

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Meyers Kitchens and Baths, LLC,

Plaintiff,

vs.

Maryann Wagner and Stipp Contracting,  
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2007-CP-10-0750

ORDER

BY

2013 OCT -3 PM 12:19  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

This matter came before this Court for a trial on May 15, 2013. Plaintiff seeks to recover upon a breach of contract claim and a mechanic's lien foreclosure action. Present at the hearing were the Plaintiff Meyers Kitchens and Baths, L.L.C., (Meyers), its counsel, W. Tracy Brown Esq., Defendant Maryann Wagner (Wagner) and her counsel, Nancy Bloodgood, Esq. Defendant Stipp Contracting, L.L.C., (Stipp) the general contractor, previously filed bankruptcy and did not appear or otherwise participate.

**FINDINGS OF FACT**

1. This case concerns a dispute arising in Charleston County. This Court has both subject matter jurisdiction and venue is proper.
2. This matter was referred to this Court by Order dated June 22, 2011.
3. Wagner contracted with general contractor, Stipp, to build her home. (Def. Ex. 5)
4. Wagner was given two choices of retail kitchen cabinet stores by the general contractor from which she could select her cabinetry.
5. Wagner chose Meyers.
6. Meyers is a business that sells and installs kitchen and bath cabinetry.

7. The two officers of Mevers are William E. Mevers and his brother, Roy E. Mevers, who are equal members of the L.L.C. Mevers Dep. 5:17-6:15, Nov. 28, 2012.
8. Mevers is licensed through its member, Roy E. Mevers.
9. On or about March 7, 2006, Mevers provided Wagner with a quote for the provision and installation of cabinetry.
10. On March 9, 2006, said cabinetry quote was accepted and signed for by Wagner.
11. The cabinetry quote described the type, quantity, and price of the selected cabinetry.
12. The cabinetry quote detailed the tax, delivery, and installation specifications.
13. On or around the end of August 2006, the cabinetry was delivered and installed by William E. Mevers.
14. Stipp, the general contractor, billed and received payment from Wagner for the cabinetry in the amount of \$18,760.00; however, Stipp never paid Mevers for the cabinetry work.
15. It is undisputed that Stipp never paid Mevers for the cabinetry work.
16. On November 20, 2006, Mevers filed its mechanic's lien in the amount of \$21,414.43.

#### CONCLUSIONS OF LAW

**I. THE CABINETRY QUOTE IS A CONTRACT BETWEEN PLAINTIFF AND DEFENDANT.**

**A. Defendants accepted Plaintiff's offer.**

The formation of a contract requires a bargain in which there is manifestation of mutual assent to the exchange and a consideration. RESTATEMENT (SECOND) OF CONTRACTS §17(1)

(1981). The manifestation of mutual assent ordinarily takes the form of an offer by one party followed by an acceptance by the other party. *See Maryland Supreme Corp. v. Blake Co.*, 279 Md. 531, 369 A.2d 1025, 1023 (Md. 1977). In determining whether a proposal amounts to an offer, the court must ask whether the proposal can be accepted to create an enforceable agreement. *See* RESTATEMENT (SECOND) OF CONTRACTS §24 (1981) (“An offer is the manifestation of willingness to enter into a bargain, so made as to justify the offeree in understanding that her assent to that bargain is invited and will conclude it”).

In this case, Mevers quoted a price of \$20,760.00, a quotation that Wagner accepted to form a binding contract as referenced in Defendant’s Exhibit 4. The quote was signed by Wagner on March 9, 2006 and an employee of Stipp on March 14, 2006. The quote included delivery, installation, and deposit specifications for the cabinetry. As to consideration, Mevers performed its bargain by delivery and installation of the cabinetry in exchange for Defendants’ promise to pay. No testimony was presented that the cabinets were defective or improperly installed. It is undisputed that Mevers has never been paid. Based on the foregoing, the Court concludes, Wagner contracted with Mevers and Wagner has failed to perform.

**B. The written cabinetry quote satisfies the Statute of Frauds requirements.**

For a writing to satisfy the Statute of Frauds it must “reasonably identify the subject matter of the contract, sufficiently indicate that a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement.” *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891 (S.C. 1989). A contract that is signed by the “party to be charged” is valid and enforceable. S.C. Code Ann. §32-3-10.

In this case, the written cabinetry quote satisfies the Statute of Frauds. The quote not only reasonably identifies the cabinets as the subject matter of the contract, but also provides detailed specifications as to the cabinetry’s delivery, installation, and costs. Further, Wagner who is the

party to be charged acknowledged the document with her signature. Accordingly, the elements are satisfied.

**II. PLAINTIFF, AS LICENSED CONTRACTOR, CAN ENFORCE THE CABINETRY QUOTE.**

South Carolina Code Section 40-59-410 provides in part that:

"[t]he practice or offer to practice residential home building, residential specialty contracting, or home inspecting as defined in this chapter by an individual residential builder, residential specialty contractor, or home inspector licensed or registered under this chapter through a firm offering residential building, residential specialty contracting, or home inspecting services to the public is authorized if: (1) *one or more of the corporate officers in the case of a corporation*, or one or more of the principal owners in the case of a firm . . . are licensed under the provisions of this chapter." (emphasis added).

Per Plaintiff's Exhibit 1, Roy Mevers is a licensed homebuilder. It is undisputed that Roy and William Mevers are both members and equal owners of Mevers. As such, Plaintiff was licensed to perform the work that is the subject of the contract and can assert its claims for breach of contract and mechanic's lien.

**III. PURSUANT TO SECTION 29-5-10 OF THE SOUTH CAROLINA CODE, PLAINTIFF CAN ENFORCE ITS MECHANIC'S LIEN.**

Mechanic's liens in South Carolina are governed by two main statutes; §§ 29-5-10 and 29-5-20 of the South Carolina Code. § 25-5-10 controls liens established by contractors or subcontractors who contract directly with or provide material and/or labor approved by the homeowner. Additionally, § 29-5-10 gives a mechanic's lien to persons who by agreement, or with the consent of the owner, perform labor on or furnish materials in the erection of a structure. Such a lien is unaffected by the amount of the contract between the homeowner and the contractor. Ringer v. Graham, 286 S.C. 14, 331 S.E.2d 373 (S.C. App. 1985).

§ 29-5-20 controls liens established by subcontractors who are seeking payment for services provided to a homeowner pursuant to a contract between the homeowner and a general

contractor. Unlike § 29-5-10, §29-5-20 contains limitation language which provides in relevant part that:

“[i]n no event shall the aggregate amount of the lien filed by a subcontractor or supplier exceed the amount due by the contractor to the subcontractor . . . in no event shall the aggregate amount of liens on the improvement exceed the amount due the owner.”

As previously determined, the cabinetry quote is a contract. The quote is a “separate contract” between Wagner and Mevers. Thus, § 29-5-10 is the applicable provision because Mevers contracted directly with Wagner to provide material and labor for the delivery and installation of the cabinetry. Further, the work was accepted and approved by Wagner. Therefore, Mevers has a right to pursue this mechanic’s lien foreclosure action pursuant to § 29-5-10.

**IV. PURSUANT TO SECTION 29-5-10 PLAINTIFF IS ENTITLED TO REASONABLE ATTORNEY’S FEES.**

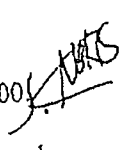
In an action on a mechanics lien arising from § 29-5-10, the right to attorney’s fees is governed by § 29-5-10 as opposed to § 29-5-20. T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 450 S.E.2d 87 (S.C.App. 1994). In pertinent part, § 29-5-10 (a) provides:

“[t]he cost which may arise in enforcing or defending against the lien under this chapter, including reasonable attorney’s fee, may be recovered by the prevailing party. The fee must be determined by the court in which the action is brought but the fee and the court costs may not exceed the amount of the lien.”

In order to protect private subcontractors who contract directly with a homeowner, § 29-5-10 allows costs and reasonable attorney’s fees to be secured by a mechanic’s lien. The amount of the award is left to the sound discretion of the court, subject to the guidelines in § 29-5-10. T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 450 S.E.2d 87 (S.C.App. 1994).

Meyer’s attorney has submitted his affidavit of fees and costs incurred. These fees include \$9,750.00 paid to Meyer’s counsel Tracy Brown, Esq., \$500.00 paid to Mike Mitchum, Esq., and



\$5,000.00 paid to Mever's initial counsel Kenneth Krawcheck, Esq. (reduced from \$7,775.00) 

Mr. Krawcheck was suspended from the practice of law during the pendency of this action and

Mr. Mitchum died during the pendency of this action, each of which resulted in the representation of Mevers by Mr. Brown at trial.

I find that applying the six factors for the reasonableness of attorney's fees and costs under Baron Data Systems, Inc. v. Loter, 297 S.C. 382 (1989) that these fees and costs are reasonable based upon the efforts of counsel, the length of time that this matter has taken to get to trial and the successful resolution of this matter on Mever's behalf. The Court further notes that the award of fees is less than the amount of the mechanic's lien.

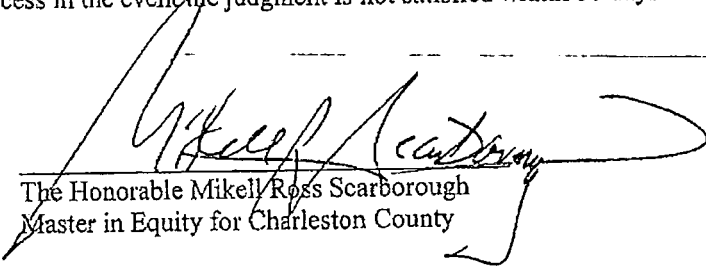
The Court therefore finds that Mevers should be granted mechanic's lien in the amount of \$20,760.00 plus an award of costs and attorney's fees in the amount of \$15,250.00 for a total award of \$36,010.00.

#### CONCLUSION

Mevers, a duly licensed homebuilder, contracted with Wagner for the delivery and installation of cabinetry to be utilized in the construction of her home being built by Stipp. Mevers provided Wagner with a quote setting forth the specific cabinetry to be provided, installed, and the price related thereto. Wagner accepted the offer as evidenced by her signature on the contract document. Mevers at all times performed in accord with the contract, but Mevers was never paid for the material and labor that was provided. Per § 29-5-10, Mevers filed and perfected its mechanic's lien. Mevers is entitled to recover in the amount of \$20,760.00 plus an amount of costs and reasonable attorney's fees to be determined by the court, not to exceed the statutory limits of the mechanic's lien.

Accordingly, judgment is entered for Mevers in the amount of \$36,010.00.

Meyers is entitled to seek foreclosure of its mechanic's lien pursuant to this Court's usual and customary foreclosure sales process in the event the judgment is not satisfied within 60 days.



The Honorable Mikell Ross Scarborough  
Master in Equity for Charleston County

Charleston, South Carolina  
Date: 12/3/13