 (1940). The Snow Court explained:

> South Carolina does not recognize the rule *of res ipsa loquitur.* Crider v. Infinger Transportation Co., 248 S.C. 10, 148 S.E.2d 732 (1966). In an action for negligence, the plaintiff must prove by direct or circumstantial evidence that the defendant did not exercise reasonable care. South Carolina's rejection *of res ipsa loquitur* is consistent with its general adherence to fault-based liability in tort. It also comports with the normal rules of proof, which require the plaintiff to prove affirmatively each element of his cause of action.

Id. at 555 n.7, 409 S.E.2d at 803 n.7.

Appellants cite South Carolina Electric & Gas v. Combustion Engineering, Inc., 283 S.C. 182, 184, 322 S.E.2d 453, 454 (Ct. App. 1984), a case involving fire damage due to a rupture of a metal hose at a power plant where summary judgment was overturned by the Court of Appeals against Daniel International Corporation, who constructed the power plant. (Appellant's Initial Brief, Page(s) 8). Appellants attempt to use this case to show that regardless of whether CSSC

furnished the plans, they still installed the HVAC unit, so like in South Carolina Electric, summary judgment is improper. (Appellant's Initial Brief, Page(s) 8-9).

However, this case does not apply. The court in South Carolina Electric found summary judgment was improper because of an affidavit stating that "Daniel was to have followed plans furnished to it by Gilbert Associates. Daniel, however, decided upon the "location, routing and construction of 'field run piping'" and "how the 'field run piping' approached the burner assembly and ... ultimately connected to the flexible metal fuel hose." South Carolina Electric & Gas v. Combustion Engineering, Inc., 283 S.C. 182, 192, 322 S.E.2d 453, 459 (Ct. App. 1984). The court in found summary judgment to be improper because of evidence stating that despite Daniel not furnishing the plans, Daniel had clear decisions in the installation. As established, there is no such evidence here. There is no evidence supporting that assertion that CSSC performed any work not according to the plans. Because there is no evidence to support their claims, Appellant's rely the doctrine of *res ipsa loquitur* to evidence a breach on behalf of CSSC. As established, *res ipsa loquitor* is not recognized by South Carolina. Therefore, Appellants lack evidence to support their claims against CSSC.

V. CONCLUSION

The lower court correctly held that Appellant lacked evidence to support their claims for negligence, breach of contract, and breach of warranty against Respondent. Therefore, Respondent respectfully requests that the lower court's order granting Respondent's motion for summary judgment be affirmed.

[signatures on following page]

Respectfully submitted,

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On this 12 day of May 2025

Charleston, South Carolain