

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Trial Court Case No. 2023-CP-23-01626
Appellate Case No.: 2024-001974

A.R. Foods, Inc.....Appellant,

v.

Carolina South Shore Construction, Inc.Respondent.

RECORD ON APPEAL

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I certify that this designation contains no matter which is irrelevant to this appeal.

s/ Kathryn L. Harden
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June 19, 2025
Greenville, South Carolina

Ar Foods Inc
PLAINTIFF(S)

Carolina South Shore Construction Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

See page 2 below

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/08/2024 .

Abri Design Studio Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court on Defendant Carolina South Shore Construction, Inc.'s Motion for Summary Judgment and Plaintiff's oral motion for additional time to respond to Defendant's motion. Based on a review of the file, submissions of the parties and oral arguments, Defendant's motion is hereby GRANTED. Plaintiff's motion for additional time is respectfully DENIED. Defendant's attorney to prepare a formal order.

It Is So Ordered.



Greenville Common Pleas

Case Caption: Ar Foods Inc vs. Carolina South Shore Construction Inc

Case Number: 2023CP2301626

Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	C.A. No.: 2023-CP-23-01626
)	
A.R. Foods, Inc.)	
Plaintiff,)	
)	
v.	)	ORDER GRANTING DEFENDANT
	)	CAROLINA SOUTH SHORE
Carolina South Shore Construction, Inc.,	)	CONSTRUCTION, INC.’S
Abri Design Studio, Inc., and Ray Group	)	MOTION FOR SUMMARY JUDGMENT
Consulting Engineers, Inc.)	
Defendant.)	
)	

I. Introduction

This matter came before me for a hearing on August 6, 2024, on Defendant Carolina South Shore Construction, Inc.’s Motion for Summary as to Plaintiff’s claims. The Plaintiff, A.R. Foods, Inc. (“Plaintiff” or “A.R. Foods”), was represented by attorney Kathryn Harden. Defendant Carolina South Shore Construction (“CSSC”) was represented by attorney John Harjehausen.

I have carefully considered the pleadings, motion, memoranda, exhibits, the arguments of counsel, and other matters properly before the Court. Based on all of the foregoing, I make the following findings of fact and conclusions of law:

II. Procedural and Factual Background

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. 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 the defendant, CSSC, to install

the HVAC ductwork. A.R. Foods alleges that the HVAC system allegedly malfunctioned and it was subsequently discovered that the HVAC system was installed improperly. According to A.R. Foods, 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 system to freeze up. The plaintiff has also asserted claims against ADS and RGCE which prepared the Design and Drawings because CSSC contends the Design and Drawings were incorrect. A.R. Foods asserted claims against all of the defendants for (1) breach of contract; (2) negligence/gross negligence; and (3) breach of warranty. This case was removed to the Circuit Court on April 4, 2023, on the basis that A.R. Foods' damages exceed \$7,500.

CSSC contends that it installed the ductwork pursuant to ADS and RGCE's design and, after it was discovered the design and drawings were flawed, a subsequent plan was prepared modifying and correcting the size of the ductwork going to the respective units. The repair work was completed by a different HVAC contractor.

CSSC seeks summary judgment on the basis there is no evidence that performed its work contrary to the original drawings prepared by ADS and RGCE. It claims there is no evidence of actionable negligence by CSSC, a breach of any contractual requirement, violation of any building or mechanical code, industry standard, or manufacturer's installation instruction. It further asserts that summary judgment is appropriate because there is no evidence A.R. Foods sustained any damages proximately caused by CSSC.

III. Analysis

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.”).

“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).

A builder who contracts to construct a dwelling impliedly warrants that the work undertaken will be performed in a careful, diligent, workmanlike manner. Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E.2d 730 (1989).

CSSC argues that expert testimony is required to support A.R. Foods’ claims. More specifically, CSSC argues that A.R. Foods has alleged the Design and Drawings were defective and it has asserted claims against ADS and RGCE. RGCE is apparently an engineering company. See S.C. Code Ann § 15-36-100 (requiring an affidavit related to certain professional negligence claims). According to CSSC, expert testimony is necessary to support A.R. Foods claims that an installation defect exists and proximately caused A.R. Foods’ claimed damages, as opposed to a drawing or design flaw, or some other cause such as a defective component from a manufacturer. The Court agrees. “The general rule in South Carolina is that where a subject is beyond the common knowledge of the jury, expert testimony is required.” Babb v. Lee Cnty Landfill SC, LLC, 405 S.C. 129, 153, 747 S.E.2d 468, 481 (2013).

CSSC asserts that A.R. Foods has not presented any evidence that it was negligent or breached a contractual requirement or warranty. In support of its motion, CSSC presented deposition testimony from the SCRCP 30(b)(6) deposition of A.R. Foods. Witness Turner Hill was designated to testify on behalf of the company. Mr. Hill testified that he did not have any construction training, experience or background in the HVAC or mechanical engineering industries. Further, he held no construction licenses. Mr. Hill did not know if A.R. Foods had a contract with CSSC. Mr. Hill testified the building at issue was owned by Hotzfam Trust, which acts as the landlord. He did not know who called the repair company which fixed the HVAC system. Mr. Hill testified that A.R. Foods had no

knowledge of anyone who would testify that CSSC breached a standard of care related to its work. Furthermore, Mr. Hill testified that he did not know the damages being claimed by A.R. Foods. When asked explicitly as to what CSSC did wrong, Mr. Hill 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.

A.R. Foods argued at the hearing that invoices existed related to the work that was undertaken to repair the HVAC system. However, the Court find a lack of any evidence in the record that the repairs were necessitated or proximately caused by any breach of duty, contract, or warranty by CSSC. See Snow v. City of Columbia, 305 S.C. 544, n. 7, 409 S.E.2d 797, n. 7 (Ct.App.1991) (noting that South Carolina does not recognize the rule of res ipsa loquitur).

A.R. Foods moves the court to permit additional evidence to be obtained under South Carolina Rule of Civil Procedure 56(f). It asserts that it is in the process of obtaining an expert and plans to depose the defendants and, therefore, summary judgment is premature because it would be deprived of a full and fair opportunity to conduct discovery. In support of the motion A.R. Foods submitted the affidavit of attorney John Crawford. However, the record indicates that A.R. Foods had a fair opportunity to conduct discovery and to consult or identify an expert witness prior to the hearing on the motion for summary judgment. A.R. Foods' complaint was filed in Magistrate Court on December 27, 2021. Pursuant to a motion from A.R. Foods this case was transferred to the Circuit Court on April 4, 2023. Thereafter, the parties exchanged written discovery and CSSC completed the deposition of A.R. Foods on January 15, 2024. The Court notes that a dormant file notice was issued on February 12, 2024, and subsequently A.R. Foods indicated that the case was active and the parties were exchanging discovery and completing depositions. CSSC filed its motion for summary judgment on May 3, 2024, stating the basis for its motion. Thereafter, A.R. Foods had several months

to complete additional discovery if it deemed it necessary, or to retain and identify an expert. A.R. Foods' motion to permit additional evidence was not filed until August 5, 2024. Under the circumstances, the Court finds the affidavit submitted by A.R. Foods did not set forth reasons it could not present facts essential to justify its opposition to the motion for summary judgment at the time of the hearing. Accordingly, the Court concludes A.R. Foods had a full and fair opportunity to conduct discovery and summary judgment is not premature. Therefore, A.R. Foods' motion to permit additional evidence pursuant to SCRCP 56(f) is denied. See Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003) (rejecting argument that summary judgment was premature and finding respondents had full and fair opportunity for discovery); Middleborough Horiz. Property Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 479–80, 465 S.E.2d 765, 771 (Ct.App.1995) (affirming summary judgment where appellants “advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment”).

IV. Conclusion

The Court find that A.R. Foods has failed to raise a material issue of fact that Carolina South Shore Construction breached a duty of care, contract, or warranty proximately causing A.R. Foods' claimed damages. Therefore, defendant Carolina South Shore Construction's Motion for Summary Judgment is hereby GRANTED. Further, the Court finds A.R. Foods had a full and fair opportunity to conduct discovery and, therefore, Plaintiff's Motion to Permit Additional Evidence to be Obtained Under Rule 56(f) is hereby DENIED.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Ar Foods Inc vs. Carolina South Shore Construction Inc

Case Number: 2023CP2301626

Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-08-27 18:25:48 page 7 of 7

Ar Foods Inc
PLAINTIFF(S)

Ray Group Consulting Engineers Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter is before the Court on Plaintiff's Amended Motion to Reconsider and/or Alter and Amend Order Granting Summary Judgment to Defendant Carolina South Shore Construction, Inc. and Plaintiff's Motion to Permit Additional Evidence to Be Obtained Under Rule 56(f). Based on a thorough review of the file, pleadings and submissions of the parties, the motions are respectfully denied. Pursuant to Rule 59(f), a hearing will not be necessary.
It Is So Ordered.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/21/2024 .

Abri Design Studio Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenville Common Pleas

Case Caption: Ar Foods Inc vs. Carolina South Shore Construction Inc , defendant,
et al
Case Number: 2023CP2301626
Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-10-21 14:25:54 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE MAGISTRATE COURT

Civil Action 2021CV2311002973

A.R. Foods, Inc.
c/o Kenison, Dudley & Crawford, LLC
704 E. McBee Avenue
Greenville, SC 29601

Plaintiff,

vs.

SUMMONS

2023-CP-23-01626

Carolina South Shore Construction, Inc.
Chris Poindexter, Registered Agent
5235 Eagle Lake Drive
Charlotte, NC 28217

Abri Design Studio, Inc.
Paul Anthony Girardeau
2969 Manitoba Lane
Marietta, GA 30062

Ray Group Consulting Engineers, Inc.
Ashim K. Ray, Registered Agent
3326 Chastain Ridge Drive
Marietta, GA 30066

Defendants.

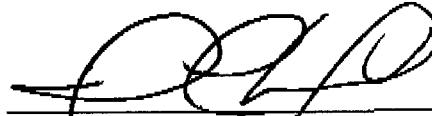
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FILED
DEC 27 2021

23 APR 4 PM 1:07
Paul Wickensmeyer, CDD, SCL, SC

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE SUMMONED AND REQUIRED to answer the Complaint in the above-entitled action, a copy of which is served upon you, and to serve a copy of your Answer upon the Plaintiff's attorney at the office located at 704 E. McBee Avenue, Greenville, South Carolina 29601 within thirty (30) days after the date of such service, exclusive of the day of service. If

you fail to answer the Complaint within thirty (30) days, judgment by default will be entered against you for the relief demanded in the Complaint.



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Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, South Carolina 29601
Office: (864) 242-4899
E-mail: crawford@conlaw.com
Attorney for Plaintiff

December 23, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE MAGISTRATE COURT

A.R. Foods, Inc.
c/o Kenison, Dudley & Crawford, LLC
704 E. McBee Avenue
Greenville, SC 29601

Civil Action _____

Plaintiff,

COMPLAINT

vs.

Carolina South Shore Construction, Inc.
Chris Poindexter, Registered Agent
5235 Eagle Lake Drive
Charlotte, NC 28217

2023-CP-23- 01626

Abri Design Studio, Inc.
Paul Anthony Girardeau
2969 Manitoba Lane
Marietta, GA 30062

Ray Group Consulting Engineers, Inc.
Ashim K. Ray, Registered Agent
3326 Chastain Ridge Drive
Marietta, GA 30066

Defendants.

The Plaintiff, A.R. Foods, Inc., ("Plaintiff"), complaining of the Defendants Carolina South Shore Construction, Inc., Abri Design Studio, Inc., and Ray Group Consulting Engineers, Inc. ("collectively "Defendants"), would allege and prove the following:

JURISDICTION AND VENUE

1. Plaintiff is a domestic corporation organized and existing under the laws of South Carolina.
2. Carolina South Shore Construction, Inc. ("CSSC"), is believed to be a corporation

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Paul Wickensmeyer COO GUL SC

existing under the laws of North Carolina but is not registered to conduct business with the South Carolina Secretary of State.

3. Abri Design Studio, Inc. ("ADS"), is believed to be a corporation existing under the laws of Georgia but is not registered to conduct business with the South Carolina Secretary of State.

4. Ray Group Consulting Engineers, Inc. ("RGCE") is believed to be a corporation existing under the laws of Georgia but is not registered to conduct business with the South Carolina Secretary of State.

5. Plaintiff rents real property with a street address of 1818 Augusta Street, Greenville, South Carolina 29605 (the "Property").

6. The Property is located within Greenville County.

7. At all times relevant to this lawsuit, Defendants performed work and/or provided professional services as it related to the Property.

8. Plaintiff's claim does not exceed Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00).

9. The Court has jurisdiction over the subject matter of this case and over the Defendants in this action pursuant to the South Carolina Long-Arm Statute, S.C. Code Ann. § 36-2-803.

10. Venue is also proper before this Court.

FACTS

11. Plaintiff contracted with RGCE and/or ADS to design the HVAC system (the "Design") and prepare drawings for the installation of an HVAC system at the Property.

12. ADS and/or RGCE prepared and provided certain drawings (the "Drawings")

regarding an HVAC system to be installed at the Property.

13. Plaintiff contracted with CSSC to perform the installation of the HVAC (the "Work") at the Property.

14. Shortly thereafter, CSSC performed the Work at the Property.

15. Following the performance of the Work, the HVAC system began malfunctioning (the "Issue").

16. Plaintiff subsequently discovered that the HVAC system was installed improperly.

17. The duct work for the HVAC system that was installed was defective and violated industry standards and warranties. Specifically, 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.

18. As a result, one of the units of the HVAC system has been replaced. Additionally, Plaintiff's utility bills have increased, and the Property has been damaged due to the compromised airflow and circulation.

19. Plaintiff reached out to the Defendants to inspect and cure the Work.

20. Upon information and belief, ADS and RGCE assert that CSSC failed to properly install the HVAC system pursuant to the Design and the Drawings.

21. Upon information and belief, CSSC asserts that the Design and the Drawings were incorrect, and that the HVAC system was installed pursuant to the Design and the Drawings.

22. Despite Plaintiff's demands, the Defendants have refused to cure the Issue.

23. As a result, Plaintiff's business has been damaged by not having a fully operable HVAC system and the Property has been damaged.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

24. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if repeated verbatim.

25. Plaintiff contacted Defendants concerning the Work, the Design, and the Drawings.

26. Plaintiff provided money in exchange for the Work, the Design, and the Drawings.

27. Defendants accepted the money in exchange for the Work, the Design, and the Drawings.

28. CSSC breached its contract in multiple ways including, but not limited to:

- a. Failing to properly furnish the Work on the Property;
- b. Failing to properly repair the Work on the Property;
- c. Failing to properly inspect the Work;
- d. Failing to perform the Work in a good and workmanlike manner, including, but not limited to, improper, defective, and/or inadequate installation;
- e. Failing to perform the Work pursuant to applicable construction industry building codes, norms, customs, standards and laws; and
- f. Failing to remedy the defects in construction after notice from Plaintiff.

29. ADS and/or RGCE breached its contract in multiple ways including, but not limited to:

- a. Failing to properly design the HVAC system;
- b. Failing to properly furnish the Drawings;
- c. Failing to inspect the Drawings; and

d. Failing to remedy the Issue following improper performance concerning the Drawings and the Design.

30. As a result of Defendants' breaches, Plaintiff has been damaged, and the Issue has resulted in damage to the Property and Plaintiff's business.

31. As a direct and proximate result of the breach by Defendants, Plaintiff has suffered actual and consequential damages in an amount to be determined at trial but wherein these damages do not to exceed Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00), together with interest and such other relief as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

32. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if repeated verbatim.

33. Defendants owed a duty to Plaintiff to perform the Work and/or issue the Design and the Drawings properly.

34. CSSC breached its duty and was negligent, grossly negligent, careless, and reckless by, among other things:

- a. Failing to properly furnish the Work on the Property;
- b. Failing to properly repair the Work on the Property;
- c. Failing to properly inspect the Work;
- d. Failing to perform the Work in a good and workmanlike manner, including, but not limited to, improper, defective, and/or inadequate installation;
- e. Failing to perform the Work pursuant to applicable construction industry building codes, norms, customs, standards and laws; and
- f. Failing to remedy the defects in construction after notice from Plaintiff.

35. ADS and/or RGCE breached its duty and was negligent, grossly negligent, careless, and reckless by, among other things:

- a. Failing to properly design the HVAC system;
- b. Failing to properly furnish the Drawings;
- c. Failing to inspect the Drawings; and
- d. Failing to remedy the Issue following improper performance concerning the Drawings and the Design.

36. As a result of Defendants' breach, Plaintiff has been damaged, and the Issue has resulted in damage to the Property and Plaintiff's business.

37. As a direct and proximate result of the breach by Defendants, Plaintiff has suffered actual and consequential damages in an amount to be determined at trial but wherein these damages do not to exceed Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00), together with interest and such other relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Warranty as to CSSC)

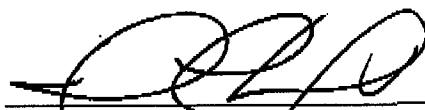
38. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if set forth verbatim.

39. By virtue of the Work, and in accordance with South Carolina law, CSSC impliedly warranted to Plaintiff that the Work undertaken would be performed in a careful, diligent, workmanlike manner, free of defects and in accordance with the applicable building code and industry standards.

40. CSSC has breached the implied warranty of workmanlike service as detailed in this Complaint.

41. As a direct and proximate result of the breach by CSSC, Plaintiff has suffered actual and consequential damages in an amount to be determined at trial but wherein these damages do not to exceed Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00), together with interest and such other relief as the Court deems just and proper.

WHEREFORE, Plaintiff respectfully prays this Court to enter judgment against the Defendants for the damages to be proven by Plaintiff at trial, plus costs associated with this action, including Plaintiff's reasonable attorney's fees, and any such other relief as the Court deems just and proper.



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Attorneys for Plaintiff

December 23, 2021
Columbia, South Carolina

23 APR 4 PM 1:07
Paul Wickensimer CDD SCL SC

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

A.R. Foods, Inc.,)
c/o Kenison, Dudley & Crawford, LLC)
704 E. McBee Avenue)
Greenville, SC 29601)

Plaintiff,)

v.)

Carolina South Shore Construction, Inc.)
Chris Poindexter, Registered Agent)
5235 Eagle Lake Drive)
Charlotte, NC 28217)

Abri Design Studio, Inc.)
Paul Anthony Girardeau)
2969 Manitoba Lane)
Marietta, GA 30062)

Ray Group Consulting Engineers, Inc.)
Ashim K. Ray, Registered Agent)
3326 Chastain Ridge Drive)
Marietta, GA 30066)

Defendants.

IN THE MAGISTRATE'S COURT

C.A. No.: 2021CV2311002973

**ANSWER OF CAROLINA SOUTH
SHORE CONSTRUCTION, INC. AND
CROSS-CLAIM AGAINST ABRI
DESIGN STUDIO, INC. AND RAY
GROUP CONSULTING ENGINEERS,
INC.**

(Jury Trial Demanded)

2023-CP-23- 01626

MAR 18 2022

Gantt Summary Court
FILED

Defendant, Carolina South Shore Construction, Inc., answering the Complaint of the plaintiff and filing a Cross-Claim against co-defendants Abri Design Studio, Inc. and Ray Group Consulting Engineers, Inc., would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. This defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 1, and therefore, denies them.

2. In response to the allegations of Paragraph 2, this defendant admits that it is a North Carolina entity authorized to do business in the State of South Carolina. This defendant denies the remaining allegations of Paragraph 2.

3. This defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 3, and therefore, denies them.

4. This defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 4, and therefore, denies them.

5. This defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 5, and therefore, denies them.

6. This defendant admits the allegations of Paragraph 6.

7. In response to the allegations of Paragraph 7, this defendant admits that it provided professional services to the "Property." This defendant denies the remaining allegations of Paragraph 7.

8. This defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 8 and, therefore, denies them.

9. This defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 9 and, therefore, denies them.

10. This defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 10 and, therefore, denies them.

11. The allegations of Paragraph 11 are not directed toward this defendant and therefore, no response is required. To the extent a response is required by this defendant, this defendant admits the allegations of Paragraph 11 upon information and belief.

12. The allegations of Paragraph 12 are not directed toward this defendant and therefore, no response is required. To the extent a response is required by this defendant, this defendant admits the allegations of Paragraph 12.

13. This defendant admits that plaintiff retained CSSC to perform certain HVAC related work at the property. Except as admitted, this defendant denies any remaining allegations in Paragraph 13.

14. This defendant admits that portion of Paragraph 14 that it performed certain HVAC related work at the property. This defendant lacks sufficient information to form a belief regarding the remaining allegations of Paragraph 14 and, therefore, denies them.

15. This defendant denies the allegations of Paragraph 15.

16. This defendant denies the allegations of Paragraph 16.

17. This defendant denies the allegations of Paragraph 17.

18. This defendant denies the allegations of Paragraph 18.

19. This defendant denies the allegations of Paragraph 19.

20. This defendant denies the allegations of Paragraph 20.

21. This defendant admits that portion of Paragraph 21 that the drawings of RGCE were incorrect and ductwork was installed pursuant to the drawings. This defendant lacks sufficient information to form a belief regarding the remaining allegations of Paragraph 21 and, therefore, denies them.

22. To the extent the allegations of Paragraph 22 are not directed toward this defendant, no response is required. To the extent a response is required by this defendant, this denies that it is responsible for curing any deficiencies with the drawings. This defendant denies any remaining allegations of Paragraph 22.

23. This defendant denies the allegations of Paragraph 23.

24. Insofar as the allegations of Paragraph 24 require a response, this defendant realleges and incorporates by reference its prior answers and allegations as if fully repeated verbatim herein.

25. To the extent the allegations of Paragraph 25 are not directed toward this defendant, no response is required. To the extent a response is required, this defendant admits that plaintiff retained CSSC to perform certain HVAC related work at the property. Except as admitted, this defendant lack sufficient information to form a belief regarding the remaining allegations in Paragraph 25 and, therefore, denies them.

26. To the extent the allegations of Paragraph 26 are not directed toward this defendant, no response is required. To the extent a response is required, this defendant admits that CSSC performed certain HVAC related work at the property in exchange for money. Except as admitted, this defendant lack sufficient information to form a belief regarding the remaining allegations in Paragraph 26 and, therefore, denies them.

27. To the extent the allegations of Paragraph 27 are not directed toward this defendant, no response is required. To the extent a response is required, this defendant admits that CSSC accepted money in exchange for the performance of certain HVAC related work at the property. Except as admitted, this defendant lack sufficient information to form a belief regarding the remaining allegations in Paragraph 27 and, therefore, denies them.

28. This defendant denies the allegations of Paragraph 28 including all subparagraphs.

29. The allegations of Paragraph 29 are not directed toward this defendant and therefore, no response is required. To the extent a response is required by this defendant it admits the allegations of Paragraph 29 upon information and belief.

30. To the extent the allegations of Paragraph 30 are not directed toward this defendant, no response is required. To the extent a response is required, this defendant denies the allegations of Paragraph 30.

31. To the extent the allegations of Paragraph 31 are not directed toward this defendant, no response is required. To the extent a response is required, this defendant denies the allegations of Paragraph 31.

32. Insofar as the allegations of Paragraph 32 require a response, this defendant realleges and incorporates by reference its prior answers and allegations as if fully repeated verbatim herein.

33. To the extent the allegations of Paragraph 33 are not directed toward this defendant, no response is required. To the extent a response is required, this defendant admits that it had a duty to comply with South Carolina law and has done so at all relevant times. This defendant denies the remaining allegations of Paragraph 33.

34. This defendant denies the allegations of Paragraph 34.

35. The allegations of Paragraph 35 are not directed toward this defendant and therefore, no response is required. To the extent a response is required by this defendant it admits the allegations of Paragraph 35 upon information and belief.

36. To the extent the allegations of Paragraph 36 are not directed toward this defendant, no response is required. To the extent a response is required, this defendant denies the allegations of Paragraph 36.

37. To the extent the allegations of Paragraph 37 are not directed toward this defendant, no response is required. To the extent a response is required, this defendant denies the allegations of Paragraph 37.

38. Insofar as the allegations of Paragraph 38 require a response, this defendant realleges and incorporates by reference its prior answers and allegations as if fully repeated verbatim herein.

39. Paragraph 39 states a legal conclusion to which no response is required. To the extent a response is required, this defendant admits that it had a duty to comply with South Carolina law and has done so at all relevant times. This defendant denies any remaining allegations in Paragraph 39.

40. This defendant denies the allegations of Paragraph 40.

41. This defendant denies the allegations of Paragraph 41.

42. The defendant denies each and every allegation of the Complaint not specifically admitted, modified, or explained herein above.

FOR A SECOND DEFENSE

43. This defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

44. This defendant alleges that the Complaint of the plaintiff fails to state facts sufficient to constitute a cause of action against it and, therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

45. This defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

46. This defendant alleges that even assuming it was negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on its part operated as a proximate cause of the incident and plaintiff's resulting injuries and damages, if any, all of which is

expressly denied and admitted solely for the purpose of this defense and no other, that plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed more than 50% to the cause of the incident and plaintiff's resulting injuries and damages, if any. For that reason, this defendant is not liable to plaintiff in any sum whatsoever.

FOR A FOURTH DEFENSE

47. This defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

48. This defendant alleges that even if it was negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on its part operated as a greater than 50% cause of the accident and plaintiff's resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, it is entitled to a determination as to the percentage which plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed to the incident and to a reduction of any amount awarded to plaintiff in an amount equal to that percentage of plaintiff's own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

49. This defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

50. The defendant alleges that to the extent that the plaintiff recovers punitive damages related to the loss complained of in the Complaint, such punitive damages must be reduced and/or limited to the amounts as specified and controlled by S.C. Code Ann. §15-32-530 and §15-32-520.

FOR A SIXTH DEFENSE

51. This defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

52. This defendant alleges that the plaintiff failed to properly mitigate its damages. This defendant pleads such failure as a complete bar to any recovery and/or that any recovery should be reduced by an amount to be proved at the trial of this case.

FOR A SEVENTH DEFENSE

53. This defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

54. This defendant alleges that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding sections of the Constitution of the State of South Carolina, Article 1, Section 3.

55. The plaintiff's claim for punitive damages violates the defendant's right to access to the Courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills the defendant's exercise of that right.

56. The plaintiff's claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons:

- a) The standard or test for determining the requisite mental state of the defendant for imposition of punitive damages is void for vagueness; and

- b) Insofar as punitive damages are not measured against actual injury to the plaintiff and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damage that may be awarded is indeterminate at the time of the defendant's alleged conduct.

FOR AN EIGHTH DEFENSE

57. This defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

58. This defendant hereby pleads the equitable doctrines of waiver, estoppel, laches and unclean hands as affirmative defenses to the plaintiff's allegations.

FOR A NINTH DEFENSE

59. This defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

60. This defendant alleges that that the plaintiff's injuries and damages, if any, were caused by the superseding negligence of the plaintiff or other parties. As such, this defendant can have no liability to the plaintiff.

FOR A TENTH DEFENSE

61. This defendants incorporate herein the allegations of its previous defenses which are consistent with this defense.

62. This defendant alleges that the plaintiff's injuries and damages, if any, were caused by the negligent, grossly negligent, or criminal acts of a third party or parties. As such, this defendant can have no liability to the plaintiff.

FOR AN ELEVENTH DEFENSE

63. This defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

64. At all times material to this action, the work of this defendant conformed with the standards of the industry and profession at the time its work was done and therefore this defendant is not liable.

FOR A TWELFTH DEFENSE

65. This defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

66. At all times material to this action, the work of this defendant was performed according to the plans and specifications of the project and in accordance with industry standards.

**FOR A THIRTEENTH DEFENSE AND BY WAY OF CROSS-CLAIM AGAINST ABRI DESIGN STUDIO, INC. AND RAY GROUP CONSULTING ENGINEERS, INC.
(Equitable Indemnity)**

67. This defendant incorporates herein the allegations of its previous defenses which are consistent with this defense.

68. Carolina South Shore Construction, Inc. is a North Carolina corporation authorized to conduct business in South Carolina.

69. Upon information and belief, Abri Design Studio, Inc. ("ADS") is believed to be a corporation existing under the laws of Georgia and conducts business in South Carolina.

70. Upon information and belief, Ray Group Consulting Engineers, Inc. ("RGCE") is believed to be a corporation existing under the laws of Georgia and conducts business in South Carolina.

71. This court has proper subject matter jurisdiction over this matter and venue is proper in the County of Greenville.

72. Upon information and belief, ADS and/or RGCE prepared and provided plaintiff with certain drawings (the "Drawings") regarding certain HVAC work to be performed at 1818 Augusta Street, Greenville, South Carolina 29605 (the "Property").

73. The drawings prepared by ADS and/or RGCE were provided to CSSC to perform certain HVAC related work at the property and CSSC performed its work in accordance with the drawings.

74. Defendant CSSC, which is without fault, has been sued by the plaintiff for alleged damages arising out ADS and/or RGCE's failure to properly (a) design the HVAC system; (b) furnish accurate and appropriate design drawings; (c) inspect the drawings, and (d) remedy the alleged improper performance issues encountered by plaintiff allegedly resulting in plaintiff's claimed damages to property and its business.

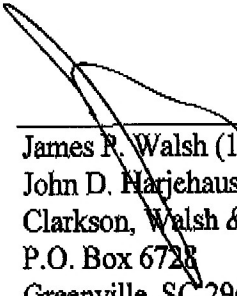
75. A special relationship exists between CSSC and ADS and/or RGCE to the extent that drawings or plans prepared by ADS and/or RGCE, were furnished to CSSC to complete certain HVAC related work at the property and CSSC performed its work in accordance with those drawings or plans.

76. CSSC has expended and will continue to expend money as a result of the alleged acts and omissions of ADS and/or RGCE. CSSC is wholly without fault in causing any damage to the plaintiff and is entitled to be indemnified for all costs incurred in this matter, whether legal fees, litigation costs, or the costs of any settlement CSSC should make with the plaintiff.

WHEREFORE, having fully answered the Complaint of the plaintiff and having cross claimed against ADS and RGCE, this defendant prays that the Complaint be dismissed, for judgment

in CSSC's favor on its cross claim against ADS and RGCE, for the costs and disbursements of this action, and for any such other and further relief as this court shall deem just and proper.

By:



James P. Walsh (15180)
John D. Harjehausen (76194)
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400
(864) 235-4399 (fax)
Attorneys for defendant Carolina South Shore
Construction, Inc.

JURY TRIAL DEMANDED

By:



James P. Walsh (15180)

March 16, 2022



CLARKSON | WALSH | COULTER

Attorneys at Law

James P. Walsh, Esq.

jwalsh@clarksonwalsh.com

(864)232-4400

March 16, 2022

Gantt Summary Court
FILED
MAR 18 2022

Gantt Summary Court
1103 White Horse Road
Greenville, SC 29605

RE: A.R. Foods, Inc. v. Carolina South Shore Construction, Inc., Abri Design Studio, Inc., and Ray Group Consulting Engineers, Inc.
C.A. No. 2021CV2311002973
Claim No. 300-109655-2022
D/O/L: May 15, 2018

Dear Sir/Madam:

Enclosed please find the original and two copies of Defendant Carolina South Shore Construction, Inc.'s Answer and Cross-Claim against Abri Design Studios, Inc. and Ray Group Consulting Engineers, Inc. along with a Certificate of Service in the above-referenced matter. I would appreciate you filing the originals and returning the filed copies to me in the envelope provided. If you have any questions, please let me know.

Yours very truly,

Clarkson, Walsh & Coulter, P.A.

James P. Walsh
James P. Walsh

JPW/kt

Enclosure

cc: John T. Crawford (w/enc.)

Ronald G. Tate (w/enc.)

Abri Design Studios, Inc. (w/enc.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 A.R. Foods, Inc.)
)
 Plaintiff,)
)
 v.)
)
 Carolina South Shore Construction, Inc.;)
 Abri Design Studio, Inc. and Ray Group)
 Consulting Engineers, Inc.)
)
 Defendants.)
 _____)

IN MAGISTRATE COURT
 Civil Action No. 2021CV2311002973

**ABRI DESIGN STUDIO, INC.
 AND RAY GROUP CONSULTING
 ENGINEERS, INC.'S ANSWER TO
 COMPLAINT**

Defendants Ray Group Consulting Engineers, Inc. and Abri Design Studio, Inc., answering the Complaint of the Plaintiff, would respectfully allege and show unto the Court the following:

FOR A FIRST DEFENSE

1. These Defendants admit the allegations of paragraphs 1 and 2 upon information and belief.
2. These Defendants admit so much of the allegations of paragraphs 3 and 4 as allege that they are corporations organized under Georgia law.
3. Upon information and belief, these Defendants admit the allegations of paragraphs 5 and 6 of the Complaint.
4. Defendants admit that they performed design services relating to the Property under an agreement with the Plaintiff.
5. Responding to paragraphs 8 through 10 of the Complaint, those allegations state conclusions of law which require no response from them. Both Defendants deny that this Court has jurisdiction over them and assert the defense of lack of personal jurisdiction to this Complaint.

Gantt Summary Court
 FILED
 APR 17 2022
 22

6. Responding to paragraphs 11 through 14 of the Complaint, these Defendants admit that they performed design services in connection with the Plaintiff's project and that Defendant Carolina South Shore Construction, Inc. was hired by the Plaintiff as general contractor to perform certain remodeling work on the property in question.

7. These Defendants admit upon information and belief the allegations of paragraphs 15 through 17, and specifically admit the allegations of paragraph 16 that the HVAC system was installed improperly by the general contractor.

8. Answering paragraph 18, Defendants admit that Plaintiff replaced one of the HVAC units but denies any responsibility or liability for such remedial work.

9. Answering paragraphs 19 through 22, these Defendants admit they did assist Plaintiff after the Plaintiff discovered that the HVAC system was not performing as intended because of the general contractor's failure to properly install it. Any allegations that assert that the design was a cause of this failure are denied.

10. These Defendants lack knowledge sufficient to form a belief regarding the truth of the allegations of paragraph 23 concerning the Plaintiff's damages, and therefore they are denied.

11. Answering the first cause of action, paragraphs 24 through 31, these Defendants deny any liability or responsibility under the claim for breach of contract and accordingly deny each and every allegation of the first cause of action.

12. Answering the second cause of action, paragraphs 32 through 37, these Defendants deny any liability or responsibility under the claim for breach of contract and accordingly deny each and every allegation of the second cause of action.

13. Answering the third cause of action, these Defendants assert that the claims do not pertain to them and require no response.

14. These Defendants deny each and every allegation of the Complaint not herein above specifically admitted, explained or modified.

FOR A SECOND DEFENSE

15. These Defendants assert that this Court lacks personal jurisdiction over them and the Complaint should accordingly be dismissed.

FOR A THIRD DEFENSE

16. These Defendants allege that the Complaint should be dismissed because Plaintiff has failed to comply with the terms of §15-36-100 of the Code of Laws of South Carolina that requires any complaint for damages against a professional licensed by or registered with the State of South Carolina alleging professional negligence against such a professional must be supported by an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on available evidence at the time of filing the affidavit. The Complaint in this action was not supported by any such affidavit and, accordingly, the Complaint must be dismissed.

FOR A FOURTH DEFENSE

17. These Defendants raise the equitable defenses of waiver, estoppel and laches as defenses to the Plaintiff's Complaint.

FOR A FIFTH DEFENSE

18. The Complaint should be dismissed to the extent Plaintiff's claims were not asserted in a timely manner consistent with the statute of limitations.

FOR A SIXTH DEFENSE

19. These Defendants assert that the Plaintiff failed to mitigate its damages as required by law.

FOR A SEVENTH DEFENSE

20. These Defendants allege the defenses of contributory/comparative negligence to the extent that any conduct of the Plaintiff contributed to the damages asserted in this action.

FOR AN EIGHTH DEFENSE

21. These Defendants allege that other persons or entities for whom these Defendants are not liable caused or contributed to the losses and damages sustained by Plaintiff and, accordingly, these Defendants have no liability to the Plaintiff.

FOR A NINTH DEFENSE
(Reservation)

22. These Defendants reserve the right to raise as an affirmative defense any defenses asserted by other parties and to amend their answer to include defenses coming to light through discovery or at trial.

WHEREFORE, having fully answered the Complaint of the Plaintiff herein, Defendants Ray Group Consulting Engineers, Inc. and Abri Design Studio, Inc. pray that the Complaint be dismissed, that they be awarded the costs of this action, and for such other and further relief as the Court may deem just and proper.

[Signature on Following Page]

Respectfully submitted,



Ronald G. Tate, Jr. (S.C. Bar No. 5475)
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 10589 (29603)
55 Beattie Place, Suite 1200
Greenville, SC 29601
Telephone: (864) 271-9580
Facsimile: (864) 271-7502
Email: RTate@gwblawfirm.com

April 20, 2022

*Attorneys for Defendants Ray Group Consulting
Engineers, Inc. and Abri Design Studio, Inc.,*

Defendants request a trial by jury of those issues so triable.



Ronald G. Tate, Jr.


STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
)	
COUNTY OF GREENVILLE	)	Civil Action NO. 2021CV2311002973
)	
A.R. Foods, Inc.)	
)	
Plaintiff,	)	CERTIFICATE OF SERVICE
)	
v.)	
)	
Carolina South Shore Construction, Inc.;)	
Abri Design Studio, Inc. and Ray Group)	
Consulting Engineers, Inc.)	
)	
Defendants.)	
_____)	

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that on April 20, 2022 I served copies of **Abri Design Studio, Inc. and Ray Group Consulting Engineers, Inc.’s Answer to Complaint and Motion to Dismiss of Abri Design Studio, Inc. and Ray Group Consulting Engineers, Inc. as to Crossclaim** on all parties of record via electronic mail addressed as follows:

James T. Crawford
Kenison, Dudley & Crawford, LLC
crawford@conlaw.com
Attorney for Plaintiff

James P. Walsh
John D. Harjehausen
Clarkson, Walsh & Coulter, PA
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Attorneys for Carolina South Shore Construction, Inc.

April 20, 2022



Kim M. Pedersoli
Legal Assistant to Ronald G. Tate, Jr.
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200
Post Office Box 10589 (29603)
Greenville, SC 29601 Gantt Summary Court

FILED

APR 22 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	C.A. No.: 2023-CP-23-01626
)	
A.R. Foods, Inc.)	
Plaintiff,)	
)	
v.	)	DEFENDANT CAROLINA SOUTH
	)	SHORE CONSTRUCTION, INC.'S
Carolina South Shore Construction, Inc.,	)	MEMORANDUM IN SUPPORT OF
Abri Design Studio, Inc., and Ray Group	)	MOTION FOR SUMMARY JUDGMENT
Consulting Engineers, Inc.)	
Defendant.)	
)	

TO: PLAINTIFF A.R. FOODS, INC., AND IT ITS ATTORNEY, JOHN T. CRAWFORD, ESQ.

I. Introduction

Defendant, Carolina South Shore Construction, Inc. (“CSSC”), moves the Court, for an Order granting it summary judgment as a matter of law as to all claims asserted by the plaintiffs including their claims for (1) breach of contract; (2) negligence/gross negligence; and (3) breach of the implied warranty of workmanlike service. As discussed below, summary judgment is appropriate because there is no evidence of any breach of any contractual obligation or express or implied warranty, common law duty, or actional negligence by CSSC. Furthermore, there is no evidence that plaintiffs have incurred any damages related to any breach of any contractual obligation or express or implied warranty, common law duty, or actional negligence by CSSC. Rather, the plaintiffs’ claims are based on speculation.

II. Procedural and Factual Background

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. The plaintiff, A.R. Foods, Inc. (“A.R. Foods), filed a complaint with the Greenville County Magistrate

Court on December 27, 2021. Exhibit A. 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.” Exhibit A, ¶ 11. It further alleges that it contracted with the movant, CSSC, to install the HVAC ductwork. Id. ¶¶ 13-14. After the ductwork was installed, the HVAC system allegedly malfunctioned and it was “subsequently discovered that the HVAC system was installed improperly.” Id. at ¶¶ 15-16. A.R. Foods alleges “the HVAC system that was installed was defective and violated industry standards and warranties. Specifically, 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.” Id. at ¶ 17. The plaintiff claims that one system was replaced and that its utility bills increased. Id. at ¶ 18. A.R. Foods notes in the Complaint that CSSC “asserts that the Design and the Drawings were incorrect, and that the HVAC system was installed pursuant to the Design and the Drawings.” Id. at ¶ 21 The plaintiff has sued all of the defendants, including ADS and RGCE which prepared the Design and Drawings for (1) breach of contract; (2) negligence/gross negligence; and (3) breach of warranty.

On April 4, 2023, plaintiff A.R. Foods removed the case to the Circuit Court on the basis that it allegedly has sustained damages in excess of \$7,500. 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, it is entitled to summary judgment on all claims as a matter of law.

III. Analysis

A. Summary Judgment Standard

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), SCRPC. “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), SCRPC (“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.”).

B. It Is Undisputed That The Original Duct Design Plan By ADS and RGCE Was Inaccurate; 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. 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. Exhibit B. These plans were used by CSSC to install the ductwork in the building. There is no evidence that CSSC performed any work contrary to the original design and drawings.

After A.R. Foods, which operates a Jersey Mike's subway sandwich shop discovered 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 they provided A.R. Foods with a modified plan. Exhibit C. Notably, the modified plan required two primary things: (1) "Disconnect two supply diffusers at serving line from AHU-1, and extending and reconnecting them to AHU-2; and (1) adding a dedicated outside air duct and intake louver for AHU-1 and increasing the size of the connection from AHU-2 to the existing duct." Exhibit C. 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.

C. A.R. Foods Has No Evidence of Actionable Negligence, a 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).

CSSC completed the Civil Rule 30(b)(6) deposition of the plaintiff, A.R. Foods. Testifying on behalf of A.R. Foods was witness Turner Hill (“Mr. Hill”). Mr. Hill does not hold any construction licenses. Exhibit D, p. 8-9. 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. Id. Nonetheless, he was designated to testify on behalf of A.R. Foods. Id. at 10. 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. Exhibit D, pp. 16-17. According to Mr. Hill, the building is not owned by A.R. Foods. Rather, it is owned by Hotzfam Trust. Id. at 24. Mr. Hill did not know who paid the bills when the HVAC system was discovered to be freezing up. Id. at 28. 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. Id. at pp. 30, 36. Eventually, the ductwork was modified by CF Mechanical. Id. at 38.

Mr. Hill did not know if anyone at A.R. Foods would testify that CSSC breached a professional standard of care. He testified:

- Q. Is anyone at A.R. Foods going to testify that my client, Carolina South Shore Construction, Inc., breached some professional standard of care related to mechanical or HVAC installations?
- A. I don't know.

- Q. You're not aware of anybody?
A. Can you ask the question again?
Q. Yeah. I mean, do you know if anyone on behalf of A.R. Foods is going to testify that my client breached the standard of care applicable to mechanical installations?
A. I don't know the answer to that question.
Q. Does anybody else at A.R. Foods know the answer to that question?
A. No.

Id. at 48.

We questioned Mr. Hill 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.

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.

Id. at pp. 42-43.

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.

Id. at 59.

IV. Conclusion

As testified by A.R. Foods, it has no evidence of a breach of a professional standard of care, a breach of contract, and does not know what CSSC allegedly did negligent or wrong. Furthermore, it does not know whether it has sustained any damage proximately caused by CSSC. South Carolina does not follow the doctrine of res ipsa loquitur. See Snow v. City of Columbia, 305 S.C. 544, n. 7, 409 S.E.2d 797, n. 7 (Ct.App.1991) (noting that South Carolina does not recognize the rule of res ipsa loquitur). In short, A.R. Foods cannot impermissibly speculate that CSSC breached a professional standard of care causing it damages. No expert has been identified by plaintiff to testify on its behalf. For all of these reasons, CSSC respectfully requests that the Court grant it summary judgment on the plaintiff's claims as a matter of law.

By: s/ John D. Harjehausen
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Attorneys for defendant Carolina South
Shore Construction, Inc.

August 5, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE MAGISTRATE COURT

A.R. Foods, Inc.
c/o Kenison, Dudley & Crawford, LLC
704 E. McBee Avenue
Greenville, SC 29601

Civil Action _____

Plaintiff,

SUMMONS

vs.

Carolina South Shore Construction, Inc.
Chris Poindexter, Registered Agent
5235 Eagle Lake Drive
Charlotte, NC 28217

Abri Design Studio, Inc.
Paul Anthony Girardeau
2969 Manitoba Lane
Marietta, GA 30062

Ray Group Consulting Engineers, Inc.
Ashim K. Ray, Registered Agent
3326 Chastain Ridge Drive
Marietta, GA 30066

Defendants.

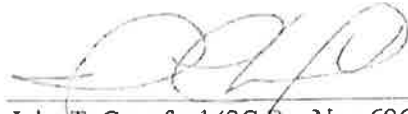
Gantt Summary Court
FILED
DEC 27 2021

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE SUMMONED AND REQUIRED to answer the Complaint in the above-entitled action, a copy of which is served upon you, and to serve a copy of your Answer upon the Plaintiff's attorney at the office located at 704 E. McBee Avenue, Greenville, South Carolina 29601 within thirty (30) days after the date of such service, exclusive of the day of service. If



you fail to answer the Complaint within thirty (30) days, judgment by default will be entered against you for the relief demanded in the Complaint.



John T. Crawford (SC Bar No.: 69682)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, South Carolina 29601
Office: (864) 242-4899
E-mail: crawford@conlaw.com
Attorney for Plaintiff

December 23, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MAGISTRATE COURT

A.R. Foods, Inc.
c/o Kenison, Dudley & Crawford, LLC
704 E. McBee Avenue
Greenville, SC 29601

Plaintiff,

Civil Action _____

COMPLAINT

vs.

Carolina South Shore Construction, Inc.
Chris Poindexter, Registered Agent
5235 Eagle Lake Drive
Charlotte, NC 28217

Abri Design Studio, Inc.
Paul Anthony Girardeau
2969 Manitoba Lane
Marietta, GA 30062

Ray Group Consulting Engineers, Inc.
Ashim K. Ray, Registered Agent
3326 Chastain Ridge Drive
Marietta, GA 30066

Defendants.

The Plaintiff, A.R. Foods, Inc., ("Plaintiff"), complaining of the Defendants Carolina South Shore Construction, Inc., Abri Design Studio, Inc., and Ray Group Consulting Engineers, Inc. ("collectively "Defendants"), would allege and prove the following:

JURISDICTION AND VENUE

1. Plaintiff is a domestic corporation organized and existing under the laws of South Carolina.
2. Carolina South Shore Construction, Inc. ("CSSC"), is believed to be a corporation

existing under the laws of North Carolina but is not registered to conduct business with the South Carolina Secretary of State.

3. Abri Design Studio, Inc. ("ADS"), is believed to be a corporation existing under the laws of Georgia but is not registered to conduct business with the South Carolina Secretary of State.

4. Ray Group Consulting Engineers, Inc. ("RGCE") is believed to be a corporation existing under the laws of Georgia but is not registered to conduct business with the South Carolina Secretary of State.

5. Plaintiff rents real property with a street address of 1818 Augusta Street, Greenville, South Carolina 29605 (the "Property").

6. The Property is located within Greenville County.

7. At all times relevant to this lawsuit, Defendants performed work and/or provided professional services as it related to the Property.

8. Plaintiff's claim does not exceed Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00).

9. The Court has jurisdiction over the subject matter of this case and over the Defendants in this action pursuant to the South Carolina Long-Arm Statute, S.C. Code Ann. § 36-2-803.

10. Venue is also proper before this Court.

FACTS

11. Plaintiff contracted with RGCE and/or ADS to design the HVAC system (the "Design") and prepare drawings for the installation of an HVAC system at the Property.

12. ADS and/or RGCE prepared and provided certain drawings (the "Drawings")

regarding an HVAC system to be installed at the Property.

13. Plaintiff contracted with CSSC to perform the installation of the HVAC (the "Work") at the Property.

14. Shortly thereafter, CSSC performed the Work at the Property.

15. Following the performance of the Work, the HVAC system began malfunctioning (the "Issue").

16. Plaintiff subsequently discovered that the HVAC system was installed improperly.

17. The duct work for the HVAC system that was installed was defective and violated industry standards and warranties. Specifically, 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.

18. As a result, one of the units of the HVAC system has been replaced. Additionally, Plaintiff's utility bills have increased, and the Property has been damaged due to the compromised airflow and circulation.

19. Plaintiff reached out to the Defendants to inspect and cure the Work.

20. Upon information and belief, ADS and RGCE assert that CSSC failed to properly install the HVAC system pursuant to the Design and the Drawings. TAB

21. Upon information and belief, CSSC asserts that the Design and the Drawings were incorrect, and that the HVAC system was installed pursuant to the Design and the Drawings.

22. Despite Plaintiff's demands, the Defendants have refused to cure the Issue.

23. As a result, Plaintiff's business has been damaged by not having a fully operable HVAC system and the Property has been damaged.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

24. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if repeated verbatim.

25. Plaintiff contacted Defendants concerning the Work, the Design, and the Drawings.

26. Plaintiff provided money in exchange for the Work, the Design, and the Drawings.

27. Defendants accepted the money in exchange for the Work, the Design, and the Drawings.

28. CSSC breached its contract in multiple ways including, but not limited to:

- a. Failing to properly furnish the Work on the Property;
- b. Failing to properly repair the Work on the Property;
- c. Failing to properly inspect the Work;
- d. Failing to perform the Work in a good and workmanlike manner, including, but not limited to, improper, defective, and/or inadequate installation;
- e. Failing to perform the Work pursuant to applicable construction industry building codes, norms, customs, standards and laws; and
- f. Failing to remedy the defects in construction after notice from Plaintiff.

*Inspections
By the
City*

29. ADS and/or RGCE breached its contract in multiple ways including, but not limited to:

- a. Failing to properly design the HVAC system;
- b. Failing to properly furnish the Drawings;
- c. Failing to inspect the Drawings; and

d. Failing to remedy the Issue following improper performance concerning the Drawings and the Design.

30. As a result of Defendants' breaches, Plaintiff has been damaged, and the Issue has resulted in damage to the Property and Plaintiff's business.

31. As a direct and proximate result of the breach by Defendants, Plaintiff has suffered actual and consequential damages in an amount to be determined at trial but wherein these damages do not to exceed Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00), together with interest and such other relief as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

32. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if repeated verbatim.

33. Defendants owed a duty to Plaintiff to perform the Work and/or issue the Design and the Drawings properly.

34. CSSC breached its duty and was negligent, grossly negligent, careless, and reckless by, among other things:

- a. Failing to properly furnish the Work on the Property;
- b. Failing to properly repair the Work on the Property;
- c. Failing to properly inspect the Work;
- d. Failing to perform the Work in a good and workmanlike manner, including, but not limited to, improper, defective, and/or inadequate installation;
- e. Failing to perform the Work pursuant to applicable construction industry building codes, norms, customs, standards and laws; and
- f. Failing to remedy the defects in construction after notice from Plaintiff.

35. ADS and/or RGCE breached its duty and was negligent, grossly negligent, careless, and reckless by, among other things:

- a. Failing to properly design the HVAC system;
- b. Failing to properly furnish the Drawings;
- c. Failing to inspect the Drawings; and
- d. Failing to remedy the Issue following improper performance concerning the Drawings and the Design.

36. As a result of Defendants' breach, Plaintiff has been damaged, and the Issue has resulted in damage to the Property and Plaintiff's business.

37. As a direct and proximate result of the breach by Defendants, Plaintiff has suffered actual and consequential damages in an amount to be determined at trial but wherein these damages do not to exceed Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00), together with interest and such other relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Warranty as to CSSC)

38. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if set forth verbatim.

39. By virtue of the Work, and in accordance with South Carolina law, CSSC impliedly warranted to Plaintiff that the Work undertaken would be performed in a careful, diligent, workmanlike manner, free of defects and in accordance with the applicable building code and industry standards.

40. CSSC has breached the implied warranty of workmanlike service as detailed in this Complaint.

41. As a direct and proximate result of the breach by CSSC, Plaintiff has suffered actual and consequential damages in an amount to be determined at trial but wherein these damages do not to exceed Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00), together with interest and such other relief as the Court deems just and proper.

WHEREFORE, Plaintiff respectfully prays this Court to enter judgment against the Defendants for the damages to be proven by Plaintiff at trial, plus costs associated with this action, including Plaintiff's reasonable attorney's fees, and any such other relief as the Court deems just and proper.

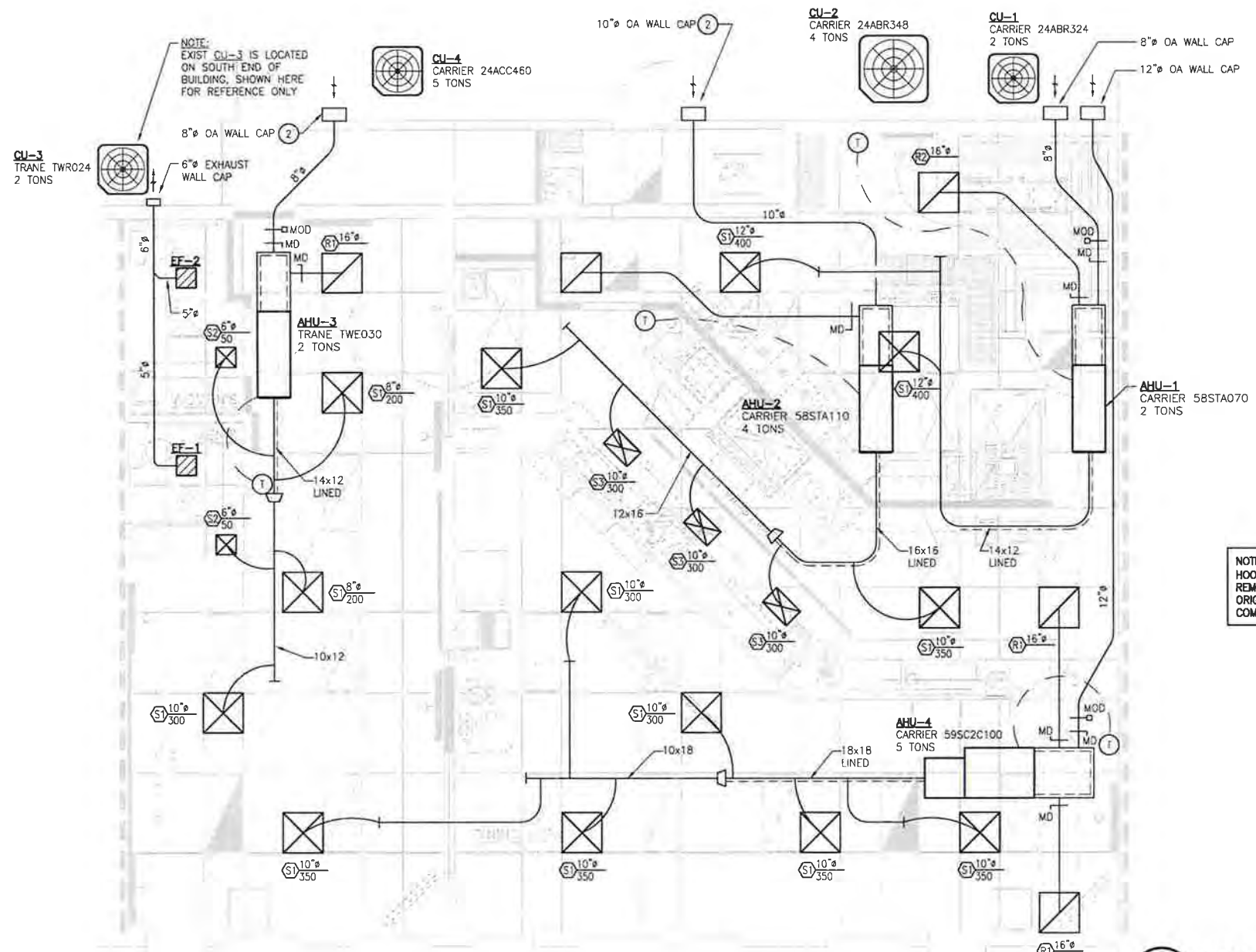


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Attorneys for Plaintiff

December 23, 2021
Columbia, South Carolina



ELECTRONICALLY FILED - 2024 Aug 05 3:22 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2301626

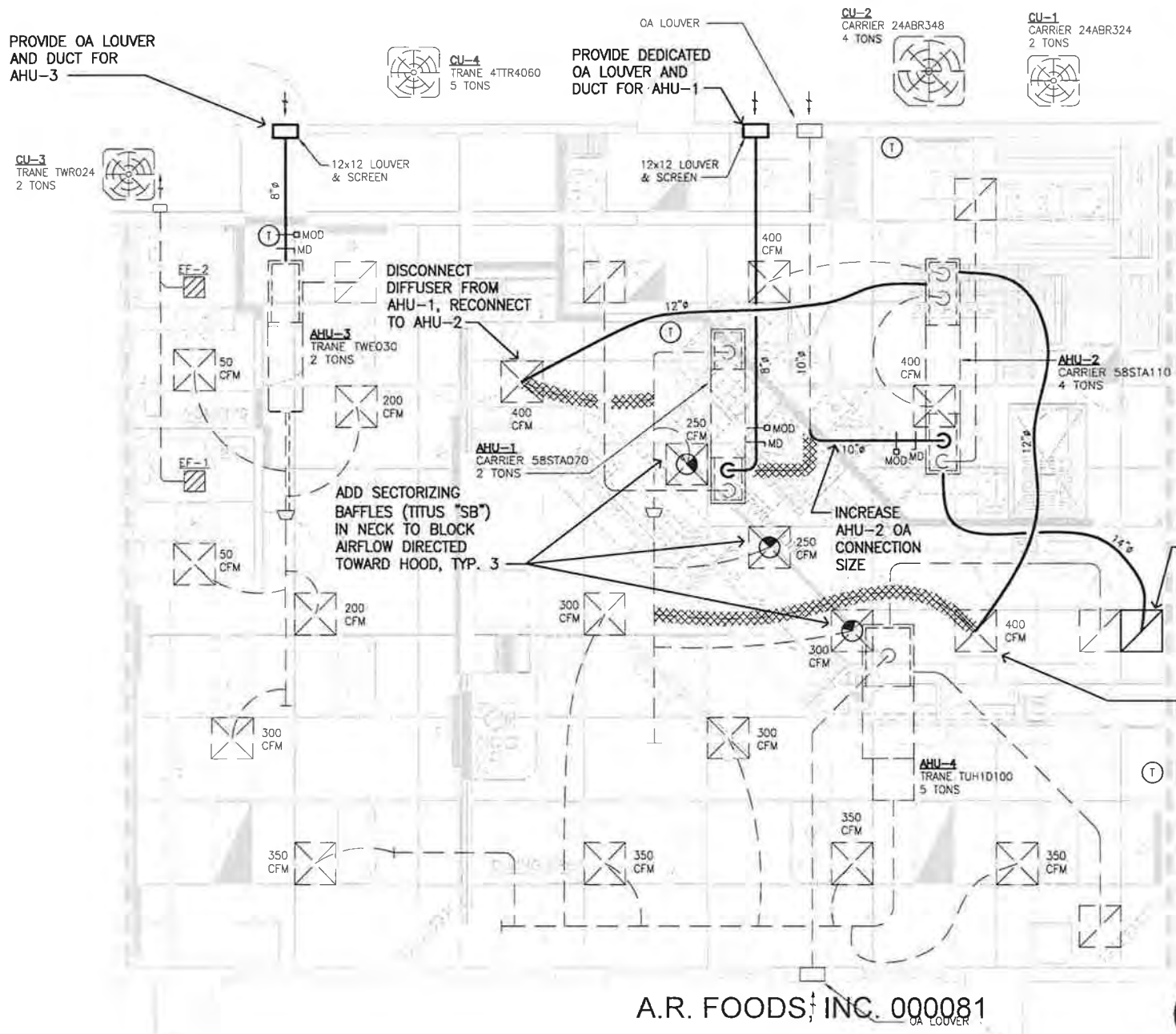


NOTE: EXIST CU-3 IS LOCATED ON SOUTH END OF BUILDING, SHOWN HERE FOR REFERENCE ONLY

NOTE: SOME INFORMATION (E.G., KITCHEN HOODS, FANS, AND DUCTWORK) HAS BEEN REMOVED FOR CLARITY. REFER TO THE ORIGINAL CONSTRUCTION DOCUMENTS FOR COMPLETE DESIGN.

A.R. FOODS, INC. 000079

1 HVAC - ORIGINAL DESIGN SCALE: NONE



PROPOSED MODIFICATIONS:

1. DISCONNECT TWO SUPPLY DIFFUSERS AT SERVING LINE FROM AHU-1, EXTEND AND RECONNECT TO AHU-2.
2. ADD RETURN GRILLE TO AHU-2.
3. ADD DEDICATED OUTSIDE AIR DUCT AND INTAKE LOUVER FOR AHU-1. INCREASE SIZE OF OA CONNECTION FROM AHU-2 TO EXISTING 10" OA DUCT.
4. ADD OUTSIDE AIR DUCT AND INTAKE LOUVER FOR AHU-3.
5. CONFIRM ALL SUPPLY, RETURN, AND OUTSIDE AIR BRANCHES HAVE MANUAL BALANCING DAMPERS. PROVIDE NEW WHERE REQUIRED.
6. CONFIRM ALL OUTSIDE AIR DUCTS HAVE MOTORIZED DAMPERS. PROVIDE NEW WHERE REQUIRED. MOTORIZED DAMPERS ARE TO BE INTERLOCKED WITH AHU TO OPEN WHEN AHU FAN IS ON AND CLOSE WHEN AHU FAN IS OFF.
7. ADD SECTORIZING BAFFLES TO THREE (3) DIFFUSERS IN FRONT OF GRIDDLE HOOD TO DIVERT SUPPLY AIR AWAY FROM HOOD.
8. PROVIDE COMPLETE TESTING, ADJUSTING, AND BALANCING FOR ALL SYSTEMS. BALANCE SUPPLY AIR DEVICES PER THIS PLAN. BALANCE OUTSIDE AIR, EXHAUST, AND MAKE-UP PER THE ORIGINAL CONSTRUCTION DOCUMENTS.

A.R. FOODS, INC. 000081

3

HVAC — PROPOSED MODIFICATIONS

SCALE: NONE



1 affiliated with or worked for A.R. Foods?

2 A Since it opened in -- you know, since we
3 started construction in 2018.

4 Q Okay. And I understand that you may have
5 worked for other shops that may have different
6 corporate designations. Is that possible?

7 A Every one of our locations, all 15, are
8 their own corporate entity, so I work for all 15 of
9 them.

10 Q And what I'm trying to find out is sort of
11 how long have you worked in -- been affiliated with
12 sort of the Jersey Mike's --

13 A Since 2005.

14 Q All right. What did you do before 2005?

15 A I went to high school.

16 Q Okay. All right.

17 But you didn't get a college degree; is
18 that right?

19 A Correct. I graduated high school in 2005
20 and started working at Jersey Mike's in 2005 when I
21 went to Tri-County Tech.

22 Q Do you hold any construction licenses?

23 A No.

24 Q Do you have any construction training
25 either by way of certification or on-the-job

1 training?

2 A No.

3 Q And just to be clear for the record, you
4 don't have any experience or background in the HVAC
5 or mechanical engineering industries?

6 A No.

7 Q And I apologize for asking you this
8 question but I ask every witness this question. Have
9 you ever been convicted of a crime other than a minor
10 traffic offense?

11 A Nope.

12 Q Let's kind of jump to --

13 MR. HARJEHAUSEN: Let's go ahead and mark
14 this.

15 (Notice of Deposition marked
16 Defendant's Exhibit Number 1 for
17 identification.)

18 BY MR. HARJEHAUSEN:

19 Q All right. Mr. Hill, I'm going to hand you
20 what's been marked as Exhibit 1 to your deposition
21 which is Defendant Carolina South Shore Construction,
22 Inc.'s Notice of SCRCP 30(b)(6) deposition of
23 A.R. Foods, Inc., SCRCP just being South Carolina
24 Rules of Civil Procedure.

25 This is the notice to take, essentially,

1 the testimony of the company of A.R. Foods, Inc.

2 Do you have an understanding that you have
3 been appointed to testify on behalf of A.R. Foods,
4 Inc.?

5 A Yes.

6 Q Have you seen Exhibit 1 before?

7 A I believe I have, in an e-mail.

8 Q Okay. And I don't want to know what you've
9 discussed with your attorney, I just want to know
10 that you understand that you have been designated to
11 testify on behalf of the topic list in this notice --

12 A Yes.

13 Q -- on behalf of A.R. Foods, Inc., correct?

14 A Correct.

15 Q Okay. And I don't know that we're going to
16 touch on all of them but if, for some reason, we
17 touch on a topic that you think somebody else is more
18 knowledgeable about -- I don't think that's going to
19 happen -- just let me know that, okay?

20 A Yep.

21 Q All right. Let's talk about 2018 and --

22 Does A.R. Foods, Inc. own more than one
23 Jersey Mike's store?

24 A No.

25 Q And where is the -- what's the address of

1 A That's correct.

2 Q Did Ray Group Consulting Engineers come out
3 and perform any site visits as far as you know at any
4 time?

5 A I believe that they did a site visit after
6 we were already open and having HVAC issues, but I do
7 not remember them specifically doing a site visit
8 before we opened.

9 MR. HARJEHAUSEN: This is Exhibit 2.
10 (Tenant Improvement Package marked
11 Defendant's Exhibit Number 2 for
12 identification.)

13 BY MR. HARJEHAUSEN:

14 Q I've handed you what's been marked as
15 Exhibit 2 and I would ask you to sort of leaf through
16 that.

17 Have you ever seen that before?

18 A Yes.

19 Q Okay. When have you seen this before?

20 A During the construction in 2018 and then
21 again when we realized we were having HVAC issues and
22 I met with Chris Poindexter on-site to confirm the
23 HVAC was incorrect.

24 Q And let me ask you, what was -- what is
25 your understanding of Carolina South Shore

1 Construction, Inc.'s involvement in the upfit of 1818
2 Augusta Street?

3 A They are the general contractor.

4 Q Okay. So they did more than just HVAC?

5 A Yes. Chris was the general contractor so
6 he handled all of the upfit.

7 Q And what I'm asking about is seats or
8 flooring or anything else, they did that work --

9 A Chris built the entire restaurant, from the
10 demolition to us getting the Certificate of
11 Occupancy. That includes installing the furniture,
12 the TV's on the wall, everything.

13 Q Had you worked with Chris Poindexter
14 before?

15 A I don't think so.

16 Q Did A.R. Foods, Inc. have a written
17 contract with Carolina South Shore Construction,
18 Inc.?

19 A I'm not sure.

20 Q Have you ever seen one?

21 A I'm not sure.

22 Q And the reason I'm asking is I haven't seen
23 one.

24 A Yeah. I don't believe that there was one
25 but I'm not sure. I don't recall seeing one.

1 Looking at A.R. FOODS 26 it says, Bill To
2 Hotzfam Trusts. It could be Hotzfarn Trust.

3 Do you see that?

4 A Yes.

5 Q Do you know whether it's Hotzfam or
6 Hotzfarn?

7 A Hotzfam.

8 Q Thanks.

9 And Hotzfam Trust, what is that?

10 A The group that owned the building at the
11 time.

12 Q So that's not A.R. Foods, correct?

13 A Correct. Hotzfam would be the landlord.

14 Q And this bill for \$272.50, that then was
15 paid by the landlord, Hotzfam Trust?

16 A I don't know who paid the bill.

17 Q Well, let's talk about what this invoice --

18 This invoice is dated May 8, 2019. Do you
19 see that?

20 A Yes.

21 Q And the description is, found kitchen unit
22 emergency drain pan full of water and some ice on
23 coil. Vacuumed water out of drain pan, vacuumed
24 drain lines and blew through drain lines to make sure
25 draining property. Found system a little low on

1 Q And the description is, 5-31 found kitchen
2 unit frozen, melted ice. Chemically cleaned
3 condenser coil outside, installed fan pressure
4 control on outdoor unit. Made adjustments. Added
5 one-half pound R-22. This will keep kitchen unit
6 from freezing up. Anymore problems, further steps
7 will need to be taken.

8 Did I read that correctly?

9 A Yes.

10 Q And it looks like there was a charge of
11 \$534.66. Do you see that?

12 A Yes.

13 Q And the bill was sent to Hotzfam Trusts.
14 Do you see that?

15 A I do.

16 Q And again, Hotzfam Trusts, is that the
17 landlord?

18 A That is the landlord.

19 Q And I see that there is a Paid stamp on
20 here but do you know who actually paid this bill?

21 A I do not.

22 Q Do you know if A.R. Foods, Inc. paid the
23 bill?

24 A I don't know who paid the bill.

25 Q At least as of these two visits, did

1 Professional Heating & Cooling raise any concerns
2 about ductwork?

3 A I'm not sure when they brought their
4 concerns up.

5 Q Okay. All right.

6 Let's take a look at A.R. FOODS, INC. 28.
7 It has a date of June 17, 2019.

8 Then it looks like Professional Heating &
9 Cooling came out for a third time; is that right?

10 A This is the third invoice you're showing
11 me.

12 Q Okay.

13 A It appears to not be the third one, though,
14 in this group based on the date of 6-17. The next
15 one is dated 6-5; so...

16 Q But that's in 2020.

17 A Oh.

18 So yeah, it appears that this would be the
19 third one that you're showing me.

20 Q So, I guess, who called Professional
21 Heating & Cooling out on these occasions?

22 A I don't know.

23 Q Would it have been somebody from Hotzfam
24 Trusts since that's where the bill was sent to?

25 A It would have either been Hotzfam Trusts or

1 me .

2 Q Okay. But you don't have a recollection of
3 calling Professional Heating & Cooling?

4 A I do not.

5 Q And looking at these first three,
6 A.R. FOODS 26, 27 and 28, you don't recall calling
7 Professional Heating & Cooling?

8 A I don't know who called them.

9 Q Okay. Looking at A.R. FOODS 28, which is
10 dated June 17, 2019, it looks like a unit had froze
11 again, correct?

12 A Correct.

13 Q It said, found unit frozen, melted ice. No
14 numbers on indoor A/C coil and outdoor unit to
15 determine tonnage. After doing some research, found
16 out furnace, which had a model and serial number, has
17 a maximum of four-ton drive. Taking door off and
18 getting numbers of A/C evaporated coil determined has
19 a four-ton expansion valve. Outdoor unit has
20 four-ton compressor. This is harder way to determine
21 tonnage, when model and serial numbers are missing on
22 equipment. After that, inspected duct system,
23 determined return and supply duct undersized. This
24 creates problems with lower suction pressures and
25 leads to freeze up. Next step is to have ductwork

1 Q Okay. So four-ton ductwork was hooked up
2 to a two-ton unit, and the two-ton ductwork was
3 hooked up to a four-ton unit?

4 A Correct.

5 Q And do you know if this Exhibit 4 is an
6 engineering diagram from Ray Consulting Group, Inc.?

7 A I don't know.

8 Q Okay. You said, I think earlier, that you
9 believed that Ray Consulting Group, Inc. made a site
10 visit.

11 A I believe that they made a site visit once
12 we discovered the HVAC issues.

13 Q Okay. Did you speak to anybody?

14 A I don't recall.

15 Q Okay. And do you know if somebody else at
16 A.R. Foods interacted with those folks?

17 A I don't know.

18 Q Did you ever talk to anyone at Ray Group
19 Consulting Engineers, Inc.?

20 A I'm not sure.

21 Q Other than an invoice that we looked at
22 from Professional Heating & Cooling, how did you come
23 to the understanding or how did A.R. Foods come to
24 the understanding that there was an issue with
25 ductwork going to a particular unit?

1 A I can't remember.

2 Q Do you know if what is identified as
3 Exhibit 4, and particularly Page 3 of Exhibit 4,
4 is -- do you see at the bottom there it says
5 HVAC-Proposed Modifications?

6 A Yes.

7 Q Do you know if that HVAC-Proposed
8 Modifications on that page shows a different duct
9 layout than the duct layout that was shown in the
10 original construction documents marked as Exhibit 2?

11 A I don't know.

12 Q When -- do you know if anyone from Ray
13 Consulting Engineers, Inc. said, oh, yeah, we
14 reversed it on the plans?

15 A I don't know.

16 Q Do you know if a proposed modified set of
17 plans was given to the repair contractor?

18 A I'm not sure.

19 Q So, for instance, my understanding is that
20 neither my client, Carolina South Shore Construction,
21 or Professional Heating & Cooling fixed this issue
22 with the ducts, correct?

23 A Correct.

24 Q Somebody else did it, and I think you
25 identified them earlier.

1 A CF Mechanical fixed it.

2 Q Do you know whether CF Mechanical was given
3 this set of plans for Exhibit 4?

4 A I don't remember.

5 Q Do you know if CF Mechanical spoke with
6 anyone at Ray Group Consulting Engineers, Inc.?

7 A I don't know.

8 Q Would anybody at A.R. Foods have more
9 knowledge than you regarding that information?

10 A No.

11 Q How did CF Mechanical know to, essentially,
12 fix the ductwork?

13 A They were given a set of plans on how to
14 fix it.

15 Q Okay. But you don't know who gave them
16 that set of plans?

17 A I don't remember.

18 Q Do you know if it was Abri Design Studios?

19 A I don't know.

20 Q Still looking at Page 3 of Exhibit 4, do
21 you see at the top of the page it has, it looks like,
22 outdoor units where it says CU-4 Trane --

23 A Yes.

24 Q -- and then it has a five-tons there, and
25 then, if you look to the right, it has CU-2 Carrier,

1 Q Do you know if the installation of this
2 system has anything to do with fixing the ductwork
3 that was done by CF Mechanical?

4 A I do not know.

5 Q Have you seen invoices from CF Mechanical?

6 A Yes.

7 Q Has A.R. Foods used CF Mechanical to make
8 other repairs at the Jersey Mike's at 1818 Augusta
9 Street other than fixing the ductwork?

10 A I don't know.

11 MR. HARJEHAUSEN: Let's go ahead and mark
12 this as Exhibit 5.

13 (Plaintiff's Answers to Carolina
14 South Shore Construction, Inc.'s Amended
15 First Set of Interrogatories marked
16 Defendant's Exhibit Number 5 for
17 identification.)

18 BY MR. HARJEHAUSEN:

19 Q Mr. Hill, I have handed you what's been
20 marked as Exhibit 5 which is Plaintiff's Answers to
21 Defendant Carolina South Shore Construction, Inc.'s
22 Amended First Set of Interrogatories. Have you ever
23 seen that document before?

24 A I can't remember.

25 Q I'll represent to you that these

1 interrogatories are typically answered by counsel
2 with input from the client, whether it's my client
3 or, in your case, your counsel on behalf of A.R.
4 Foods --

5 A Okay.

6 Q -- but do you know if you or somebody else
7 at A.R. Foods supplied the information to respond to
8 these interrogatories?

9 A I don't know.

10 Q All right. Lets go through these a little
11 bit. I have some questions about them.

12 On Page 3 it says, Dave Bockstahler,
13 Mr. Bockstahler, has knowledge of the facts and
14 issues regarding the Jersey Mike's HVAC project
15 performed by the defendant and the resulting damages.

16 Do you see that?

17 A I do.

18 Q Do you know what A.R. Food, Inc.'s
19 resulting damages are?

20 A I don't.

21 Q Do you know who else at A.R. Foods would
22 know that?

23 A I don't.

24 Q Do you know what knowledge Mr. Bockstahler
25 has regarding either the upfit of 1818 Augusta Street

1 or the repair of the duct issue causing the units to
2 freeze up?

3 A I'm not sure.

4 Q Let's go down to Turner Hill.

5 It says Turner Hill, District Manager for
6 plaintiff.

7 If Mr. Hill -- that's you, right?

8 A That is correct.

9 Q Is your job title District Manager?

10 A I don't have a job title.

11 Q Do you have knowledge -- it says, Mr. Hill
12 has knowledge of the facts and issues regarding the
13 Jersey Mike's HVAC project performed by defendants
14 and the resulting damages.

15 Do you see that?

16 A I do see that.

17 Q Do you know what A.R. Food's resulting
18 damages are in this case?

19 A I do not.

20 Q Let's talk about Keith Mikulka.

21 Have you spoken or has anyone at A.R. Foods
22 spoken with Mr. Mikulka?

23 A I believe that Keith is the one that
24 e-mailed us or e-mailed the changes that needed to be
25 made to correct the issues.

1 Q Who is he affiliated with? He's with Ray
2 Group Consulting Engineers?

3 A Yeah. Keith is the engineer.

4 Q And what changes do you understand were
5 made?

6 A What changes were made to correct the HVAC?

7 Q Yes.

8 A Whatever was on Keith's list. I don't
9 recall what all it was.

10 Q Well, do you know whether Keith Mikulka
11 prepared the Exhibit 4 diagrams to, essentially,
12 reverse the ductwork to the correct unit?

13 A I don't know if Keith created this.

14 Q Do you know if Ray Group Consulting
15 prepared it?

16 A I don't know who prepared this that you
17 gave me.

18 Q Exhibit 4?

19 A Correct.

20 Q Okay. Do you know if Keith Mikulka
21 prepared a repair plan whether or not it's Exhibit 4
22 or not for the ductwork?

23 A I believe that Keith e-mailed over the
24 repair plan but I don't know who created the repair
25 plan.

1 Q -- related to this lawsuit?

2 A I do not.

3 Q My understanding is that A.R. Foods does
4 not have any mechanical experience, correct?

5 A That's correct.

6 Q Is anyone at A.R. Foods going to testify
7 that my client, Carolina South Shore Construction,
8 Inc., breached some professional standard of care
9 related to mechanical or HVAC installations?

10 A I don't know.

11 Q You're not aware of anybody?

12 A Can you ask the question again?

13 Q Yeah. I mean, do you know if anyone on
14 behalf of A.R. Foods is going to testify that my
15 client breached the standard of care applicable to
16 mechanical installations?

17 A I don't know the answer to that question.

18 Q Does anybody else at A.R. Foods know the
19 answer to that question?

20 A No.

21 Q Have you spoken to anyone at CF Mechanical
22 as to whether or not it is going to offer any
23 opinions as to whether or not Carolina South Shore
24 Construction violated any sort of standard of care
25 related to mechanical installations?

1 A I haven't talked to them about that.

2 Q Let me ask you this. Can a general
3 contractor rely upon a set of plans given to it by an
4 engineer?

5 A Can you ask me that again?

6 Q Sure.

7 Can a general contractor rely upon a set of
8 plans given to it by an engineer?

9 A I don't know.

10 Q All right.

11 MR. HARJEHAUSEN: Let's go ahead and mark
12 this as the next exhibit.

13 (E-mail from Keith Mikulka to
14 Mr. Hill dated 7-8-19 marked Defendant's
15 Exhibit Number 6 for identification.)

16 BY MR. HARJEHAUSEN:

17 Q All right. Mr. Hill, have you seen this
18 e-mail chain before?

19 A Yes.

20 Q All right. Let's start with Page -- the
21 e-mail chain, Page 12, which is -- it looks like an
22 e-mail July 2, 2019. And it's from Turner Hill,
23 which is you, right?

24 A That's correct.

25 Q To Angel Jennings, right?

1 A I'm not sure.

2 Q Well, I'll just represent to you that this
3 was the legal complaint initialing the lawsuit which
4 was filed against my client, Carolina South Shore
5 Construction, Inc., Abri Design Studio and Ray Group
6 Consulting Engineers by A.R. Foods.

7 Are you the person at A.R. Foods most
8 knowledgeable about the allegations in this
9 complaint?

10 A I believe so.

11 Q Is it the position of A.R. Foods that Abri
12 Design Studio or Ray Group Consulting Engineers
13 prepared and provided certain drawings for the upfit
14 at the -- regarding an HVAC system to be installed at
15 1818 Augusta?

16 A Can you say that again?

17 Q Sure.

18 I'll direct your attention to Paragraph 12,
19 Page 2.

20 A Page 2. Okay.

21 So what's the question?

22 Q Is that your understanding, that Abri
23 Design Studio and Ray Group Consulting Engineers
24 prepared and provided certain drawings regarding the
25 HVAC to be installed at the property?

1 A Yes.

2 Q It says down below in Paragraph 20, upon
3 information and belief, Abri Design Systems and Ray
4 Group Consulting Engineers assert that Carolina South
5 Shore Construction failed to properly install the
6 HVAC system pursuant to the design and drawings.

7 Do you see that language?

8 A I do see that.

9 Q Have you had any conversations or has
10 anyone at A.R. Foods had any conversations with Abri
11 Design Studios or Ray Group Consulting Engineers
12 about that?

13 A I don't know.

14 Q Do you know where that allegation comes
15 from?

16 A I do not know.

17 Q But you haven't had any conversations with
18 anybody at Abri Design Studios or Ray Group
19 Consulting Engineers that Carolina South Shore
20 Construction failed to properly install the HVAC
21 system?

22 A I don't remember.

23 Q Carolina South Shore Construction did not
24 install the units outside during the upfit of this
25 property; is that right?

1 A They did not install the existing units.
2 They did install the new unit.

3 Q Okay. Do you know if the new unit has
4 anything to do with this ductwork issue?

5 A I don't know.

6 Q If you would, look at Paragraph 29.
7 A.R. Foods is contending in this lawsuit or alleging
8 that either Abri Design Studio or Ray Group
9 Consulting Engineers failed to properly furnish
10 drawings. Is that fair? That's an allegation in
11 this case?

12 A Yes.

13 Q Do you have any knowledge or information
14 about the particulars of that allegation?

15 A I do not.

16 Q Do you know if A.R. Foods' total claimed
17 damages in this case are less than \$25,000?

18 A I'm not sure.

19 Q Would anybody else at A.R. Foods have
20 greater knowledge?

21 A I don't think so.

22 MR. HARJEHAUSEN: All right. Let's go off
23 the record.

24 - - -

25 (Off the record.)

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BY MR. HARJEHAUSEN:

Q Mr. Hill, on behalf of A.R. Foods what did my client, Carolina South Shore Construction, do wrong?

A I don't know.

Q Do you know how -- the approximate cost of the CF Mechanical bill?

A I'm not sure.

Q Do you know if there was more than one invoice?

A I don't know.

MR. HARJEHAUSEN: Those are all of the questions I have. I appreciate your time.

THE WITNESS: Yes, sir.

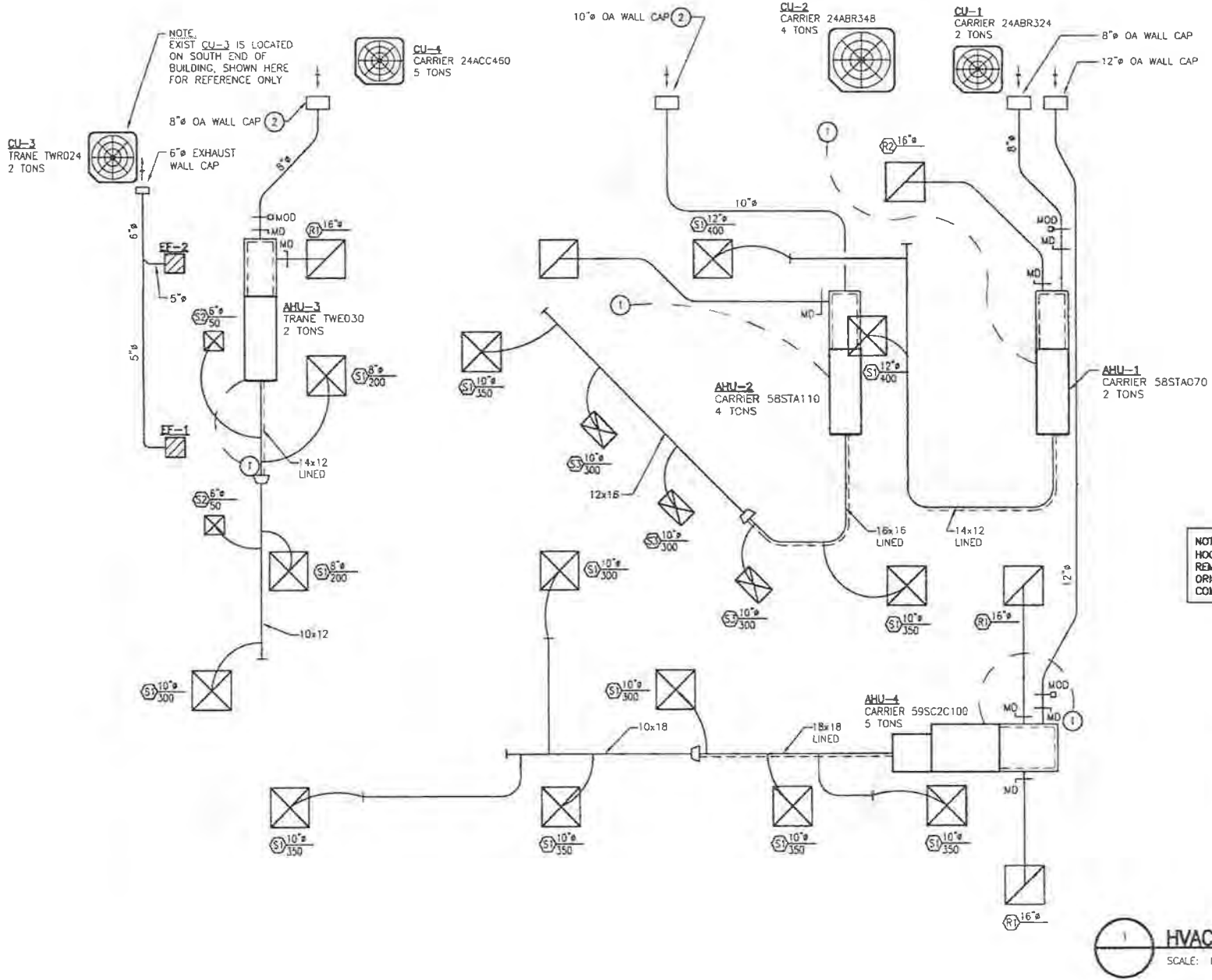
EXAMINATION

BY MR. NANNEY:

Q Hi. My name is Lee Nanney. I got to meet you earlier today. I represent Abri Design and Ray Group Consulting, and I don't think I'm going to be too terribly long here.

A Okay.

Q Looking back at this last exhibit, looking



NOTE: SOME INFORMATION (E.G., KITCHEN HOODS, FANS, AND DUCTWORK) HAS BEEN REMOVED FOR CLARITY. REFER TO THE ORIGINAL CONSTRUCTION DOCUMENTS FOR COMPLETE DESIGN.



1 HVAC - ORIGINAL DESIGN
SCALE: NONE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	C.A. No.: 2023-CP-23-01626
)	
A.R. Foods, Inc.)	
Plaintiff,)	
)	
v.	)	DEFENDANT CAROLINA SOUTH
	)	SHORE CONSTRUCTION, INC.'S
Carolina South Shore Construction, Inc.,	)	MOTION FOR SUMMARY JUDGMENT
Abri Design Studio, Inc., and Ray Group)	
Consulting Engineers, Inc.)	
Defendant.)	
)	

TO: PLAINTIFF A.R. FOODS, INC., AND IT ITS ATTORNEY, JOHN T. CRAWFORD, ESQ.

PLEASE TAKE NOTICE that Defendant, Carolina South Shore Construction, Inc., by and through its undersigned attorneys, pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*, will move before the presiding judge of Greenville County, at a time and place designated by the Court, for an Order granting Carolina South Shore Construction, Inc. summary judgment as a matter of law as to all claims asserted by the plaintiffs including their claims for (1) breach of contract; (2) negligence/gross negligence; and (3) breach of the implied warranty of workmanlike service. Summary judgment is appropriate because there is no evidence of any breach of any contractual obligation or express or implied warranty, common law duty, or actional negligence by Carolina South Shore Construction, Inc. Furthermore, there is no evidence that plaintiffs have incurred any damages related to any breach of any contractual obligation or express or implied warranty, common law duty, or actional negligence by Carolina South Shore Construction, Inc. Rather, the plaintiffs' claims are based on speculation.

This motion will be based upon the pleadings, parties' written discovery responses, witness deposition testimony, documents produced, motion briefs and memoranda, and such evidence which may later be submitted.

By: s/ John D. Harjehausen
John D. Harjehausen (76194)
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400
(864) 235-4399 (fax)
Attorneys for defendant Carolina South
Shore Construction, Inc.

May 3, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	C.A. No.: 2023-CP-23-01626
)	
A.R. Foods, Inc.,)	
)	
Plaintiff,	)	PLAINTIFF’S MOTION TO
	)	RECONSIDER AND/OR ALTER AND
	)	AMEND ORDER GRANTING
v.	)	DEFENDANT CAROLINA SOUTH
	)	SHORE CONSTRUCITON, INC.’S
Carolina South Shore Construction, Inc.;	)	MOTION FOR SUMMARY JUDGMENT
Abri Design Studio, Inc.; and Ray Group	)	AND PLAINTIFF’S MOTION TO
Consulting Engineers, Inc.,	)	PERMIT ADDITIONAL EVIDENCE TO
	)	BE OBTAINED UNDER RULE 56(F)
Defendants,)	
)	

Plaintiff A.R. Foods, Inc. (“A.R. Foods” or “Plaintiff”) hereby moves pursuant to Rules 52, 59 and all other applicable rules of the South Carolina Rules of Civil Procedure (“SCRCP”), and the Court’s inherent authority, for the Court to reconsider its Order granting Defendant Carolina South Shore Construction, Inc.’s (“CSSC”) Motion for Summary Judgment and denying Plaintiff’s Motion to Permit Additional Evidence to be Obtained under Rule 56(f)¹ (the “Order”) showing as follows:

PROCEDURAL BACKGROUND

This matter was filed on December 27, 2021 in the Greenville County Magistrate Court. At the time, Plaintiff believed the damages did not exceed the jurisdictional limit. However, in preparation for mediation, it was determined that the damages exceed \$7,500. This case was then transferred to the Court of Common Pleas on April 4, 2023. Two of the Defendants, Abri Design Studio, Inc. (“ADSI”) and Ray Group Consulting Engineers, Inc. (“RGCE”), have not made

¹ Plaintiff fully incorporates herein its Motion to Permit Additional Evidence to be Obtained under Rule 56(f) filed on August 5, 2024.

appearances in this matter despite both being properly served.² Discovery is ongoing. CSSC took the deposition of Plaintiff and the deposition of RGCE was noticed and postponed.

On May 3, 2024, CSSC filed their Motion for Summary Judgment alleging that Plaintiff's claims were based on speculation. However, no additional substantive information was provided in the Motion. A hearing on CSSC's Motion was scheduled for August 6, 2024. On August 5, 2024 at 3:22 PM, CSSC filed its Brief in Support of the Motion for Summary Judgment. Counsel for Plaintiff and CSSC presented oral arguments at the hearing on August 6, 2024. Pursuant to a Form 4 Order, the Court granted Defendant CSSC's Motion for Summary Judgment and denied Plaintiff's Motion to Permit Additional Evidence to be Obtained under Rule 56(f) on August 9, 2024.

FACTUAL BACKGROUND

This case arises out of a defective HVAC system that was installed at the Jersey Mike's location operated by Plaintiff. Defendants ADS and RGCE were contracted to design and prepare the drawings for the HVAC system. Defendant CSSC was the general contractor for the installation of the HVAC system. Following the installation, the HVAC system began malfunctioning. It was discovered that the diffusers for the 2-ton HVAC system and the 4-ton HVAC system were swapped. Therefore, the duct system was undersized for the 4-ton HVAC system. RGCE and ADS have taken the position that CSSC incorrectly installed the HVAC system. CSSC contends that that it installed the systems in accordance with the plans.

Mr. Hill, representative of Plaintiff, testified that "the ductwork for a two-ton 24 unit and a four-ton unit were essentially hooked up 25 to the wrong units." Hill Depo. 35:23-25.³ This was

² RGCE was given an extension to respond as the parties were attempting to resolve the claims.

³ Excerpts of the 30(b)(6) Deposition of Plaintiff are attached hereto as Exhibit 1.

further indicated in Mr. Hill testimony, when counsel for CSSC counsel questioned his regarding Professional Heating and Cooling's invoices.

Q: It said, found unit frozen, melted ice. No numbers on indoor A/C coil and outdoor unit to determine tonnage. After doing some research, found out furnace, which had a model and serial number, has a maximum of four-ton drive. Taking door off and 18 getting numbers of A/C evaporated coil determined has a four-ton expansion valve. Outdoor unit has four-ton compressor. This is harder way to determine tonnage, when model and serial numbers are missing on equipment. After that, inspected duct system, determined return and supply duct undersized. This creates problems with lower suction pressures and leads to freeze up. Next step is to have ductwork increased in size to support four-ton system. Until this is done, will not be able to determine if any other issues from running on restricted air flow. Most likely will solve issue since fan cycling pressure control that was recently installed. Did I read that correctly.

A: You did.

Hill Depo. 30:13-31:7. *See* Exhibit 1.

ARGUMENT & CITATION OF AUTHORITY

Pursuant to Rule 59(e), SCRCP, “[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” *See also* Rule 52(b), SCRCP, (“Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly[.]”).

1. Defendant CSSC's Motion for Summary Judgment

A motion for summary judgment may only be granted when there is no genuine dispute of material facts and judgment should be entered as a matter of law. Rule 56(c), SCRCP. A party moving for summary judgment must use admissible evidence to support the motion. *See Hall v. Fedor*, 349 S.C. 169, 175 (Ct. App. 2002). The court must “view all evidence in the light most favorable to the non-moving party.” *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285 (Ct. App. 2001). On summary judgment the court’s duty “is not to try issues of fact, but to determine whether there are genuine issues of material fact to be tried, and once finding triable issues exist, the Court must leave those issues for determination at trial.” *Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 408 (Ct. App. 2002).

“Summary judgment is appropriate in those cases in which plain, palpable and indisputable facts exist on which reasonable minds cannot differ.” *Tompkins v. Festival Centre Group*, 306 S.C. 193, 410 S.E.2d 593 (Ct. App. 1991). “Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” *Thomas Sand Co.* at 112. A trial court should not grant a motion for summary judgment when pleadings, depositions, answer to interrogatories, and admissions on file, together with affidavits, if any, show there is a genuine issue as to any material fact. *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 58, 518 S.E.2d 301, 304 (1999) (citations omitted). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Id.* Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Id.*

In the present case, it is undisputed that there was an issue with the HVAC system. However, the parties dispute who is responsible for the issue. During Mr. Hill’s deposition, he

testified regarding the following:

A: We asked Chris to fix it since he was the contractor that installed it.

Q: Okay. And what was Chris' response?

A: Once the engineering company came out and sent over the list of how to fix it, Chris' response was it sounds like an interesting fix.

Hill Depo. 33:23-34:3. *See* Exhibit 1.

Further evidence is shown through correspondence between the parties prior to this litigation. In an email to Turner Hill on September 10, 2019, Keith Mikulka, a representative of RGCE, wrote the “(t)he design shows a 2 ton system serving the Prep Area and a 4 ton system serving the Serving Line. The preliminary conclusion was that these systems were swapped (i.e., 2 ton unit serves the Serving Line and the 4 ton unit serves the Prep Area). I visited the site last month and confirmed this to be the case.” *See* Exhibit 2. Christopher Pondexter, representative of CSSC, wrote on November 16, 2020 that “(t)here are no defects or deficiencies in the installation of the system only inaccuracies in the engineering.” *See* Exhibit 3.

For the reasons stated above, genuine issues of material fact exist and/or Plaintiff has presented facts which prove or tend to prove the relief sought in the Complaint. Summary Judgment in favor of Defendant CSSC is improper. Moreover, as discovery is ongoing, summary judgment is premature.

2. Plaintiff's Motion to Permit Additional Evidence to be Obtained under Rule 56(f)

Rule 56(f), SCRCF, provides that “[s]hould it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavits facts essential to justify his opposition, the court may refuse the application for judgment, or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make

such other order as is just.” As explained in the affidavit submitted by Plaintiff, certain vital and relevant evidence is expected to be obtained in the upcoming depositions of Defendants and an expert to be retained by Plaintiff. *See* Exhibit 4.

IV. CONCLUSION

For the reasons set forth above, Plaintiff requests that the Court reconsider its Order granting Defendant CSSC’s Motion for Summary Judgment and Plaintiff’s Motion to Permit Additional Discovery to be Obtained under Rule 56(f).

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC
KENISON, DUDLEY & CRAWFORD, LLC



John T. Crawford (SC Bar No.: 69682)
Kenison, Dudley & Crawford, LLC
325 West McBee Avenue, Suite 301
Greenville, South Carolina 29601
Office: (864) 242-4899
E-mail: crawford@conlaw.com
Attorney for Plaintiff

August 19, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF
COMMON PLEAS

- - -

A.R. FOODS, INC.,	:	
	:	
Plaintiff,	:	
	:	Case No.
vs.	:	2023-CP-23-01626
	:	
CAROLINA SOUTH SHORE	:	
CONSTRUCTION, INC., ABRI	:	
DESIGN STUDIO, INC., and RAY	:	
GROUP CONSULTING ENGINEERS,	:	
INC.,	:	
	:	
Defendants.	:	

30(b)(6) DEPOSITION OF A.R. FOODS, INC.
Given By Turner Hill

DATE TAKEN: Monday, January 15, 2024

TIME BEGAN: 10:00 a.m.

TIME ENDED: 11:38 a.m.

LOCATION: Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, South Carolina 29601

REPORTED BY: Mary Posey, Court Reporter
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 me.

2 Q Okay. But you don't have a recollection of
3 calling Professional Heating & Cooling?

4 A I do not.

5 Q And looking at these first three,
6 A.R. FOODS 26, 27 and 28, you don't recall calling
7 Professional Heating & Cooling?

8 A I don't know who called them.

9 Q Okay. Looking at A.R. FOODS 28, which is
10 dated June 17, 2019, it looks like a unit had froze
11 again, correct?

12 A Correct.

13 Q It said, found unit frozen, melted ice. No
14 numbers on indoor A/C coil and outdoor unit to
15 determine tonnage. After doing some research, found
16 out furnace, which had a model and serial number, has
17 a maximum of four-ton drive. Taking door off and
18 getting numbers of A/C evaporated coil determined has
19 a four-ton expansion valve. Outdoor unit has
20 four-ton compressor. This is harder way to determine
21 tonnage, when model and serial numbers are missing on
22 equipment. After that, inspected duct system,
23 determined return and supply duct undersized. This
24 creates problems with lower suction pressures and
25 leads to freeze up. Next step is to have ductwork

1 increased in size to support four-ton system. Until
2 this is done, will not be able to determine if any
3 other issues from running on restricted air flow.
4 Most likely will solve issue since fan cycling
5 pressure control that was recently installed.

6 Did I read that correctly.

7 A You did.

8 Q And it looks like there was a balance due
9 of \$137.50, correct?

10 A Correct.

11 Q Do you know if A.R. Foods, Inc. paid this
12 bill?

13 A I don't know.

14 Q Do you know if Hotzfam Trusts paid the
15 bill?

16 A I don't know.

17 Q Do you know the method of payment, credit
18 card, check or some other method?

19 A I don't know.

20 Q Let me ask you, do you recall or were you
21 there when Professional Heating & Cooling came out?

22 A I don't remember.

23 Q At any time while these units were freezing
24 up, were you involved at all in trying to determine,
25 say, the serial numbers on the units?

1 ductwork was not hooked up to the proper unit?

2 A I believe so. But this was four years ago
3 so I'm not exactly sure.

4 Q Okay. Do you know who was hired to, I
5 guess, fix the ductwork in the units?

6 A Who was hired to fix it when Chris wouldn't
7 fix it?

8 Q Yes.

9 A Yes.

10 Q Who?

11 A Freddie Fielding.

12 Q Okay.

13 A CF Mechanical is their name, or the name of
14 the company.

15 Q And what I'm trying to find out is -- still
16 looking at A.R. FOODS 28 which is part of Exhibit
17 3 -- Professional Heating & Cooling is saying, look,
18 you have a duct problem, right? At least in part?

19 A Correct.

20 Q And was Professional Heating & Cooling --
21 why wasn't Professional Heating & Cooling retained to
22 work on that since they --

23 A We asked Chris to fix it since he was the
24 contractor that installed it.

25 Q Okay. And what was Chris' response?

1 A Once the engineering company came out and
2 sent over the list of how to fix it, Chris' response
3 was it sounds like an interesting fix.

4 Q But he declined?

5 A I don't know what he said other than it
6 sounds like an interesting fix.

7 MR. HARJEHAUSEN: Let's go ahead and mark
8 this.

9 (HVAC engineering diagram marked
10 Defendant's Exhibit Number 4 for
11 identification.)

12 MS. HARDEN: Can we take a five-minute
13 break?

14 MR. HARJEHAUSEN: Sure.

15 - - -

16 (Recess in the proceedings.)

17 - - -

18 BY MR. HARJEHAUSEN:

19 Q All right, Mr. Hill, I've handed you what's
20 been marked as Exhibit 4 which is three pages, and --

21 A I have a question.

22 Q Yes.

23 A Does it matter that it doesn't have the
24 A.R. Foods stuff at the bottom? Mine doesn't like
25 all the other ones did.

FW: JMS Greenville, SC, HVAC

__substg1.0_3701000D.msg

FW: JMS Greenville, SC, HVAC

From
 Paul Girardeau
 To
 James Copeland
 Recipients
 jcopeland@contractdisputeslaw.com

Paul Girardeau RA**Owner/Architect**

Paul.girardeau@abri-ds.com

P.O. Box 669504

Marietta Georgia 30066

Cell: 770-639-0200

Fax: 678-623-3182

From: Keith Mikulka <keithm@raygroup.net> **Sent:** Tuesday, September 10, 2019 11:04 AM **To:** 'Turner Hill' <turnerhilljm@gmail.com> **Cc:** Paul Girardeau <paul.girardeau@abri-ds.com>; Rodney Taylor <rtaylor@JERSEYMIKES.com>; boxcpa@me.com **Subject:** JMS Greenville, SC, HVAC

Turner;

Two issues with the HVAC system at this location were recently brought to our attention. Specifically, the cooling coil in the Prep Area unit has repeatedly frozen over and the Serving Line unit is unable to satisfy its load. The design shows a 2 ton system serving the Prep Area and a 4 ton system serving the Serving Line. The preliminary conclusion was that these systems were swapped (i.e., 2 ton unit serves the Serving Line and the 4 ton unit serves the Prep Area). I visited the site last month and confirmed this to be the case. Our recommendations for corrective action are given below.

Please note, the purpose of this trip was only to investigate the cause of the specific problems noted above and not to perform a comprehensive inspection of all construction nor to develop as-built drawings for the installation. While some unrelated construction deficiencies were observed during my visit, and are noted below, this email is not to be interpreted as a "punch list" nor are any deficiencies which are omitted herein to be considered "approved" by the Engineer of Record.

Original Design (refer to attached sketch #1): The 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. *Note that some information from the original design has been removed from this sketch (e.g., hoods and fans, miscellaneous construction notes, etc.) in order focus on the reported problems. Please refer to the original Construction Documents for the full design.*

Site Observations (refer to attached sketch #2): The air devices within the Serving Line area are indeed connected to AHU-1 and the air devices in the Prep Area are connected to AHU-2. As a result of the installation, the Prep Area unit is likely low on airflow (4 ton unit with air distribution sized for 2 tons) contributing to the reported coil freezing and the Serving Line does not have adequate cooling (2 ton unit serving 4 ton load). A few additional areas of concern were also observed:

1. Outside air ducts for AHU-1 and AHU-2 are undersized compared to the design.

2. No outside air is provided for AHU-3.

Page 100 of 244

3. Manual balancing dampers could not be located for any supply, return, or outside air branches. *These are necessary to allow for system balancing.*

- 4. Motorized shut-off dampers could not be located for any outside air duct connections. *These are required by Energy Code to minimize standby air leakage.*
- 5. 4-way fixed supply diffusers were installed at the service line near the hood in lieu of adjustable diffusers. This is not recommended as the high velocity air directed toward the hood may disrupt the hood's performance. *Note that this specific problem may not have occurred yet at these diffusers are likely significantly low on airflow at this time.*
- 6. No Testing, Adjusting, and Balancing (TAB) report has been submitted. A proper TAB will ensure that the system is operating as designed. As a side note, a TAB service performed at the end of construction also would have discovered the issues with AHU-1 and AHU-2 allowing for corrective action to be taken before store operations were significantly impacted.

Proposed Modifications (refer to attached sketch #3): We recommend the following steps be taken to correct the problems reported by the owner and note above.

- 1. Disconnect two supply diffusers at Serving Line from AHU-1 and reconnect to AHU-2.
- 2. Add one return grille for AHU-2.
- 3. Provide new outside air duct/louver for AHU-1 and increase the size of the OA connection for AHU-2.
- 4. Provide outside air for AHU-3.
- 5. Confirm and, where necessary, provide manual balancing dampers for all supply or return air device connections.
- 6. Confirm and, where necessary, provide manual balancing damper and motorized shut-off damper for each outside air connection.
- 7. Provide sectorizing baffles (Titus "SB") in the necks of the 3 square diffusers located near the hood in order to deflect the supply air away from the hood.
- 8. Provide complete Testing, Adjusting, and Balancing for all systems.

Please let us know if you have any questions about our findings or recommendations.

Thanks,
Keith

JMS Greenville HVAC Sketches 2019-09-10.pdf

JMS Greenville HVAC Sketches 2019-09-10.pdf

- WOMEN'S
- MEN'S
- SERVING LINE
- DINING AREA
- PREP AREA
- EXISTING PANELS
- ATTIC ACCESS
- TRACK LIGHTS
- T R
- A C
- K L
- IG H
- T S
- AutoCAD SHX Text

SCALE:
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NONE
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%%UHVAC - ORIGINAL DESIGN
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NOTE: EXIST CU-3 IS LOCATED CU-3 IS LOCATED IS LOCATED ON SOUTH END OF BUILDING, SHOWN HERE FOR REFERENCE ONLY
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EF-2
AutoCAD SHX Text
EF-1
AutoCAD SHX Text
S3
AutoCAD SHX Text
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AutoCAD SHX Text
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AutoCAD SHX Text
S1
AutoCAD SHX Text
10"%%C
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350
AutoCAD SHX Text
S1
AutoCAD SHX Text
10"%%C
AutoCAD SHX Text
350
AutoCAD SHX Text
S1
AutoCAD SHX Text
12"%%C
AutoCAD SHX Text
400
AutoCAD SHX Text
S1
AutoCAD SHX Text
12"%%C
AutoCAD SHX Text
400
AutoCAD SHX Text
S2
AutoCAD SHX Text
6"%%C
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S2
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2
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12" OA WALL CAP
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8"
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AutoCAD SHX Text
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CU-4 CARRIER 24ACC460 5 TONS
AutoCAD SHX Text
CU-3 TRANE TWR024 2 TONS
AutoCAD SHX Text
AHU-3 TRANE TWE030 2 TONS
AutoCAD SHX Text
AHU-2 CARRIER 58STA110 4 TONS
AutoCAD SHX Text
AHU-1 CARRIER 58STA070 2 TONS
AutoCAD SHX Text
AHU-4 CARRIER 59SC2C100 5 TONS
AutoCAD SHX Text
CU-2 CARRIER 24ABR348 4 TONS
AutoCAD SHX Text
CU-1 CARRIER 24ABR324 2 TONS
AutoCAD SHX Text
8" OA WALL CAP
AutoCAD SHX Text

NOTE: SOME INFORMATION (E.G., KITCHEN HOODS, FANS, AND DUCTWORK) HAS BEEN REMOVED FOR CLARITY. REFER TO THE ORIGINAL CONSTRUCTION DOCUMENTS FOR COMPLETE DESIGN.

WOMEN'S

MEN'S

SERVING LINE

DINING AREA

PREP AREA

EXISTING PANELS

ATTIC ACCESS

TRACK LIGHTS

T R

A C

K L

IG H

T S

AutoCAD SHX Text

%%OBSERVATIONS:

AutoCAD SHX Text

1. PREP AREA SERVED BY AHU-2 (4 TONS) INSTEAD OF AHU-1 (2 TONS). 2. SERVING LINE SERVED BY AHU-1 (2 TONS) INSTEAD OF AHU-2 (4 TONS). 3. 6" OUTSIDE AIR DUCT FOR AHU-1 INSTEAD OF 8" . 8" 6" OUTSIDE AIR DUCT FOR AHU-1 INSTEAD OF 8" . 8" OUTSIDE AIR DUCT FOR AHU-2 INSTEAD OF 10" . 10" COMBINED OUTSIDE AIR DUCT FOR AHU-1 AND AHU-2 IS SMALLER THAN DESIGN PROVIDES. 4. NO OUTSIDE AIR PROVIDED FOR AHU-3. NO OUTSIDE AIR PROVIDED FOR AHU-3. 5. MANUAL BALANCING DAMPERS COULD NOT BE LOCATED FOR MANUAL BALANCING DAMPERS COULD NOT BE LOCATED FOR SUPPLY, RETURN, OR OUTSIDE AIR BRANCHES. 6. MOTORIZED DAMPERS COULD NOT BE LOCATED FOR OUTSIDE AIR MOTORIZED DAMPERS COULD NOT BE LOCATED FOR OUTSIDE AIR DUCTS. 7. 3-CONE SQUARE DIFFUSERS USED AT SERVICE LINE IN FRONT OF 3-CONE SQUARE DIFFUSERS USED AT SERVICE LINE IN FRONT OF HOOD INSTEAD OF DOUBLE DEFLECTION (ADJUSTABLE THROW) REGISTERS. HIGH VELOCITY AIRFLOW DIRECTED TOWARD HOOD WILL DISRUPT HOOD CAPTURE AND CONTAINMENT. NOTE THAT THIS SPECIFIC PROBLEM MAY NOT HAVE MANIFESTED ITSELF YET SINCE THE AIR HANDLING UNIT IS UNDERSIZED FOR THIS ZONE. 8. NO TESTING, ADJUSTING, AND BALANCING (TAB) REPORT PROVIDED.NO TESTING, ADJUSTING, AND BALANCING (TAB) REPORT PROVIDED.

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SCALE:

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%%UHVAC - SITE OBSERVATIONS

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EF-2

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EF-1

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6" EXHAUSTWALL CAP

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8"

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6"

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14"

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16"

AutoCAD SHX Text

OA LOUVER

AutoCAD SHX Text

OA LOUVER

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CU-4 TRANE 4TTR4060 5 TONS

AutoCAD SHX Text

CU-3 TRANE TWR024 2 TONS

AutoCAD SHX Text

AHU-3 TRANE TWE030 2 TONS

AutoCAD SHX Text
AHU-4 TRANE TUH1D100 5 TONS
AutoCAD SHX Text
CU-2 CARRIER 24ABR348 4 TONS
AutoCAD SHX Text
CU-1 CARRIER 24ABR324 2 TONS
AutoCAD SHX Text
AHU-2 CARRIER 58STA110 4 TONS
AutoCAD SHX Text
AHU-1 CARRIER 58STA070 2 TONS

WOMEN'S

MEN'S

SERVING LINE

DINING AREA

PREP AREA

EXISTING PANELS

ATTIC ACCESS

TRACK LIGHTS

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A C

K L

I G H

T S

AutoCAD SHX Text

SCALE:

AutoCAD SHX Text

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%%UHVAC - PROPOSED MODIFICATIONS

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EF-2

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EF-1

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DISCONNECT DIFFUSER FROM AHU-1, RECONNECT TO AHU-2

AutoCAD SHX Text

ADD SECTORIZING BAFFLES (TITUS "SB") IN NECK TO BLOCK AIRFLOW DIRECTED TOWARD HOOD, TYP. 3

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DISCONNECT DIFFUSER FROM AHU-1, RECONNECT TO AHU-2

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NEW RETURN GRILLE CONNECTED TO AHU-2

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12"

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14"

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12"

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8"

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%%UPROPOSED MODIFICATIONS:

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1. DISCONNECT TWO SUPPLY DIFFUSERS AT SERVING LINE FROM DISCONNECT TWO SUPPLY DIFFUSERS AT SERVING LINE FROM AHU-1, EXTEND AND RECONNECT TO AHU-2. 2. ADD RETURN GRILLE TO AHU-2. ADD RETURN GRILLE TO AHU-2. 3. ADD DEDICATED OUTSIDE AIR DUCT AND INTAKE LOUVER FOR ADD DEDICATED OUTSIDE AIR DUCT AND INTAKE LOUVER FOR AHU-1. INCREASE SIZE OF OA CONNECTION FROM AHU-2 TO EXISTING 10" OA DUCT.4. ADD OUTSIDE AIR DUCT AND INTAKE LOUVER FOR AHU-3. ADD OUTSIDE AIR DUCT AND INTAKE LOUVER FOR AHU-3. 5. CONFIRM ALL SUPPLY, RETURN, AND OUTSIDE AIR BRANCHES HAVE CONFIRM ALL SUPPLY, RETURN, AND OUTSIDE AIR BRANCHES HAVE MANUAL BALANCING DAMPERS. PROVIDE NEW WHERE REQUIRED. 6. CONFIRM ALL OUTSIDE AIR DUCTS HAVE MOTORIZED DAMPERS. CONFIRM ALL OUTSIDE AIR DUCTS HAVE MOTORIZED DAMPERS. PROVIDE NEW WHERE REQUIRED. MOTORIZED DAMPERS ARE TO BE INTERLOCKED WITH AHU TO OPEN WHEN AHU FAN IS ON AND CLOSE WHEN AHU FAN IS OFF. 7. ADD SECTORIZING BAFFLES TO THREE (3) DIFFUSERS IN FRONT OF ADD SECTORIZING BAFFLES TO THREE (3) DIFFUSERS IN FRONT OF GRIDDLE HOOD TO DIVERT SUPPLY AIR AWAY FROM HOOD. 8. PROVIDE COMPLETE TESTING, ADJUSTING AND BALANCING FOR ALL PROVIDE COMPLETE TESTING, ADJUSTING, AND BALANCING FOR ALL SYSTEMS. BALANCE SUPPLY AIR DEVICES PER THIS PLAN. PER THIS PLAN. . BALANCE OUTSIDE AIR, EXHAUST, AND MAKE-UP PER THE PER THE ORIGINAL CONSTRUCTION DOCUMENTS..

AutoCAD SHX Text
PROVIDE OA LOUVER AND DUCT FOR AHU-3

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12x12 LOUVER & SCREEN

AutoCAD SHX Text
8"

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300 CFM

AutoCAD SHX Text
PROVIDE DEDICATED OA LOUVER AND DUCT FOR AHU-1

AutoCAD SHX Text
12x12 LOUVER & SCREEN

AutoCAD SHX Text

OA LOUVER
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OA LOUVER
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CU-4 TRANE 4TTR4060 5 TONS
AutoCAD SHX Text
CU-3 TRANE TWR024 2 TONS
AutoCAD SHX Text
CU-2 CARRIER 24ABR348 4 TONS
AutoCAD SHX Text
CU-1 CARRIER 24ABR324 2 TONS
AutoCAD SHX Text
AHU-3 TRANE TWE030 2 TONS
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AHU-2 CARRIER 58STA110 4 TONS
AutoCAD SHX Text
AHU-1 CARRIER 58STA070 2 TONS
AutoCAD SHX Text
AHU-4 TRANE TUH1D100 5 TONS
AutoCAD SHX Text
INCREASE AHU-2 OA CONNECTION SIZE

- Sheets and Views
 - 1 - Original Design
- JMS Greenville HVAC Sketch-2 - Site Observations.pdf
 - Sheets and Views
 - 2 - Site Observations
- JMS Greenville HVAC Sketch-3 - PROPOSED CORRECTIONS.pdf
 - Sheets and Views
 - 3 - PROPOSED CORRECTIONS

Carolina South Shore Construction
5235 Eagle Lake Drive
Charlotte NC 28217

Horton & Horton
413 Vardry Street, Ste 4A
Greenville SC 29601

November 16, 2020

Re: Jersey Mike's
Project Number 2017-53.54
181 Augusta Road
Greenville SC 29605

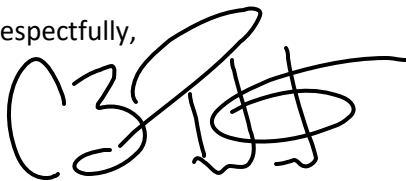
Mr. Horton,

It appears your client is mistaken in his allegations. There are no defects or deficiencies in the installation of the system only inaccuracies in the engineering. The installation of the ductwork was permitted, inspected by the city and passed inspection. No defects or deficiencies.

If you refer to the permitted set of plans dated 01-19-2018 page H1-01 you can clearly see where the engineer mislabeled the units either by mistake or by inaccurate existing field information provided to him by AR Foods, Inc. This is not an installation issue it is an information issue. Only after the discrepancies were discovered, 16 months after the Certificate of Occupancy, did the engineer revise his original drawings to reflect the correct tonnage of the units.

In response to your clients demand for payment, I refuse to be responsible for the oversight or omission of other parties hired by AR Foods Inc. and will appear in court to support my position.

Respectfully,

A handwritten signature in black ink, appearing to read 'C. Poindexter', with a large, stylized flourish extending from the end of the signature.

Christopher Poindexter
Carolina South Shore Construction

cc: JMD Law

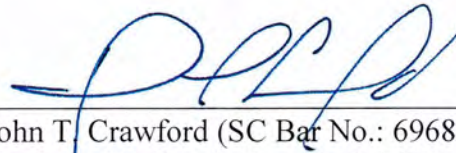
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	
	)	C.A. No.: 2023-CP-23-01626
A.R. Foods, Inc.,)	
)	
Plaintiff,)	
	)	AFFIDAVIT OF
v.	)	JOHN T. CRAWFORD, JR.
)	
Carolina South Shore Construction, Inc.;)	
Abri Design Studio, Inc.; and Ray Group)	
Consulting Engineers, Inc.,)	
)	
Defendants,)	
)	

The undersigned, having first being duly sworn and, upon personal knowledge and information, states as follows:

1. I am an attorney licensed to practice law in South Carolina. I am one of the founding members of Kenison, Dudley and Crawford, LLC. I represent the Plaintiff in the above-captioned lawsuit.
2. This matter arises out of a defective HVAC system. There is a dispute among the Defendants who is responsible for the issue.
3. Defendants Abri Design Studio, Inc. (“ADS”) and Ray Group Consulting Engineers, Inc. (“RGCE”) were contracted to design and prepare the drawings for the HVAC system. Defendant Carolina South Shore Construction, Inc. (“CSSC”) was the general contractor for the installation.
4. Defendants ADS and RGCE contend that CSSC installed the system incorrectly. Defendant CSSC contends that the system was installed in accordance with the plans.

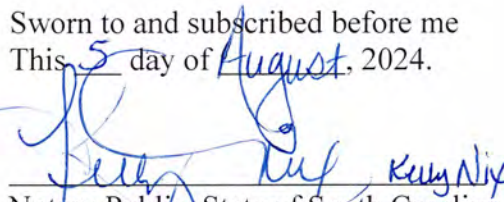
5. Plaintiff is in the process of scheduling the depositions of the Defendants as well as in the process of retaining an expert to provide an opinion on the cause of the defective system.
6. Plaintiff anticipates that these depositions and expert will provide vital information in support of Plaintiff's Response to Defendant CSSC's Motion for Summary Judgment.
7. For these reasons, and pursuant to South Carolina Rule of Civil Procedure Rule 56(f), Plaintiff requests that the Court reserve ruling on Defendant CSSC's Motion for Summary Judgment until such time as Plaintiff can take the deposition of Defendants and submit an affidavit from an expert. In the alternative, Plaintiff requests that the Court deny Defendant CSSC's Motion for Summary Judgment as discovery is ongoing and the Motion is premature.

FURTHER AFFIANT SAYETH NOT.



John T. Crawford (SC Bar No.: 69682)
Kenison, Dudley & Crawford, LLC
325 West McBee Avenue, Suite 301
Greenville, South Carolina 29601
Office: (864) 242-4899
E-mail: crawford@conlaw.com
Attorney for Plaintiff

Sworn to and subscribed before me
This 5 day of August, 2024.



Notary Public, State of South Carolina
My Commission Expires: 8/28/2025

appearances in this matter despite both being properly served.² Discovery is ongoing. CSSC took the deposition of Plaintiff and the deposition of RGCE was noticed and postponed.

On May 3, 2024, CSSC filed their Motion for Summary Judgment alleging that Plaintiff's claims were based on speculation. However, no additional substantive information was provided in the Motion. A hearing on CSSC's Motion was scheduled for August 6, 2024. On August 5, 2024 at 3:22 PM, CSSC filed its Brief in Support of the Motion for Summary Judgment. Counsel for Plaintiff and CSSC presented oral arguments at the hearing on August 6, 2024. Pursuant to a Form 4 Order, the Court granted Defendant CSSC's Motion for Summary Judgment and denied Plaintiff's Motion to Permit Additional Evidence to be Obtained under Rule 56(f) on August 9, 2024. A subsequent order was submitted by CSSC, which was signed by the Court and filed on August 28, 2024. See Exhibit 1.

FACTUAL BACKGROUND

This case arises out of a defective HVAC system that was installed at the Jersey Mike's location operated by Plaintiff. Defendants ADS and RGCE were contracted to design and prepare the drawings for the HVAC system. Defendant CSSC was the general contractor for the installation of the HVAC system. Following the installation, the HVAC system began malfunctioning. It was discovered that the diffusers for the 2-ton HVAC system and the 4-ton HVAC system were swapped. Therefore, the duct system was undersized for the 4-ton HVAC system. RGCE and ADS have taken the position that CSSC incorrectly installed the HVAC system. CSSC contends that that it installed the systems in accordance with the plans.

Mr. Hill, representative of Plaintiff, testified that "the ductwork for a two-ton 24 unit and

² RGCE was given an extension to respond as the parties were attempting to resolve the claims.

a four-ton unit were essentially hooked up 25 to the wrong units.” Hill Depo. 35:23-25.³ This was further indicated in Mr. Hill testimony, when counsel for CSSC counsel questioned his regarding Professional Heating and Cooling’s invoices.

Q: It said, found unit frozen, melted ice. No numbers on indoor A/C coil and outdoor unit to determine tonnage. After doing some research, found out furnace, which had a model and serial number, has a maximum of four-ton drive. Taking door off and 18 getting numbers of A/C evaporated coil determined has a four-ton expansion valve. Outdoor unit has four-ton compressor. This is harder way to determine tonnage, when model and serial numbers are missing on equipment. After that, inspected duct system, determined return and supply duct undersized. This creates problems with lower suction pressures and leads to freeze up. Next step is to have ductwork increased in size to support four-ton system. Until this is done, will not be able to determine if any other issues from running on restricted air flow. Most likely will solve issue since fan cycling pressure control that was recently installed. Did I read that correctly.

A: You did.

Hill Depo. 30:13-31:7. *See* Exhibit 2.

ARGUMENT & CITATION OF AUTHORITY

Pursuant to Rule 59(e), SCRCP, “[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” *See also* Rule 52(b), SCRCP, (“Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and

³ Excerpts of the 30(b)(6) Deposition of Plaintiff are attached hereto as Exhibit 2.

may amend the judgment accordingly[.]”).

1. Defendant CSSC’s Motion for Summary Judgment

A motion for summary judgment may only be granted when there is no genuine dispute of material facts and judgment should be entered as a matter of law. Rule 56(c), SCRPC. A party moving for summary judgment must use admissible evidence to support the motion. *See Hall v. Fedor*, 349 S.C. 169, 175 (Ct. App. 2002). The court must “view all evidence in the light most favorable to the non-moving party.” *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285 (Ct. App. 2001). On summary judgment the court’s duty “is not to try issues of fact, but to determine whether there are genuine issues of material fact to be tried, and once finding triable issues exist, the Court must leave those issues for determination at trial.” *Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 408 (Ct. App. 2002).

“Summary judgment is appropriate in those cases in which plain, palpable and indisputable facts exist on which reasonable minds cannot differ.” *Tompkins v. Festival Centre Group*, 306 S.C. 193, 410 S.E.2d 593 (Ct. App. 1991). “Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” *Thomas Sand Co.* at 112. A trial court should not grant a motion for summary judgment when pleadings, depositions, answer to interrogatories, and admissions on file, together with affidavits, if any, show there is a genuine issue as to any material fact. *Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 58, 518 S.E.2d 301, 304 (1999) (citations omitted). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Id.* Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Id.*

In the present case, it is undisputed that there was an issue with the HVAC system.

However, the parties dispute who is responsible for the issue. During Mr. Hill's deposition, he testified regarding the following:

A: We asked Chris to fix it since he was the contractor that installed it.

Q: Okay. And what was Chris' response?

A: Once the engineering company came out and sent over the list of how to fix it, Chris' response was it sounds like an interesting fix.

Hill Depo. 33:23-34:3. *See* Exhibit 2.

Further evidence is shown through correspondence between the parties prior to this litigation. In an email to Turner Hill on September 10, 2019, Keith Mikulka, a representative of RGCE, wrote the "(t)he design shows a 2 ton system serving the Prep Area and a 4 ton system serving the Serving Line. The preliminary conclusion was that these systems were swapped (i.e., 2 ton unit serves the Serving Line and the 4 ton unit serves the Prep Area). I visited the site last month and confirmed this to be the case." *See* Exhibit 3. Christopher Pondexter, representative of CSSC, wrote on November 16, 2020 that "(t)here are no defects or deficiencies in the installation of the system only inaccuracies in the engineering." *See* Exhibit 4.

For the reasons stated above, genuine issues of material fact exist and/or Plaintiff has presented facts which prove or tend to prove the relief sought in the Complaint. Summary Judgment in favor of Defendant CSSC is improper. Moreover, as discovery is ongoing, summary judgment is premature.

2. Plaintiff's Motion to Permit Additional Evidence to be Obtained under Rule 56(f)

Rule 56(f), SCRC, provides that "[s]hould it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavits facts essential to justify his opposition, the court may refuse the application for judgment, or may order a continuance to


permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.” As explained in the affidavit submitted by Plaintiff, certain vital and relevant evidence is expected to be obtained in the upcoming depositions of Defendants and an expert to be retained by Plaintiff. *See* Exhibit 5.

IV. CONCLUSION

For the reasons set forth above, Plaintiff requests that the Court reconsider its Order granting Defendant CSSC’s Motion for Summary Judgment and Plaintiff’s Motion to Permit Additional Discovery to be Obtained under Rule 56(f).

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC
KENISON, DUDLEY & CRAWFORD, LLC



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Office: (864) 242-4899
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Attorney for Plaintiff

September 9, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	C.A. No.: 2023-CP-23-01626
)	
A.R. Foods, Inc.)	
Plaintiff,)	
)	
v.	)	ORDER GRANTING DEFENDANT
	)	CAROLINA SOUTH SHORE
Carolina South Shore Construction, Inc.,	)	CONSTRUCTION, INC.’S
Abri Design Studio, Inc., and Ray Group	)	MOTION FOR SUMMARY JUDGMENT
Consulting Engineers, Inc.)	
Defendant.)	
)	

I. Introduction

This matter came before me for a hearing on August 6, 2024, on Defendant Carolina South Shore Construction, Inc.’s Motion for Summary as to Plaintiff’s claims. The Plaintiff, A.R. Foods, Inc. (“Plaintiff” or “A.R. Foods”), was represented by attorney Kathryn Harden. Defendant Carolina South Shore Construction (“CSSC”) was represented by attorney John Harjehausen.

I have carefully considered the pleadings, motion, memoranda, exhibits, the arguments of counsel, and other matters properly before the Court. Based on all of the foregoing, I make the following findings of fact and conclusions of law:

II. Procedural and Factual Background

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. 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 the defendant, CSSC, to install

the HVAC ductwork. A.R. Foods alleges that the HVAC system allegedly malfunctioned and it was subsequently discovered that the HVAC system was installed improperly. According to A.R. Foods, 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 system to freeze up. The plaintiff has also asserted claims against ADS and RGCE which prepared the Design and Drawings because CSSC contends the Design and Drawings were incorrect. A.R. Foods asserted claims against all of the defendants for (1) breach of contract; (2) negligence/gross negligence; and (3) breach of warranty. This case was removed to the Circuit Court on April 4, 2023, on the basis that A.R. Foods' damages exceed \$7,500.

CSSC contends that it installed the ductwork pursuant to ADS and RGCE's design and, after it was discovered the design and drawings were flawed, a subsequent plan was prepared modifying and correcting the size of the ductwork going to the respective units. The repair work was completed by a different HVAC contractor.

CSSC seeks summary judgment on the basis there is no evidence that performed its work contrary to the original drawings prepared by ADS and RGCE. It claims there is no evidence of actionable negligence by CSSC, a breach of any contractual requirement, violation of any building or mechanical code, industry standard, or manufacturer's installation instruction. It further asserts that summary judgment is appropriate because there is no evidence A.R. Foods sustained any damages proximately caused by CSSC.

III. Analysis

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.”).

“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).

A builder who contracts to construct a dwelling impliedly warrants that the work undertaken will be performed in a careful, diligent, workmanlike manner. Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E.2d 730 (1989).

CSSC argues that expert testimony is required to support A.R. Foods’ claims. More specifically, CSSC argues that A.R. Foods has alleged the Design and Drawings were defective and it has asserted claims against ADS and RGCE. RGCE is apparently an engineering company. See S.C. Code Ann § 15-36-100 (requiring an affidavit related to certain professional negligence claims). According to CSSC, expert testimony is necessary to support A.R. Foods claims that an installation defect exists and proximately caused A.R. Foods’ claimed damages, as opposed to a drawing or design flaw, or some other cause such as a defective component from a manufacturer. The Court agrees. “The general rule in South Carolina is that where a subject is beyond the common knowledge of the jury, expert testimony is required.” Babb v. Lee Cnty Landfill SC, LLC, 405 S.C. 129, 153, 747 S.E.2d 468, 481 (2013).

CSSC asserts that A.R. Foods has not presented any evidence that it was negligent or breached a contractual requirement or warranty. In support of its motion, CSSC presented deposition testimony from the SCRCP 30(b)(6) deposition of A.R. Foods. Witness Turner Hill was designated to testify on behalf of the company. Mr. Hill testified that he did not have any construction training, experience or background in the HVAC or mechanical engineering industries. Further, he held no construction licenses. Mr. Hill did not know if A.R. Foods had a contract with CSSC. Mr. Hill testified the building at issue was owned by Hotzfam Trust, which acts as the landlord. He did not know who called the repair company which fixed the HVAC system. Mr. Hill testified that A.R. Foods had no

knowledge of anyone who would testify that CSSC breached a standard of care related to its work. Furthermore, Mr. Hill testified that he did not know the damages being claimed by A.R. Foods. When asked explicitly as to what CSSC did wrong, Mr. Hill 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.

A.R. Foods argued at the hearing that invoices existed related to the work that was undertaken to repair the HVAC system. However, the Court find a lack of any evidence in the record that the repairs were necessitated or proximately caused by any breach of duty, contract, or warranty by CSSC. See Snow v. City of Columbia, 305 S.C. 544, n. 7, 409 S.E.2d 797, n. 7 (Ct.App.1991) (noting that South Carolina does not recognize the rule of res ipsa loquitur).

A.R. Foods moves the court to permit additional evidence to be obtained under South Carolina Rule of Civil Procedure 56(f). It asserts that it is in the process of obtaining an expert and plans to depose the defendants and, therefore, summary judgment is premature because it would be deprived of a full and fair opportunity to conduct discovery. In support of the motion A.R. Foods submitted the affidavit of attorney John Crawford. However, the record indicates that A.R. Foods had a fair opportunity to conduct discovery and to consult or identify an expert witness prior to the hearing on the motion for summary judgment. A.R. Foods' complaint was filed in Magistrate Court on December 27, 2021. Pursuant to a motion from A.R. Foods this case was transferred to the Circuit Court on April 4, 2023. Thereafter, the parties exchanged written discovery and CSSC completed the deposition of A.R. Foods on January 15, 2024. The Court notes that a dormant file notice was issued on February 12, 2024, and subsequently A.R. Foods indicated that the case was active and the parties were exchanging discovery and completing depositions. CSSC filed its motion for summary judgment on May 3, 2024, stating the basis for its motion. Thereafter, A.R. Foods had several months

to complete additional discovery if it deemed it necessary, or to retain and identify an expert. A.R. Foods' motion to permit additional evidence was not filed until August 5, 2024. Under the circumstances, the Court finds the affidavit submitted by A.R. Foods did not set forth reasons it could not present facts essential to justify its opposition to the motion for summary judgment at the time of the hearing. Accordingly, the Court concludes A.R. Foods had a full and fair opportunity to conduct discovery and summary judgment is not premature. Therefore, A.R. Foods' motion to permit additional evidence pursuant to SCRCP 56(f) is denied. See Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003) (rejecting argument that summary judgment was premature and finding respondents had full and fair opportunity for discovery); Middleborough Horiz. Property Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 479–80, 465 S.E.2d 765, 771 (Ct.App.1995) (affirming summary judgment where appellants “advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment”).

IV. Conclusion

The Court find that A.R. Foods has failed to raise a material issue of fact that Carolina South Shore Construction breached a duty of care, contract, or warranty proximately causing A.R. Foods' claimed damages. Therefore, defendant Carolina South Shore Construction's Motion for Summary Judgment is hereby GRANTED. Further, the Court finds A.R. Foods had a full and fair opportunity to conduct discovery and, therefore, Plaintiff's Motion to Permit Additional Evidence to be Obtained Under Rule 56(f) is hereby DENIED.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Ar Foods Inc vs. Carolina South Shore Construction Inc

Case Number: 2023CP2301626

Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-08-27 18:25:48 page 7 of 7

ELECTRONICALLY FILED - 2024 Aug 28 9:17 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2301626
ELECTRONICALLY FILED - 2024 Sep 09 4:28 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2301626

1 me.

2 Q Okay. But you don't have a recollection of
3 calling Professional Heating & Cooling?

4 A I do not.

5 Q And looking at these first three,
6 A.R. FOODS 26, 27 and 28, you don't recall calling
7 Professional Heating & Cooling?

8 A I don't know who called them.

9 Q Okay. Looking at A.R. FOODS 28, which is
10 dated June 17, 2019, it looks like a unit had froze
11 again, correct?

12 A Correct.

13 Q It said, found unit frozen, melted ice. No
14 numbers on indoor A/C coil and outdoor unit to
15 determine tonnage. After doing some research, found
16 out furnace, which had a model and serial number, has
17 a maximum of four-ton drive. Taking door off and
18 getting numbers of A/C evaporated coil determined has
19 a four-ton expansion valve. Outdoor unit has
20 four-ton compressor. This is harder way to determine
21 tonnage, when model and serial numbers are missing on
22 equipment. After that, inspected duct system,
23 determined return and supply duct undersized. This
24 creates problems with lower suction pressures and
25 leads to freeze up. Next step is to have ductwork

1 increased in size to support four-ton system. Until
2 this is done, will not be able to determine if any
3 other issues from running on restricted air flow.
4 Most likely will solve issue since fan cycling
5 pressure control that was recently installed.

6 Did I read that correctly.

7 A You did.

8 Q And it looks like there was a balance due
9 of \$137.50, correct?

10 A Correct.

11 Q Do you know if A.R. Foods, Inc. paid this
12 bill?

13 A I don't know.

14 Q Do you know if Hotzfam Trusts paid the
15 bill?

16 A I don't know.

17 Q Do you know the method of payment, credit
18 card, check or some other method?

19 A I don't know.

20 Q Let me ask you, do you recall or were you
21 there when Professional Heating & Cooling came out?

22 A I don't remember.

23 Q At any time while these units were freezing
24 up, were you involved at all in trying to determine,
25 say, the serial numbers on the units?

1 ductwork was not hooked up to the proper unit?

2 A I believe so. But this was four years ago
3 so I'm not exactly sure.

4 Q Okay. Do you know who was hired to, I
5 guess, fix the ductwork in the units?

6 A Who was hired to fix it when Chris wouldn't
7 fix it?

8 Q Yes.

9 A Yes.

10 Q Who?

11 A Freddie Fielding.

12 Q Okay.

13 A CF Mechanical is their name, or the name of
14 the company.

15 Q And what I'm trying to find out is -- still
16 looking at A.R. FOODS 28 which is part of Exhibit
17 3 -- Professional Heating & Cooling is saying, look,
18 you have a duct problem, right? At least in part?

19 A Correct.

20 Q And was Professional Heating & Cooling --
21 why wasn't Professional Heating & Cooling retained to
22 work on that since they --

23 A We asked Chris to fix it since he was the
24 contractor that installed it.

25 Q Okay. And what was Chris' response?

1 A Once the engineering company came out and
2 sent over the list of how to fix it, Chris' response
3 was it sounds like an interesting fix.

4 Q But he declined?

5 A I don't know what he said other than it
6 sounds like an interesting fix.

7 MR. HARJEHAUSEN: Let's go ahead and mark
8 this.

9 (HVAC engineering diagram marked
10 Defendant's Exhibit Number 4 for
11 identification.)

12 MS. HARDEN: Can we take a five-minute
13 break?

14 MR. HARJEHAUSEN: Sure.

15 - - -

16 (Recess in the proceedings.)

17 - - -

18 BY MR. HARJEHAUSEN:

19 Q All right, Mr. Hill, I've handed you what's
20 been marked as Exhibit 4 which is three pages, and --

21 A I have a question.

22 Q Yes.

23 A Does it matter that it doesn't have the
24 A.R. Foods stuff at the bottom? Mine doesn't like
25 all the other ones did.

FW: JMS Greenville, SC, HVAC

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FW: JMS Greenville, SC, HVAC

From
 Paul Girardeau
 To
 James Copeland
 Recipients
 jcopeland@contractdisputeslaw.com

Paul Girardeau RA**Owner/Architect**

Paul.girardeau@abri-ds.com

P.O. Box 669504

Marietta Georgia 30066

Cell: 770-639-0200

Fax: 678-623-3182

From: Keith Mikulka <keithm@raygroup.net> **Sent:** Tuesday, September 10, 2019 11:04 AM **To:** 'Turner Hill' <turnerhilljm@gmail.com> **Cc:** Paul Girardeau <paul.girardeau@abri-ds.com>; Rodney Taylor <rtaylor@JERSEYMIKES.com>; boxcpa@me.com **Subject:** JMS Greenville, SC, HVAC

Turner;

Two issues with the HVAC system at this location were recently brought to our attention. Specifically, the cooling coil in the Prep Area unit has repeatedly frozen over and the Serving Line unit is unable to satisfy its load. The design shows a 2 ton system serving the Prep Area and a 4 ton system serving the Serving Line. The preliminary conclusion was that these systems were swapped (i.e., 2 ton unit serves the Serving Line and the 4 ton unit serves the Prep Area). I visited the site last month and confirmed this to be the case. Our recommendations for corrective action are given below.

Please note, the purpose of this trip was only to investigate the cause of the specific problems noted above and not to perform a comprehensive inspection of all construction nor to develop as-built drawings for the installation. While some unrelated construction deficiencies were observed during my visit, and are noted below, this email is not to be interpreted as a "punch list" nor are any deficiencies which are omitted herein to be considered "approved" by the Engineer of Record.

Original Design (refer to attached sketch #1): The 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. *Note that some information from the original design has been removed from this sketch (e.g., hoods and fans, miscellaneous construction notes, etc.) in order focus on the reported problems. Please refer to the original Construction Documents for the full design.*

Site Observations (refer to attached sketch #2): The air devices within the Serving Line area are indeed connected to AHU-1 and the air devices in the Prep Area are connected to AHU-2. As a result of the installation, the Prep Area unit is likely low on airflow (4 ton unit with air distribution sized for 2 tons) contributing to the reported coil freezing and the Serving Line does not have adequate cooling (2 ton unit serving 4 ton load). A few additional areas of concern were also observed:

1. Outside air ducts for AHU-1 and AHU-2 are undersized compared to the design.
2. No outside air is provided for AHU-3.

3. Manual balancing dampers could not be located for any supply, return, or outside air branches. *These are necessary to allow for system balancing.*

- 4. Motorized shut-off dampers could not be located for any outside air duct connections. *These are required by Energy Code to minimize standby air leakage.*
- 5. 4-way fixed supply diffusers were installed at the service line near the hood in lieu of adjustable diffusers. This is not recommended as the high velocity air directed toward the hood may disrupt the hood's performance. *Note that this specific problem may not have occurred yet at these diffusers are likely significantly low on airflow at this time.*
- 6. No Testing, Adjusting, and Balancing (TAB) report has been submitted. A proper TAB will ensure that the system is operating as designed. As a side note, a TAB service performed at the end of construction also would have discovered the issues with AHU-1 and AHU-2 allowing for corrective action to be taken before store operations were significantly impacted.

Proposed Modifications (refer to attached sketch #3): We recommend the following steps be taken to correct the problems reported by the owner and note above.

- 1. Disconnect two supply diffusers at Serving Line from AHU-1 and reconnect to AHU-2.
- 2. Add one return grille for AHU-2.
- 3. Provide new outside air duct/louver for AHU-1 and increase the size of the OA connection for AHU-2.
- 4. Provide outside air for AHU-3.
- 5. Confirm and, where necessary, provide manual balancing dampers for all supply or return air device connections.
- 6. Confirm and, where necessary, provide manual balancing damper and motorized shut-off damper for each outside air connection.
- 7. Provide sectorizing baffles (Titus "SB") in the necks of the 3 square diffusers located near the hood in order to deflect the supply air away from the hood.
- 8. Provide complete Testing, Adjusting, and Balancing for all systems.

Please let us know if you have any questions about our findings or recommendations.

Thanks,
Keith

JMS Greenville HVAC Sketches 2019-09-10.pdf

JMS Greenville HVAC Sketches 2019-09-10.pdf

- WOMEN'S
- MEN'S
- SERVING LINE
- DINING AREA
- PREP AREA
- EXISTING PANELS
- ATTIC ACCESS
- TRACK LIGHTS
- T R
- A C
- K L
- IG H
- T S
- AutoCAD SHX Text

SCALE:
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%%UHVAC - ORIGINAL DESIGN
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NOTE: EXIST CU-3 IS LOCATED CU-3 IS LOCATED IS LOCATED ON SOUTH END OF BUILDING, SHOWN HERE FOR REFERENCE ONLY

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EF-2
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EF-1
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CU-4 CARRIER 24ACC460 5 TONS
AutoCAD SHX Text
CU-3 TRANE TWR024 2 TONS
AutoCAD SHX Text
AHU-3 TRANE TWE030 2 TONS
AutoCAD SHX Text
AHU-2 CARRIER 58STA110 4 TONS
AutoCAD SHX Text
AHU-1 CARRIER 58STA070 2 TONS
AutoCAD SHX Text
AHU-4 CARRIER 59SC2C100 5 TONS
AutoCAD SHX Text
CU-2 CARRIER 24ABR348 4 TONS
AutoCAD SHX Text
CU-1 CARRIER 24ABR324 2 TONS
AutoCAD SHX Text
8" OA WALL CAP
AutoCAD SHX Text

NOTE: SOME INFORMATION (E.G., KITCHEN HOODS, FANS, AND DUCTWORK) HAS BEEN REMOVED FOR CLARITY. REFER TO THE ORIGINAL CONSTRUCTION DOCUMENTS FOR COMPLETE DESIGN.

WOMEN'S

MEN'S

SERVING LINE

DINING AREA

PREP AREA

EXISTING PANELS

ATTIC ACCESS

TRACK LIGHTS

T R

A C

K L

IG H

T S

AutoCAD SHX Text

%%OBSERVATIONS:

AutoCAD SHX Text

1. PREP AREA SERVED BY AHU-2 (4 TONS) INSTEAD OF AHU-1 (2 TONS).
 2. SERVING LINE SERVED BY AHU-1 (2 TONS) INSTEAD OF AHU-2 (4 TONS).
 3. 6" OUTSIDE AIR DUCT FOR AHU-1 INSTEAD OF 8" . 8" OUTSIDE AIR DUCT FOR AHU-1 INSTEAD OF 8" . 8" OUTSIDE AIR DUCT FOR AHU-2 INSTEAD OF 10" . 10" COMBINED OUTSIDE AIR DUCT FOR AHU-1 AND AHU-2 IS SMALLER THAN DESIGN PROVIDES.
 4. NO OUTSIDE AIR PROVIDED FOR AHU-3. NO OUTSIDE AIR PROVIDED FOR AHU-3.
 5. MANUAL BALANCING DAMPERS COULD NOT BE LOCATED FOR MANUAL BALANCING DAMPERS COULD NOT BE LOCATED FOR SUPPLY, RETURN, OR OUTSIDE AIR BRANCHES.
 6. MOTORIZED DAMPERS COULD NOT BE LOCATED FOR OUTSIDE AIR MOTORIZED DAMPERS COULD NOT BE LOCATED FOR OUTSIDE AIR DUCTS.
 7. 3-CONE SQUARE DIFFUSERS USED AT SERVICE LINE IN FRONT OF HOOD INSTEAD OF DOUBLE DEFLECTION (ADJUSTABLE THROW) REGISTERS. HIGH VELOCITY AIRFLOW DIRECTED TOWARD HOOD WILL DISRUPT HOOD CAPTURE AND CONTAINMENT. NOTE THAT THIS SPECIFIC PROBLEM MAY NOT HAVE MANIFESTED ITSELF YET SINCE THE AIR HANDLING UNIT IS UNDERSIZED FOR THIS ZONE.
 8. NO TESTING, ADJUSTING, AND BALANCING (TAB) REPORT PROVIDED.

AutoCAD SHX Text

SCALE:

AutoCAD SHX Text

2

AutoCAD SHX Text

NONE

AutoCAD SHX Text

%%UHVAC - SITE OBSERVATIONS

AutoCAD SHX Text

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AutoCAD SHX Text

EF-2

AutoCAD SHX Text

EF-1

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CU-4 TRANE 4TTR4060 5 TONS

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CU-3 TRANE TWR024 2 TONS

AutoCAD SHX Text

AHU-3 TRANE TWE030 2 TONS

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AHU-4 TRANE TUH1D100 5 TONS
AutoCAD SHX Text
CU-2 CARRIER 24ABR348 4 TONS
AutoCAD SHX Text
CU-1 CARRIER 24ABR324 2 TONS
AutoCAD SHX Text
AHU-2 CARRIER 58STA110 4 TONS
AutoCAD SHX Text
AHU-1 CARRIER 58STA070 2 TONS

WOMEN'S

MEN'S

SERVING LINE

DINING AREA

PREP AREA

EXISTING PANELS

ATTIC ACCESS

TRACK LIGHTS

T R

A C

K L

I G H

T S

AutoCAD SHX Text

SCALE:

AutoCAD SHX Text

3

AutoCAD SHX Text

NONE

AutoCAD SHX Text

%%UHVAC - PROPOSED MODIFICATIONS

AutoCAD SHX Text

T

AutoCAD SHX Text

EF-2

AutoCAD SHX Text

EF-1

AutoCAD SHX Text

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AutoCAD SHX Text

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AutoCAD SHX Text

10"

AutoCAD SHX Text

10"

AutoCAD SHX Text

DISCONNECT DIFFUSER FROM AHU-1, RECONNECT TO AHU-2

AutoCAD SHX Text

ADD SECTORIZING BAFFLES (TITUS "SB") IN NECK TO BLOCK AIRFLOW DIRECTED TOWARD HOOD, TYP. 3

AutoCAD SHX Text

DISCONNECT DIFFUSER FROM AHU-1, RECONNECT TO AHU-2

AutoCAD SHX Text

R1

AutoCAD SHX Text

14"%%c

AutoCAD SHX Text

NEW RETURN GRILLE CONNECTED TO AHU-2

AutoCAD SHX Text

12"

AutoCAD SHX Text

14"

AutoCAD SHX Text

12"

AutoCAD SHX Text
8"

AutoCAD SHX Text
%%UPROPOSED MODIFICATIONS:

AutoCAD SHX Text
1. DISCONNECT TWO SUPPLY DIFFUSERS AT SERVING LINE FROM DISCONNECT TWO SUPPLY DIFFUSERS AT SERVING LINE FROM AHU-1, EXTEND AND RECONNECT TO AHU-2. 2. ADD RETURN GRILLE TO AHU-2. 3. ADD DEDICATED OUTSIDE AIR DUCT AND INTAKE LOUVER FOR AHU-1. INCREASE SIZE OF OA CONNECTION FROM AHU-2 TO EXISTING 10" OA DUCT. 4. ADD OUTSIDE AIR DUCT AND INTAKE LOUVER FOR AHU-3. 5. CONFIRM ALL SUPPLY, RETURN, AND OUTSIDE AIR BRANCHES HAVE MANUAL BALANCING DAMPERS. PROVIDE NEW WHERE REQUIRED. 6. CONFIRM ALL OUTSIDE AIR DUCTS HAVE MOTORIZED DAMPERS. CONFIRM ALL OUTSIDE AIR DUCTS HAVE MOTORIZED DAMPERS. PROVIDE NEW WHERE REQUIRED. MOTORIZED DAMPERS ARE TO BE INTERLOCKED WITH AHU TO OPEN WHEN AHU FAN IS ON AND CLOSE WHEN AHU FAN IS OFF. 7. ADD SECTORIZING BAFFLES TO THREE (3) DIFFUSERS IN FRONT OF GRIDDLE HOOD TO DIVERT SUPPLY AIR AWAY FROM HOOD. 8. PROVIDE COMPLETE TESTING, ADJUSTING, AND BALANCING FOR ALL SYSTEMS. BALANCE SUPPLY AIR DEVICES PER THIS PLAN. . BALANCE OUTSIDE AIR, EXHAUST, AND MAKE-UP PER THE PER THE ORIGINAL CONSTRUCTION DOCUMENTS..

AutoCAD SHX Text
PROVIDE OA LOUVER AND DUCT FOR AHU-3

AutoCAD SHX Text
MD

AutoCAD SHX Text
MOD

AutoCAD SHX Text
12x12 LOUVER & SCREEN

AutoCAD SHX Text
8"

AutoCAD SHX Text
MD

AutoCAD SHX Text
MOD

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MD

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MOD

AutoCAD SHX Text
50 CFM

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250 CFM

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250 CFM

AutoCAD SHX Text
300 CFM

AutoCAD SHX Text
PROVIDE DEDICATED OA LOUVER AND DUCT FOR AHU-1

AutoCAD SHX Text
12x12 LOUVER & SCREEN

AutoCAD SHX Text

OA LOUVER
AutoCAD SHX Text
OA LOUVER
AutoCAD SHX Text
CU-4 TRANE 4TTR4060 5 TONS
AutoCAD SHX Text
CU-3 TRANE TWR024 2 TONS
AutoCAD SHX Text
CU-2 CARRIER 24ABR348 4 TONS
AutoCAD SHX Text
CU-1 CARRIER 24ABR324 2 TONS
AutoCAD SHX Text
AHU-3 TRANE TWE030 2 TONS
AutoCAD SHX Text
AHU-2 CARRIER 58STA110 4 TONS
AutoCAD SHX Text
AHU-1 CARRIER 58STA070 2 TONS
AutoCAD SHX Text
AHU-4 TRANE TUH1D100 5 TONS
AutoCAD SHX Text
INCREASE AHU-2 OA CONNECTION SIZE

- Sheets and Views
 - 1 - Original Design
- JMS Greenville HVAC Sketch-2 - Site Observations.pdf
 - Sheets and Views
 - 2 - Site Observations
- JMS Greenville HVAC Sketch-3 - PROPOSED CORRECTIONS.pdf
 - Sheets and Views
 - 3 - PROPOSED CORRECTIONS

Carolina South Shore Construction
5235 Eagle Lake Drive
Charlotte NC 28217

Horton & Horton
413 Vardry Street, Ste 4A
Greenville SC 29601

November 16, 2020

Re: Jersey Mike's
Project Number 2017-53.54
181 Augusta Road
Greenville SC 29605

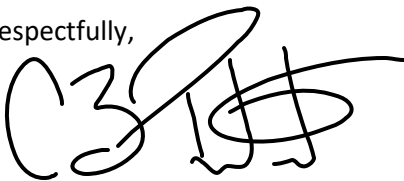
Mr. Horton,

It appears your client is mistaken in his allegations. There are no defects or deficiencies in the installation of the system only inaccuracies in the engineering. The installation of the ductwork was permitted, inspected by the city and passed inspection. No defects or deficiencies.

If you refer to the permitted set of plans dated 01-19-2018 page H1-01 you can clearly see where the engineer mislabeled the units either by mistake or by inaccurate existing field information provided to him by AR Foods, Inc. This is not an installation issue it is an information issue. Only after the discrepancies were discovered, 16 months after the Certificate of Occupancy, did the engineer revise his original drawings to reflect the correct tonnage of the units.

In response to your clients demand for payment, I refuse to be responsible for the oversight or omission of other parties hired by AR Foods Inc. and will appear in court to support my position.

Respectfully,



Christopher Poindexter
Carolina South Shore Construction

cc: JMD Law

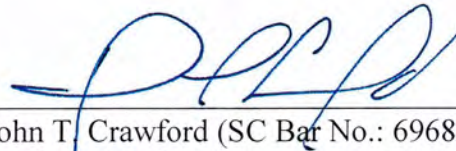
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	
	)	C.A. No.: 2023-CP-23-01626
A.R. Foods, Inc.,)	
)	
Plaintiff,)	
	)	AFFIDAVIT OF
v.	)	JOHN T. CRAWFORD, JR.
)	
Carolina South Shore Construction, Inc.;)	
Abri Design Studio, Inc.; and Ray Group)	
Consulting Engineers, Inc.,)	
)	
Defendants,)	
)	

The undersigned, having first being duly sworn and, upon personal knowledge and information, states as follows:

1. I am an attorney licensed to practice law in South Carolina. I am one of the founding members of Kenison, Dudley and Crawford, LLC. I represent the Plaintiff in the above-captioned lawsuit.
2. This matter arises out of a defective HVAC system. There is a dispute among the Defendants who is responsible for the issue.
3. Defendants Abri Design Studio, Inc. (“ADS”) and Ray Group Consulting Engineers, Inc. (“RGCE”) were contracted to design and prepare the drawings for the HVAC system. Defendant Carolina South Shore Construction, Inc. (“CSSC”) was the general contractor for the installation.
4. Defendants ADS and RGCE contend that CSSC installed the system incorrectly. Defendant CSSC contends that the system was installed in accordance with the plans.

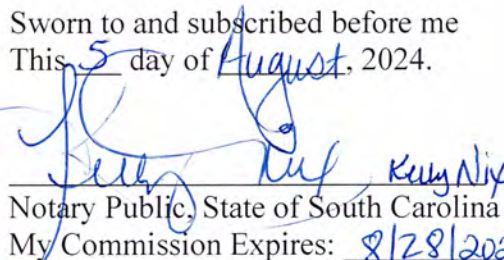
5. Plaintiff is in the process of scheduling the depositions of the Defendants as well as in the process of retaining an expert to provide an opinion on the cause of the defective system.
6. Plaintiff anticipates that these depositions and expert will provide vital information in support of Plaintiff's Response to Defendant CSSC's Motion for Summary Judgment.
7. For these reasons, and pursuant to South Carolina Rule of Civil Procedure Rule 56(f), Plaintiff requests that the Court reserve ruling on Defendant CSSC's Motion for Summary Judgment until such time as Plaintiff can take the deposition of Defendants and submit an affidavit from an expert. In the alternative, Plaintiff requests that the Court deny Defendant CSSC's Motion for Summary Judgment as discovery is ongoing and the Motion is premature.

FURTHER AFFIANT SAYETH NOT.



John T. Crawford (SC Bar No.: 69682)
Kenison, Dudley & Crawford, LLC
325 West McBee Avenue, Suite 301
Greenville, South Carolina 29601
Office: (864) 242-4899
E-mail: crawford@conlaw.com
Attorney for Plaintiff

Sworn to and subscribed before me
This 5 day of August, 2024.



Notary Public, State of South Carolina
My Commission Expires: 8/28/2025

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APPEARANCES:

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Representing the Defendants Abri Design Studio,
Inc. and Ray Group Consulting Engineers, Inc.

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I N D E X

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E X H I B I T S

DEFENDANT'S EXHIBITS	DESCRIPTION	MARKED
1	Notice of Deposition	9
2	Tenant Improvement Package	16
3	Set of invoices	23
4	HVAC engineering diagram	34
5	Plaintiff's Answers to Carolina South Shore Construction, Inc.'s Amended First Set of Interrogatories	42
6	E-mail from Keith Mikulka to Mr. Hill, dated 7-8-19	49
7	Summons and Complaint	55

1 (It is hereby stipulated and agreed
2 by and among counsel for the respective
3 parties that this deposition is being
4 taken in accordance with the South
5 Carolina Rules of Civil Procedure; and
6 that the deponent waives reading and
7 signing of this deposition transcript.)

8 - - -

9 TURNER HILL, after having been first
10 duly sworn, was examined and testified as
11 follows:

12 - - -

13 EXAMINATION

14 - - -

15 BY MR. HARJEHAUSEN:

16 Q Mr. Hill, my name is John Harjehausen. I
17 represent Carolina South Shore Construction, Inc.
18 We're here to take the deposition of A.R. Foods, the
19 company itself, A.R. Foods, Inc. Do you understand
20 that?

21 A Yes.

22 Q Have you ever had your deposition taken
23 before?

24 A No.

25 Q Okay. Just some brief rules of the road.

1 You understand that your testimony is under
2 oath just like it would be in court; is that correct?

3 A Yes.

4 Q You understand that it's subject to the
5 penalty of perjury just like it would be in court,
6 correct?

7 A Yes.

8 Q Are you under the influence of any alcohol,
9 medications or other substances which would prohibit
10 you from testifying truthfully?

11 A No.

12 Q If you don't understand my question, please
13 ask me to rephrase it, and, if you answer, I'm going
14 to assume you understood it. Is that fair?

15 A Yes, sir.

16 Q I don't think we're going to be here that
17 long but it may take an hour or two --

18 A Okay.

19 Q -- but if you want to take a break for any
20 reason, you don't have to tell me, just ask to take a
21 break. I'll tell you that I drink a lot of coffee
22 and I may take a break before you.

23 A I'm in the same boat.

24 Q And once the deposition is underway, if we
25 take a break, you're not allowed to talk to your

1 attorney about the substance of your testimony. If
2 you do, I can come back and ask you questions about
3 that even though that would normally be protected by
4 attorney/client privilege. But you can talk to your
5 attorney about anything else during the breaks. Do
6 you have that understanding?

7 A Yes.

8 Q Okay. I'm going to be asking you some
9 background information.

10 A Okay.

11 Q Not too much. I'm not trying to pry, I'm
12 trying to get a sense for who you are.

13 I understand that you operate a Jersey
14 Mike's Subway Shop and we're here about an HVAC
15 issue, but did you -- are you from South Carolina?

16 A Yes.

17 Q Did you grow up here?

18 A I did.

19 Q Where at?

20 A Clemson.

21 Q Okay. I live in Powdersville. One son
22 went to Clemson, one went to USC.

23 Did you go to Clemson University?

24 A I did not.

25 Q And you're a current owner of A.R. Foods,

1 Inc.; is that right?

2 A No. So...

3 Q Okay. Who are the -- there are multiple
4 shareholders of A.R. Foods, Inc.?

5 A Yes.

6 Q Are you one of the shareholders?

7 A I am not.

8 Q Okay. What is your role with A.R. Foods,
9 Inc?

10 A So Dave Bockstahler is the owner and I
11 oversee all of Dave's locations.

12 Q Okay. What is your job title?

13 A I don't have a clear job title but I
14 essentially do everything for Dave, so I help with
15 finding the locations.

16 Q Okay.

17 A You know, during construction, I -- if the
18 contractors need anything, I'm kind of the go-to guy,
19 and then, once the location is open, I, you know,
20 oversee the operations of it, so I'm basically there
21 from the beginning until it happens.

22 Now, there's some stores that I'm Dave's
23 partner on so I'm a partner on eight of his 15
24 stores. A.R. Foods is not one of those, though.

25 Q All right. How long have you been

1 affiliated with or worked for A.R. Foods?

2 A Since it opened in -- you know, since we
3 started construction in 2018.

4 Q Okay. And I understand that you may have
5 worked for other shops that may have different
6 corporate designations. Is that possible?

7 A Every one of our locations, all 15, are
8 their own corporate entity, so I work for all 15 of
9 them.

10 Q And what I'm trying to find out is sort of
11 how long have you worked in -- been affiliated with
12 sort of the Jersey Mike's --

13 A Since 2005.

14 Q All right. What did you do before 2005?

15 A I went to high school.

16 Q Okay. All right.

17 But you didn't get a college degree; is
18 that right?

19 A Correct. I graduated high school in 2005
20 and started working at Jersey Mike's in 2005 when I
21 went to Tri-County Tech.

22 Q Do you hold any construction licenses?

23 A No.

24 Q Do you have any construction training
25 either by way of certification or on-the-job

1 training?

2 A No.

3 Q And just to be clear for the record, you
4 don't have any experience or background in the HVAC
5 or mechanical engineering industries?

6 A No.

7 Q And I apologize for asking you this
8 question but I ask every witness this question. Have
9 you ever been convicted of a crime other than a minor
10 traffic offense?

11 A Nope.

12 Q Let's kind of jump to --

13 MR. HARJEHAUSEN: Let's go ahead and mark
14 this.

15 (Notice of Deposition marked
16 Defendant's Exhibit Number 1 for
17 identification.)

18 BY MR. HARJEHAUSEN:

19 Q All right. Mr. Hill, I'm going to hand you
20 what's been marked as Exhibit 1 to your deposition
21 which is Defendant Carolina South Shore Construction,
22 Inc.'s Notice of SCRCP 30(b)(6) deposition of
23 A.R. Foods, Inc., SCRCP just being South Carolina
24 Rules of Civil Procedure.

25 This is the notice to take, essentially,

1 the testimony of the company of A.R. Foods, Inc.

2 Do you have an understanding that you have
3 been appointed to testify on behalf of A.R. Foods,
4 Inc.?

5 A Yes.

6 Q Have you seen Exhibit 1 before?

7 A I believe I have, in an e-mail.

8 Q Okay. And I don't want to know what you've
9 discussed with your attorney, I just want to know
10 that you understand that you have been designated to
11 testify on behalf of the topic list in this notice --

12 A Yes.

13 Q -- on behalf of A.R. Foods, Inc., correct?

14 A Correct.

15 Q Okay. And I don't know that we're going to
16 touch on all of them but if, for some reason, we
17 touch on a topic that you think somebody else is more
18 knowledgeable about -- I don't think that's going to
19 happen -- just let me know that, okay?

20 A Yep.

21 Q All right. Let's talk about 2018 and --
22 Does A.R. Foods, Inc. own more than one
23 Jersey Mike's store?

24 A No.

25 Q And where is the -- what's the address of

1 the store that it owns?

2 A 1818 Augusta Road. Sorry. Augusta Street,
3 Suite 106.

4 Q Okay. And has it been operating since 2018
5 or thereabouts?

6 A Yes.

7 Q All right. Were you involved in locating
8 that property prior to Jersey Mike's occupying it?

9 A No.

10 Q Were you involved or -- on behalf of A.R.
11 Foods -- when I say you, you've been designated on
12 behalf of A.R. Foods, but were you involved in sort
13 of the upfit of the premises for the Jersey Mike's
14 store?

15 A I mean, we hired Chris to do -- South Shore
16 to do the upfit so, I mean, we hired a company to do
17 the site visit, create the drawings, which would be
18 the architect and the engineer, and then they give it
19 to Chris and then Chris does the upfit. Now,
20 involvement, I mean, we hire the people to do it but
21 we don't actually do anything related to the upfit
22 other than --

23 Q Hiring other people?

24 A -- hiring -- I mean, yeah. We're
25 restaurant operators; so...

1 Q Okay. Let me ask you, who -- let's go
2 through -- let's start with Ray Group Consulting
3 Engineers, Inc. Did A.R. Foods, Inc. enter into a
4 written contract with Ray Group Consulting Engineers,
5 Inc.?

6 A I'm not sure.

7 Q What was Ray Group Consulting Engineers,
8 Inc. asked to do with respect to the 1818 Augusta
9 Street location?

10 A You would have to ask Abri -- is that the
11 company, Abri Design -- because they hire Ray Group.
12 We don't choose the engineer, we choose the architect
13 and then they choose the engineer.

14 Q Okay. And that's what I'm trying to find
15 out. What is your understanding of Abri Design
16 Studio, Inc.?

17 A They are the architect.

18 Q And did Abri Design Studio, Inc. prepare
19 plans for this location?

20 A Yes.

21 Q And when I say this location, I'm just
22 talking about 1818 Augusta Street.

23 A Correct.

24 Q And do you know what involvement Ray Group
25 Consulting Engineers had with Abri Design Studio,

1 Inc.?

2 A I don't know what involvement they had
3 other than they're the engineers, so the architect
4 hires the engineers.

5 Q Okay. Let me ask you this.

6 A.R. Foods knows that it wants to start a
7 Jersey Mike's Subway Shop, correct?

8 A Uh-huh.

9 Q And, for the court reporter, is that a yes?

10 A Oh. Yes.

11 Q She can't pick up a head nod.

12 A Sorry. My bad. Yeah.

13 Q But does the Jersey Mike's brands have a
14 set of plans that they typically use for their shop?

15 A No.

16 Q So every location is a bit different?

17 A Correct.

18 Q As far as you know, the locations you've
19 worked at or been involved in the upfit, have been
20 associated with the upfit, there have been unique
21 plans for each location?

22 A Every single one is different.

23 Q Okay. Do you know if Abri Design Studio,
24 Inc. has done more than the location at 1818 Augusta?

25 A Yes.

1 Q Does either Abri Design Studio or Ray Group
2 Consulting Engineers, Inc. come out and perform a
3 site visit?

4 A Yes.

5 Q Did you meet with anybody from either of
6 those companies related to 1818 Augusta Street? Or
7 did somebody from A.R. Foods meet with them to do a
8 site visit?

9 A I'm trying to remember. This was a long
10 time ago. I know that Abri did a site visit but I do
11 not remember if I was there when they did their site
12 visit or if they just had a lockbox and just accessed
13 the site on their own.

14 Q Okay. How do you know they did a site
15 visit if you don't have a recollection of being
16 there?

17 Were arrangements made for them to come to
18 the property?

19 A Yes.

20 Q And what I'm trying to get at is for that
21 1818, what information was supplied by A.R. Foods,
22 Inc., if any, related to the existing HVAC system to
23 Abri or Ray Group Consulting Engineers?

24 A I'm not sure.

25 Q Okay. I mean, my understanding is that

1 there were four outdoor units at 1818 Augusta Street.

2 A That's incorrect.

3 Q How many units are there?

4 A There are four now but existing there were
5 only three.

6 Q Okay. So before the upfit, there were only
7 three outdoor units?

8 A Yes.

9 Q And what I mean by outdoor units, I'm
10 talking about like outdoor either defusers or
11 condensers or --

12 A Correct. There were three and then we
13 added a new one to create four.

14 Q Okay. Did -- and correct me if I'm wrong,
15 but did A.R. Foods, Inc. provide any information
16 regarding the existing three units to Abri Design
17 Studio or Ray Group Consulting?

18 A I don't remember, but typically the purpose
19 of a site visit is for them to gather that
20 information. When say I them, you know, Abri.

21 Q Okay.

22 A That's who I'm referring to.

23 Q Do you have any recollection of -- I know
24 that you've told me Abri hires Ray Consulting
25 Engineers; is that correct?

1 A That's correct.

2 Q Did Ray Group Consulting Engineers come out
3 and perform any site visits as far as you know at any
4 time?

5 A I believe that they did a site visit after
6 we were already open and having HVAC issues, but I do
7 not remember them specifically doing a site visit
8 before we opened.

9 MR. HARJEHAUSEN: This is Exhibit 2.

10 (Tenant Improvement Package marked
11 Defendant's Exhibit Number 2 for
12 identification.)

13 BY MR. HARJEHAUSEN:

14 Q I've handed you what's been marked as
15 Exhibit 2 and I would ask you to sort of leaf through
16 that.

17 Have you ever seen that before?

18 A Yes.

19 Q Okay. When have you seen this before?

20 A During the construction in 2018 and then
21 again when we realized we were having HVAC issues and
22 I met with Chris Poindexter on-site to confirm the
23 HVAC was incorrect.

24 Q And let me ask you, what was -- what is
25 your understanding of Carolina South Shore

1 Construction, Inc.'s involvement in the upfit of 1818
2 Augusta Street?

3 A They are the general contractor.

4 Q Okay. So they did more than just HVAC?

5 A Yes. Chris was the general contractor so
6 he handled all of the upfit.

7 Q And what I'm asking about is seats or
8 flooring or anything else, they did that work --

9 A Chris built the entire restaurant, from the
10 demolition to us getting the Certificate of
11 Occupancy. That includes installing the furniture,
12 the TV's on the wall, everything.

13 Q Had you worked with Chris Poindexter
14 before?

15 A I don't think so.

16 Q Did A.R. Foods, Inc. have a written
17 contract with Carolina South Shore Construction,
18 Inc.?

19 A I'm not sure.

20 Q Have you ever seen one?

21 A I'm not sure.

22 Q And the reason I'm asking is I haven't seen
23 one.

24 A Yeah. I don't believe that there was one
25 but I'm not sure. I don't recall seeing one.

1 Q What was the approximate cost of the upfit?

2 A I'm not sure.

3 Q Okay. Do you know if any other Jersey
4 Mike's stores had utilized the services of Carolina
5 South Shore Construction, Inc. for upfitting?

6 A So I know that Chris has built Jersey
7 Mike's before, but I believe that Chris changed his
8 company name at some point so I don't know the answer
9 to that exact question about Carolina South Shore
10 Construction, but I know that Chris Poindexter was an
11 approved Jersey Mike's contractor and had built other
12 locations.

13 Q Okay. And I apologize if I've asked you
14 this but -- I probably did. Did A.R. Foods, Inc.
15 have a written contract with Abri Design Studio,
16 Inc.?

17 A I'm not sure.

18 Q And the same question for Ray Group
19 Consulting Engineers, Inc. Do you know?

20 A I'm not sure.

21 Q And what I'm trying to get at is, can you
22 tell me how, for instance, Abri Design Studio's plans
23 would get to Carolina South Shore Construction? Do
24 they get them from A.R. Foods? Does Carolina South
25 Shore Construction, Inc. --

1 A I don't know how they got them.

2 Q Okay.

3 A Typically an architect would send them to
4 the City for approval and then, once approval is
5 done, then they would share them with the general
6 contractor. But I don't know how Chris got them from
7 them.

8 Q Okay. Do you know if what we have marked
9 as Exhibit 2 are the plans for the Jersey Mike's Sub
10 Shop that were utilized for the upfit at 1818 Augusta
11 Street?

12 A I don't know. I would assume that they are
13 but this is a lot of information so I'm not really
14 sure.

15 I don't know how you got them so -- I'm
16 assuming these are the right ones.

17 Q Well, they have an A.R. Foods, Inc. Bates
18 label. If you look at the bottom in the middle where
19 it says A.R. FOODS, INC. 000001, that Bates label is
20 not an original -- the numbering is not original to
21 the document. Attorneys use those for their
22 particular clients, put their own Bates numbers on
23 them, but I'll just represent to you that I got these
24 from A.R. Foods' attorneys.

25 A Then I would assume they are the correct

1 ones.

2 Q Who paid -- did A.R. Foods pay Carolina
3 South Shore Construction, Inc. directly for its work?

4 A I'm not sure.

5 Q Who would know that?

6 A Chris would know who he received the check
7 from.

8 Q Okay. Would the owner of A.R. Foods know,
9 for instance -- I mean, these plans as Exhibit 2 say,
10 I believe, the project on the right, A.R. Foods,
11 Inc., and then it has an address of 610 Pettigru
12 Street, Greenville, South Carolina 29601, and then it
13 has Dave Bockstahler, a phone number and an e-mail
14 address, boxcpa@me.com. Do you see that?

15 A Yes.

16 Q Did -- was Mr. Bockstahler involved in
17 coordinating either the transmittal of the plans to
18 the general contractor or was he involved at all in
19 the upfit process?

20 A I don't remember.

21 Q Okay. Would he have been the one at
22 A.R. Foods responsible for paying or contracting for
23 services rendered?

24 A Yes.

25 Q Have you talked with him about whether or

1 not A.R. Foods has a written contract with Carolina
2 South Shore Construction or Abri Design Studios?

3 A Yes.

4 Q And what has he said?

5 A I don't remember our exact conversation but
6 I asked him if he had any contracts, to e-mail them
7 over to us, but I don't recall if he even had any.

8 Q All right. At some point a Certificate of
9 Occupancy was issued for the Jersey Mike's Sub Store
10 at 1818 Augusta Street.

11 A Correct.

12 Q Tell me about who first encountered or
13 perceived that there was an HVAC issue. Were you
14 working there?

15 A So we were having issues with the front
16 line not cooling properly, it could not get cool, and
17 the back of the store the air-conditioner kept
18 freezing up so it was also not cooling. And the
19 landlord sent their HVAC company out a couple of
20 times and they are the ones that said in the back of
21 the store the unit keeps freezing up, we need to look
22 at the ductwork, there could, possibly, be something
23 wrong with it, because there's nothing wrong with the
24 unit, it doesn't make sense that it is continuing to
25 freeze up.

1 Q Does A.R. Foods, Inc. have a lease with the
2 landlord?

3 A Yes.

4 Q And under that lease who is responsible for
5 maintaining the outdoor units?

6 A The tenant is responsible for maintaining
7 the unit.

8 Q Okay. Why then did the landlord send its
9 contractor out there?

10 A So Kathy was the landlord, and any time we
11 have work done on the units, we like to reach out to
12 her about it because those were existing units. And
13 we didn't know if it was going to need to be replaced
14 or not and so, if it was, she would be the one
15 responsible for replacing it. So we tried to use the
16 landlord's HVAC companies.

17 Q Okay. But, in this case, the tenant is
18 responsible for sort of servicing, if necessary, but
19 not replacement of the equipment?

20 A Yes.

21 Q And what I'm trying to get at is who paid
22 for this company to come out and say, hey, we've got
23 a problem here, maybe we should look at the ducts?

24 A I don't remember.

25 Q Did A.R. Foods pay for that?

1 A I don't remember.

2 Q Did the landlord pay for that?

3 A I don't remember.

4 Q You don't know?

5 A I don't remember who paid for it.

6 Q Okay. Would Mr. Bockstahler have more
7 information in that regard?

8 A No.

9 Q Were you working at the store at that time?

10 A Yes.

11 Q So you were the ones interfacing with the
12 landlord and/or the company that came out?

13 A Yes.

14 Q Okay. Let's got through some of the
15 invoices.

16 (Set of invoices marked Defendant's
17 Exhibit Number 3 for identification.)

18 BY MR. HARJEHAUSEN:

19 Q Okay. I've handed you a set of invoices
20 that have a Bates label number A.R. FOODS, INC. 26
21 through A.R. FOODS, INC. 30. And I'll just ask you,
22 have you ever seen those before?

23 A Yes.

24 Q Okay. Well, let's start with the first
25 one, the first page.

1 Looking at A.R. FOODS 26 it says, Bill To
2 Hotzfam Trusts. It could be Hotzfarn Trust.

3 Do you see that?

4 A Yes.

5 Q Do you know whether it's Hotzfam or
6 Hotzfarn?

7 A Hotzfam.

8 Q Thanks.

9 And Hotzfam Trust, what is that?

10 A The group that owned the building at the
11 time.

12 Q So that's not A.R. Foods, correct?

13 A Correct. Hotzfam would be the landlord.

14 Q And this bill for \$272.50, that then was
15 paid by the landlord, Hotzfam Trust?

16 A I don't know who paid the bill.

17 Q Well, let's talk about what this invoice --
18 This invoice is dated May 8, 2019. Do you
19 see that?

20 A Yes.

21 Q And the description is, found kitchen unit
22 emergency drain pan full of water and some ice on
23 coil. Vacuumed water out of drain pan, vacuumed
24 drain lines and blew through drain lines to make sure
25 draining property. Found system a little low on

1 freon, added one and a half pounds R-22. Found
2 t-stat set to 68 degrees, recommended to tenant to
3 not set below 72 degrees, can cause to freeze up.
4 Cooling fine at present time. Any more issues,
5 suggest installing fan cycle controller.

6 Do you see all of those -- that
7 description?

8 A Yes.

9 Q Did I read that correctly?

10 A Yes.

11 Q Were you involved in calling out
12 Professional Heating & Cooling on this occasion?

13 A I don't remember.

14 Q Do you know if this invoice applies to the
15 Jersey Mike's Sub Shop at 1818 Augusta Street?

16 A It does.

17 Q How do you know that?

18 A Because Professional Heating & Cooling
19 would be the company that we would call at that
20 specific Jersey Mike's because that's the company
21 that the landlord uses.

22 Q Okay. And there's a stamp on here that
23 says, Paid by -- and then it looks like 9132, and a
24 note below it, AV Ste 106/108.

25 Do you know what that is?

1 A I mean, I'm assuming a stamp that
2 Professional Heating & Cooling put on it when it was
3 paid.

4 Q Okay.

5 I'm sorry. I don't want you to assume. If
6 you know something, that's fine, but -- I guess it's
7 a poor question.

8 A I mean, I don't know.

9 Q Do you know who issued any check or payment
10 or credit card for this balance due of \$272.50?

11 A I do not.

12 Q So you don't know if it was paid by
13 A.R. Foods or Hotzfam Trusts.

14 A I do not.

15 Q And you don't know how it was paid, credit
16 card or check.

17 A I do not.

18 Q Was this the first time that the system
19 froze up after a Certificate of Occupancy was issued?

20 A I don't know.

21 Q Do you know anybody else at A.R. Foods who
22 would know?

23 A No.

24 Q All right.

25 Let's look at the next one. It's

1 A.R. FOODS, INC. 27. And this one has a date of
2 5-31-2019. Do you see what?

3 A Yes.

4 Q How long had Jersey Mike's been open as of
5 May of 2019?

6 A Less than a year.

7 Q Okay. When did it open?

8 A June or July of 2018.

9 Q And what I'm trying to find out -- and
10 again, I will represent to you that these invoices
11 were produced by the plaintiff, A.R. Foods, Inc.

12 Do you know if there were invoices from
13 HVAC servicing or repairs prior to May of 2019?

14 A I do not, no.

15 Q Do you know of anybody else at A.R. Foods
16 who would know?

17 A No.

18 Q Okay. Let's go back to A.R. FOODS 27,
19 which is part of Exhibit 3.

20 And that has a date of May 31, 2019. Do
21 you see that?

22 A Yes.

23 Q So this is a little less than a year after
24 when the store opened; is that right?

25 A Correct.

1 Q And the description is, 5-31 found kitchen
2 unit frozen, melted ice. Chemically cleaned
3 condenser coil outside, installed fan pressure
4 control on outdoor unit. Made adjustments. Added
5 one-half pound R-22. This will keep kitchen unit
6 from freezing up. Anymore problems, further steps
7 will need to be taken.

8 Did I read that correctly?

9 A Yes.

10 Q And it looks like there was a charge of
11 \$534.66. Do you see that?

12 A Yes.

13 Q And the bill was sent to Hotzfam Trusts.
14 Do you see that?

15 A I do.

16 Q And again, Hotzfam Trusts, is that the
17 landlord?

18 A That is the landlord.

19 Q And I see that there is a Paid stamp on
20 here but do you know who actually paid this bill?

21 A I do not.

22 Q Do you know if A.R. Foods, Inc. paid the
23 bill?

24 A I don't know who paid the bill.

25 Q At least as of these two visits, did

1 Professional Heating & Cooling raise any concerns
2 about ductwork?

3 A I'm not sure when they brought their
4 concerns up.

5 Q Okay. All right.

6 Let's take a look at A.R. FOODS, INC. 28.
7 It has a date of June 17, 2019.

8 Then it looks like Professional Heating &
9 Cooling came out for a third time; is that right?

10 A This is the third invoice you're showing
11 me.

12 Q Okay.

13 A It appears to not be the third one, though,
14 in this group based on the date of 6-17. The next
15 one is dated 6-5; so...

16 Q But that's in 2020.

17 A Oh.

18 So yeah, it appears that this would be the
19 third one that you're showing me.

20 Q So, I guess, who called Professional
21 Heating & Cooling out on these occasions?

22 A I don't know.

23 Q Would it have been somebody from Hotzfam
24 Trusts since that's where the bill was sent to?

25 A It would have either been Hotzfam Trusts or

1 me.

2 Q Okay. But you don't have a recollection of
3 calling Professional Heating & Cooling?

4 A I do not.

5 Q And looking at these first three,
6 A.R. FOODS 26, 27 and 28, you don't recall calling
7 Professional Heating & Cooling?

8 A I don't know who called them.

9 Q Okay. Looking at A.R. FOODS 28, which is
10 dated June 17, 2019, it looks like a unit had froze
11 again, correct?

12 A Correct.

13 Q It said, found unit frozen, melted ice. No
14 numbers on indoor A/C coil and outdoor unit to
15 determine tonnage. After doing some research, found
16 out furnace, which had a model and serial number, has
17 a maximum of four-ton drive. Taking door off and
18 getting numbers of A/C evaporated coil determined has
19 a four-ton expansion valve. Outdoor unit has
20 four-ton compressor. This is harder way to determine
21 tonnage, when model and serial numbers are missing on
22 equipment. After that, inspected duct system,
23 determined return and supply duct undersized. This
24 creates problems with lower suction pressures and
25 leads to freeze up. Next step is to have ductwork

1 increased in size to support four-ton system. Until
2 this is done, will not be able to determine if any
3 other issues from running on restricted air flow.
4 Most likely will solve issue since fan cycling
5 pressure control that was recently installed.

6 Did I read that correctly.

7 A You did.

8 Q And it looks like there was a balance due
9 of \$137.50, correct?

10 A Correct.

11 Q Do you know if A.R. Foods, Inc. paid this
12 bill?

13 A I don't know.

14 Q Do you know if Hotzfam Trusts paid the
15 bill?

16 A I don't know.

17 Q Do you know the method of payment, credit
18 card, check or some other method?

19 A I don't know.

20 Q Let me ask you, do you recall or were you
21 there when Professional Heating & Cooling came out?

22 A I don't remember.

23 Q At any time while these units were freezing
24 up, were you involved at all in trying to determine,
25 say, the serial numbers on the units?

1 A No.

2 Q Was there somebody else at A.R. Foods
3 responsible for that?

4 A I don't remember.

5 Q And do you know who called Professional
6 Heating & Cooling on this occasion?

7 A I don't.

8 Q Do you know if the serial numbers were
9 missing on the equipment?

10 A I do not know.

11 Q Okay. Do you know if when Abri Design
12 Studios came out to do their site inspection they
13 examined these units to determine their tonnage?

14 A I don't know.

15 Q Have you ever had any conversations with
16 anybody at Abri Design Studios about whether they had
17 examined these units to determine their tonnage?

18 A I can't remember.

19 Q This invoice indicates that the duct system
20 was inspected, correct? It says after that --

21 A Yes.

22 Q -- inspect duct system?

23 And then there's language, determined
24 return and supply duct undersized.

25 And is this when it was discovered that the

1 ductwork was not hooked up to the proper unit?

2 A I believe so. But this was four years ago
3 so I'm not exactly sure.

4 Q Okay. Do you know who was hired to, I
5 guess, fix the ductwork in the units?

6 A Who was hired to fix it when Chris wouldn't
7 fix it?

8 Q Yes.

9 A Yes.

10 Q Who?

11 A Freddie Fielding.

12 Q Okay.

13 A CF Mechanical is their name, or the name of
14 the company.

15 Q And what I'm trying to find out is -- still
16 looking at A.R. FOODS 28 which is part of Exhibit
17 3 -- Professional Heating & Cooling is saying, look,
18 you have a duct problem, right? At least in part?

19 A Correct.

20 Q And was Professional Heating & Cooling --
21 why wasn't Professional Heating & Cooling retained to
22 work on that since they --

23 A We asked Chris to fix it since he was the
24 contractor that installed it.

25 Q Okay. And what was Chris' response?

1 A Once the engineering company came out and
2 sent over the list of how to fix it, Chris' response
3 was it sounds like an interesting fix.

4 Q But he declined?

5 A I don't know what he said other than it
6 sounds like an interesting fix.

7 MR. HARJEHAUSEN: Let's go ahead and mark
8 this.

9 (HVAC engineering diagram marked
10 Defendant's Exhibit Number 4 for
11 identification.)

12 MS. HARDEN: Can we take a five-minute
13 break?

14 MR. HARJEHAUSEN: Sure.

15 - - -

16 (Recess in the proceedings.)

17 - - -

18 BY MR. HARJEHAUSEN:

19 Q All right, Mr. Hill, I've handed you what's
20 been marked as Exhibit 4 which is three pages, and --

21 A I have a question.

22 Q Yes.

23 A Does it matter that it doesn't have the
24 A.R. Foods stuff at the bottom? Mine doesn't like
25 all the other ones did.

1 Q No. This one may have come from my client
2 or anybody else.

3 A Oh, okay. Cool. Just making sure we're --

4 Q Yeah.

5 A -- I didn't have the wrong one or
6 something.

7 Q That's a fair question. But no, it doesn't
8 matter.

9 A Okay.

10 Q I'm not representing that this document
11 came from A.R. Foods.

12 A Okay.

13 Q I'm just asking you, have you ever seen
14 this document before?

15 A I don't know.

16 Q Let me ask you to take a look at Page 3 of
17 Exhibit 4.

18 Do you have an understanding as to what the
19 air duct problem was that was fixed?

20 A Yes.

21 Q Can you tell me what that is?

22 A I cannot tell you specifically what that is
23 but what I can say is that the ductwork for a two-ton
24 unit and a four-ton unit were essentially hooked up
25 to the wrong units.

1 Q Okay. So four-ton ductwork was hooked up
2 to a two-ton unit, and the two-ton ductwork was
3 hooked up to a four-ton unit?

4 A Correct.

5 Q And do you know if this Exhibit 4 is an
6 engineering diagram from Ray Consulting Group, Inc.?

7 A I don't know.

8 Q Okay. You said, I think earlier, that you
9 believed that Ray Consulting Group, Inc. made a site
10 visit.

11 A I believe that they made a site visit once
12 we discovered the HVAC issues.

13 Q Okay. Did you speak to anybody?

14 A I don't recall.

15 Q Okay. And do you know if somebody else at
16 A.R. Foods interacted with those folks?

17 A I don't know.

18 Q Did you ever talk to anyone at Ray Group
19 Consulting Engineers, Inc.?

20 A I'm not sure.

21 Q Other than an invoice that we looked at
22 from Professional Heating & Cooling, how did you come
23 to the understanding or how did A.R. Foods come to
24 the understanding that there was an issue with
25 ductwork going to a particular unit?

1 A I can't remember.

2 Q Do you know if what is identified as
3 Exhibit 4, and particularly Page 3 of Exhibit 4,
4 is -- do you see at the bottom there it says
5 HVAC-Proposed Modifications?

6 A Yes.

7 Q Do you know if that HVAC-Proposed
8 Modifications on that page shows a different duct
9 layout than the duct layout that was shown in the
10 original construction documents marked as Exhibit 2?

11 A I don't know.

12 Q When -- do you know if anyone from Ray
13 Consulting Engineers, Inc. said, oh, yeah, we
14 reversed it on the plans?

15 A I don't know.

16 Q Do you know if a proposed modified set of
17 plans was given to the repair contractor?

18 A I'm not sure.

19 Q So, for instance, my understanding is that
20 neither my client, Carolina South Shore Construction,
21 or Professional Heating & Cooling fixed this issue
22 with the ducts, correct?

23 A Correct.

24 Q Somebody else did it, and I think you
25 identified them earlier.

1 A CF Mechanical fixed it.

2 Q Do you know whether CF Mechanical was given
3 this set of plans for Exhibit 4?

4 A I don't remember.

5 Q Do you know if CF Mechanical spoke with
6 anyone at Ray Group Consulting Engineers, Inc.?

7 A I don't know.

8 Q Would anybody at A.R. Foods have more
9 knowledge than you regarding that information?

10 A No.

11 Q How did CF Mechanical know to, essentially,
12 fix the ductwork?

13 A They were given a set of plans on how to
14 fix it.

15 Q Okay. But you don't know who gave them
16 that set of plans?

17 A I don't remember.

18 Q Do you know if it was Abri Design Studios?

19 A I don't know.

20 Q Still looking at Page 3 of Exhibit 4, do
21 you see at the top of the page it has, it looks like,
22 outdoor units where it says CU-4 Trane --

23 A Yes.

24 Q -- and then it has a five-tons there, and
25 then, if you look to the right, it has CU-2 Carrier,

1 a number, and then four tons, and CU-1 Carrier, two
2 tons?

3 A Yes.

4 Q Do you know whether anyone at A.R. Foods
5 supplied either the tonnage or the serial numbers for
6 the units to Abri Design Studio or Ray Group
7 Consulting Engineers?

8 A I don't remember.

9 Q Assuming that Exhibit 4 was prepared by Ray
10 Group Consulting Engineers, do you know how they
11 would have gotten that information, the tonnage
12 and/or the serial numbers?

13 A I don't know.

14 Q And/or the make, Trane versus Carrier?

15 A I don't know.

16 Q Okay. Do you know who paid the bill for
17 CF Mechanical?

18 A A.R. Foods.

19 Q Okay. And why did A.R. Foods pay the bill
20 for CF Mechanical when the other bills for
21 Professional Heating & Cooling were billed to Hotzfam
22 Trusts?

23 A Can you ask me that again?

24 Q Sure.

25 CF Mechanical billed A.R. Foods, Inc.; is

1 that right?

2 A That is correct.

3 Q Why did those bills go to A.R. Foods, Inc.
4 for the ductwork when previous troubleshooting went
5 to Hotzfam Trusts?

6 A Because Professional Heating & Cooling,
7 that's the company that the landlord works with so
8 that's the company that we were using, but when we
9 had CF Mechanical come out, you know, they don't know
10 who the landlord is, they just know that we need to
11 have this fixed, so they would never send the bill to
12 the landlord because they have no involvement with
13 the landlord.

14 Q Okay. Was CF Mechanical able to fix the
15 ductwork?

16 A Yes.

17 Q Did you have any additional problems with
18 units freezing after that work was done?

19 A Not that I recall.

20 Q Was CF Mechanical's work done in 2019?

21 A I don't know.

22 Q Let's go back to Exhibit 3.

23 If you look at Pages 4 and 5, which would
24 be A.R. FOODS 29 and 30, it looks like some repairs
25 were done in June of 2020; is that right?

1 A Yes.

2 Q And those repairs were billed to
3 Hotzfam, LLC; is that right?

4 A Yes.

5 Q Did A.R. Foods pay for these repairs?

6 A I don't know.

7 Q Do you know if these invoices, A.R. Foods,
8 INC. 29 and 30, have anything to do with the ductwork
9 issue that we've just discussed that was fixed by CF
10 Mechanical?

11 A I don't know.

12 Q Page -- the last page, A.R. FOODS, INC. 30,
13 is dated June 24, 2020. Do you see that?

14 A Yes.

15 Q And it says, installed new Tempstar split
16 system, installed new emergency drain pan & float
17 switch, extended platform property for new air
18 handler, used cleanup kit for refrigerant lines,
19 modified and connected back to original ductwork,
20 high voltage electrical, started up and verified
21 operation, unit cooling fine now, this system will
22 have a standard manufacturer's parts warranty and
23 one-year labor warranty.

24 Do you see that?

25 A I do.

1 Q Do you know if the installation of this
2 system has anything to do with fixing the ductwork
3 that was done by CF Mechanical?

4 A I do not know.

5 Q Have you seen invoices from CF Mechanical?

6 A Yes.

7 Q Has A.R. Foods used CF Mechanical to make
8 other repairs at the Jersey Mike's at 1818 Augusta
9 Street other than fixing the ductwork?

10 A I don't know.

11 MR. HARJEHAUSEN: Let's go ahead and mark
12 this as Exhibit 5.

13 (Plaintiff's Answers to Carolina
14 South Shore Construction, Inc.'s Amended
15 First Set of Interrogatories marked
16 Defendant's Exhibit Number 5 for
17 identification.)

18 BY MR. HARJEHAUSEN:

19 Q Mr. Hill, I have handed you what's been
20 marked as Exhibit 5 which is Plaintiff's Answers to
21 Defendant Carolina South Shore Construction, Inc.'s
22 Amended First Set of Interrogatories. Have you ever
23 seen that document before?

24 A I can't remember.

25 Q I'll represent to you that these

1 interrogatories are typically answered by counsel
2 with input from the client, whether it's my client
3 or, in your case, your counsel on behalf of A.R.
4 Foods --

5 A Okay.

6 Q -- but do you know if you or somebody else
7 at A.R. Foods supplied the information to respond to
8 these interrogatories?

9 A I don't know.

10 Q All right. Lets go through these a little
11 bit. I have some questions about them.

12 On Page 3 it says, Dave Bockstahler,
13 Mr. Bockstahler, has knowledge of the facts and
14 issues regarding the Jersey Mike's HVAC project
15 performed by the defendant and the resulting damages.

16 Do you see that?

17 A I do.

18 Q Do you know what A.R. Food, Inc.'s
19 resulting damages are?

20 A I don't.

21 Q Do you know who else at A.R. Foods would
22 know that?

23 A I don't.

24 Q Do you know what knowledge Mr. Bockstahler
25 has regarding either the upfit of 1818 Augusta Street

1 or the repair of the duct issue causing the units to
2 freeze up?

3 A I'm not sure.

4 Q Let's go down to Turner Hill.

5 It says Turner Hill, District Manager for
6 plaintiff.

7 If Mr. Hill -- that's you, right?

8 A That is correct.

9 Q Is your job title District Manager?

10 A I don't have a job title.

11 Q Do you have knowledge -- it says, Mr. Hill
12 has knowledge of the facts and issues regarding the
13 Jersey Mike's HVAC project performed by defendants
14 and the resulting damages.

15 Do you see that?

16 A I do see that.

17 Q Do you know what A.R. Food's resulting
18 damages are in this case?

19 A I do not.

20 Q Let's talk about Keith Mikulka.

21 Have you spoken or has anyone at A.R. Foods
22 spoken with Mr. Mikulka?

23 A I believe that Keith is the one that
24 e-mailed us or e-mailed the changes that needed to be
25 made to correct the issues.

1 Q Who is he affiliated with? He's with Ray
2 Group Consulting Engineers?

3 A Yeah. Keith is the engineer.

4 Q And what changes do you understand were
5 made?

6 A What changes were made to correct the HVAC?

7 Q Yes.

8 A Whatever was on Keith's list. I don't
9 recall what all it was.

10 Q Well, do you know whether Keith Mikulka
11 prepared the Exhibit 4 diagrams to, essentially,
12 reverse the ductwork to the correct unit?

13 A I don't know if Keith created this.

14 Q Do you know if Ray Group Consulting
15 prepared it?

16 A I don't know who prepared this that you
17 gave me.

18 Q Exhibit 4?

19 A Correct.

20 Q Okay. Do you know if Keith Mikulka
21 prepared a repair plan whether or not it's Exhibit 4
22 or not for the ductwork?

23 A I believe that Keith e-mailed over the
24 repair plan but I don't know who created the repair
25 plan.

1 Q Let me ask you about -- let's go back to
2 the interrogatories which are, I believe, Exhibit 5.

3 A Correct.

4 Q I'll ask you to take a look at Page 4. In
5 Paragraph 4 it says, set forth an itemized statement
6 of all damages, exclusive of pain and suffering,
7 claiming to have been sustained by you.

8 And the response is, discovery is ongoing,
9 plaintiff reserves the right to supplement this
10 response as discovery progresses subject to and
11 without foregoing, see the invoices produced with
12 Plaintiff's Response to Defendant's Requests for
13 Production of Documents served therewith.

14 Do you see that language?

15 A I do see that.

16 Q Other than an invoice from CF Mechanical,
17 are you aware of any other damages that are being
18 claimed by A.R. Foods, Inc.?

19 A I'm not sure.

20 Q And the reason I ask is we went through
21 some invoices that were billed to Hotzfam Trusts, or
22 Hotzfam, LLC, correct?

23 A Correct.

24 Q You don't know if those are amounts that
25 are being claimed by A.R. Foods, Inc., correct?

1 A I'm not sure.

2 Q Other than, perhaps, an invoice from
3 CF Mechanical or invoices from CF Mechanical to
4 correct ductwork, what other damages, if any, are
5 being claimed by A.R. Foods, Inc. in this case
6 against the defendants?

7 A I'm not sure.

8 Q Do you understand this is my one and only
9 time to ask A.R. Foods questions prior to a trial?

10 A Yes.

11 Q Has A.R. Foods paid any attorneys fees?

12 A Like...

13 Q Related to this lawsuit.

14 A Yes.

15 Q Do you know what the amount of those are?

16 A I do not.

17 Q How do you know that they've paid attorneys
18 fees?

19 A Because I typed the credit card number in
20 and pressed Pay online.

21 Q And is that a company credit card?

22 A Yes.

23 Q Do you know what the amount of the accrued
24 attorneys fees are at this time --

25 A I do not.

1 Q -- related to this lawsuit?

2 A I do not.

3 Q My understanding is that A.R. Foods does
4 not have any mechanical experience, correct?

5 A That's correct.

6 Q Is anyone at A.R. Foods going to testify
7 that my client, Carolina South Shore Construction,
8 Inc., breached some professional standard of care
9 related to mechanical or HVAC installations?

10 A I don't know.

11 Q You're not aware of anybody?

12 A Can you ask the question again?

13 Q Yeah. I mean, do you know if anyone on
14 behalf of A.R. Foods is going to testify that my
15 client breached the standard of care applicable to
16 mechanical installations?

17 A I don't know the answer to that question.

18 Q Does anybody else at A.R. Foods know the
19 answer to that question?

20 A No.

21 Q Have you spoken to anyone at CF Mechanical
22 as to whether or not it is going to offer any
23 opinions as to whether or not Carolina South Shore
24 Construction violated any sort of standard of care
25 related to mechanical installations?

1 A I haven't talked to them about that.

2 Q Let me ask you this. Can a general
3 contractor rely upon a set of plans given to it by an
4 engineer?

5 A Can you ask me that again?

6 Q Sure.
7 Can a general contractor rely upon a set of
8 plans given to it by an engineer?

9 A I don't know.

10 Q All right.

11 MR. HARJEHAUSEN: Let's go ahead and mark
12 this as the next exhibit.

13 (E-mail from Keith Mikulka to
14 Mr. Hill dated 7-8-19 marked Defendant's
15 Exhibit Number 6 for identification.)

16 BY MR. HARJEHAUSEN:

17 Q All right. Mr. Hill, have you seen this
18 e-mail chain before?

19 A Yes.

20 Q All right. Let's start with Page -- the
21 e-mail chain, Page 12, which is -- it looks like an
22 e-mail July 2, 2019. And it's from Turner Hill,
23 which is you, right?

24 A That's correct.

25 Q To Angel Jennings, right?

1 A Correct.

2 Q And then it's copied to Keith Mikulka and
3 some other folks, correct?

4 A That's correct.

5 Q Who is Angel Jennings?

6 A She was our office administrator.

7 Q Okay. And so you were sort of e-mailing
8 Keith Mikulka at Ray Group and Jamie Hux at Abri
9 Design Studios; is that right?

10 A Jamie, Sunita, Paul, yes.

11 Q Okay. Was anybody else -- was anybody at
12 Carolina South Shore Construction copied on this
13 e-mail?

14 A Not on this specific one that you're
15 referring to.

16 I do have a question about this.

17 Q Yes.

18 A It appears that there's another e-mail
19 before here that's not attached. Is there a reason
20 why?

21 Q I'm not sure.

22 A It said that Angel sent it at 7:11 a.m. and
23 then I responded at 7:31.

24 Q I'm not sure.

25 A Is that important, to have the whole e-mail

1 chain?

2 Q Your attorney can ask questions if she need
3 be --

4 A Okay.

5 Q -- but I'm entitled to ask you questions
6 related to this document.

7 A Okay.

8 Q And if you can't answer, that's fine.

9 A Okay.

10 Q But I'm just trying to confirm that at
11 least as of July 2nd you sent an e-mail to Angel
12 Jennings and copied some other folks, correct?

13 A Yes. That's correct.

14 Q And we've been having issues with one of
15 the units on and off since we opened last year. The
16 unit was already on-site, and the landlord has been
17 sending their AC guy to work on it. He told me they
18 never had an issue with the four, he thinks that it's
19 odd that he kept having issues now. After he did
20 some investigating, he came to the conclusion that it
21 does not have adequate ductwork for the supply. He
22 said it is a four-ton unit and wants us to figure it
23 out if the plans have -- or if the plans have that,
24 it is a smaller-sized unit.

25 And then you said, is there a way you all

1 can reference the plan to see what size units the
2 drawings say are there and if the duct work is
3 adequate, correct?

4 A That's correct.

5 Q And then it looks like, ultimately, Keith
6 Mikulka basically asked which unit, and, you know,
7 you pretty much told him I don't have a copy of the
8 plans, correct?

9 A That was my response.

10 Q And then later Mr. Mikulka says, our plans
11 show AHU-2 serving the front line, it is the four-ton
12 system, 1600 cfm, clouded in red in the image below.

13 And then you reported back, okay, after
14 doing more investigation with the drawings, it is
15 Unit 1 that is freezing up, is Unit 1 listed as a
16 two-ton or four-ton on the drawing?

17 Do you see that?

18 A I do see that.

19 Q So you were involved in sort of identifying
20 the unit that was freezing up and having issues,
21 correct?

22 A Can you ask me that one more time?

23 Q Yeah.

24 You were involved in troubleshooting which
25 unit was freezing up and having issues.

1 A Based on this e-mail, I would have done
2 that for Keith.

3 Q Okay. And then if you go look at Page 7,
4 at some point you were attempting to identify the
5 model numbers, correct?

6 A I need help. We have an issue that is way
7 above my head. I do not think I can confirm the
8 model numbers. I am a sub maker. I do not know
9 anything about HVAC. The guy that is the repairman
10 has been on-site and he says the following.

11 Q And there's some pictures on Page 6 and 5,
12 4, 3, and then there's an e-mail on 2. Did you send
13 those pictures to Keith Mikulka?

14 A Based on this, I believe I sent Keith those
15 pictures.

16 Q Okay. And you were attempting to send
17 Keith pictures of the manufacturer's labels, correct,
18 like model and serial number?

19 A Yes.

20 Q Do you know if anyone from Ray Group
21 Consulting Engineers did that before preparing plans?

22 A I do not know.

23 Q Did you ever ask Keith Mikulka, hey, why
24 are you asking me, you guys should have this
25 information before you prepared plans?

1 A I don't remember.

2 Q Do you know if anyone from Ray Group
3 Consulting Engineers came out to actually look at
4 these units after you sent the e-mails, the
5 photographs?

6 A I believe they did.

7 Q And then up above it looks like Keith
8 Mikulka on July 8th responded to your e-mail and
9 said, we designed the two-ton system to serve the
10 back prep area, System #1, purple area, and the
11 four-ton system to serve the service line system,
12 System #2, green area, as the plans show. It seems
13 the four-ton unit and two-ton indoor unit locations
14 are reversed.

15 Do you see that language?

16 A I do see that.

17 Q Do you know whether or not the plans
18 showed -- the original plans showed the ductwork
19 reversed for the tonnage?

20 A I don't know.

21 Q Do you know if Mr. Mikulka prepared, again,
22 that drawing we've looked at before as Exhibit 4, to
23 correct the plans?

24 A I don't know who prepared this drawing.

25 Q Do you know if it came from Ray Group

1 Consulting Engineers, Inc.?

2 A I don't know who this came from.

3 Q And you don't know who would have given a
4 plan to CF Mechanical?

5 A I'm not sure.

6 Q Okay. Well, looking at Page 3 of
7 Exhibit 4, do you see the language where it says,
8 over here to the left, disconnect defuser from AHU-1,
9 reconnect to AHU-2?

10 A I do.

11 Q And then there's other language over here
12 where it says, disconnect defuser from AH-1,
13 reconnect to AH-2.

14 A Yes.

15 Q Okay. Again, you don't know if this plan
16 shows a modification to the original duct layout?

17 A I do not know.

18 MR. HARJEHAUSEN: Let's go ahead and mark
19 this.

20 (Summons and Complaint marked
21 Defendant's Exhibit Number 7 for
22 identification.)

23 BY MR. HARJEHAUSEN:

24 Q Mr. Hill, I'll ask you, have you ever seen
25 Exhibit 7 before?

1 A I'm not sure.

2 Q Well, I'll just represent to you that this
3 was the legal complaint initialing the lawsuit which
4 was filed against my client, Carolina South Shore
5 Construction, Inc., Abri Design Studio and Ray Group
6 Consulting Engineers by A.R. Foods.

7 Are you the person at A.R. Foods most
8 knowledgeable about the allegations in this
9 complaint?

10 A I believe so.

11 Q Is it the position of A.R. Foods that Abri
12 Design Studio or Ray Group Consulting Engineers
13 prepared and provided certain drawings for the upfit
14 at the -- regarding an HVAC system to be installed at
15 1818 Augusta?

16 A Can you say that again?

17 Q Sure.

18 I'll direct your attention to Paragraph 12,
19 Page 2.

20 A Page 2. Okay.

21 So what's the question?

22 Q Is that your understanding, that Abri
23 Design Studio and Ray Group Consulting Engineers
24 prepared and provided certain drawings regarding the
25 HVAC to be installed at the property?

1 A Yes.

2 Q It says down below in Paragraph 20, upon
3 information and belief, Abri Design Systems and Ray
4 Group Consulting Engineers assert that Carolina South
5 Shore Construction failed to properly install the
6 HVAC system pursuant to the design and drawings.

7 Do you see that language?

8 A I do see that.

9 Q Have you had any conversations or has
10 anyone at A.R. Foods had any conversations with Abri
11 Design Studios or Ray Group Consulting Engineers
12 about that?

13 A I don't know.

14 Q Do you know where that allegation comes
15 from?

16 A I do not know.

17 Q But you haven't had any conversations with
18 anybody at Abri Design Studios or Ray Group
19 Consulting Engineers that Carolina South Shore
20 Construction failed to properly install the HVAC
21 system?

22 A I don't remember.

23 Q Carolina South Shore Construction did not
24 install the units outside during the upfit of this
25 property; is that right?

1 A They did not install the existing units.
2 They did install the new unit.

3 Q Okay. Do you know if the new unit has
4 anything to do with this ductwork issue?

5 A I don't know.

6 Q If you would, look at Paragraph 29.
7 A.R. Foods is contending in this lawsuit or alleging
8 that either Abri Design Studio or Ray Group
9 Consulting Engineers failed to properly furnish
10 drawings. Is that fair? That's an allegation in
11 this case?

12 A Yes.

13 Q Do you have any knowledge or information
14 about the particulars of that allegation?

15 A I do not.

16 Q Do you know if A.R. Foods' total claimed
17 damages in this case are less than \$25,000?

18 A I'm not sure.

19 Q Would anybody else at A.R. Foods have
20 greater knowledge?

21 A I don't think so.

22 MR. HARJEHAUSEN: All right. Let's go off
23 the record.

24 - - -

25 (Off the record.)

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- - -

BY MR. HARJEHAUSEN:

Q Mr. Hill, on behalf of A.R. Foods what did my client, Carolina South Shore Construction, do wrong?

A I don't know.

Q Do you know how -- the approximate cost of the CF Mechanical bill?

A I'm not sure.

Q Do you know if there was more than one invoice?

A I don't know.

MR. HARJEHAUSEN: Those are all of the questions I have. I appreciate your time.

THE WITNESS: Yes, sir.

- - -

EXAMINATION

- - -

BY MR. NANNEY:

Q Hi. My name is Lee Nanney. I got to meet you earlier today. I represent Abri Design and Ray Group Consulting, and I don't think I'm going to be too terribly long here.

A Okay.

Q Looking back at this last exhibit, looking

1 at the --

2 A Which one?

3 Q The 7.

4 A Yes.

5 Q And I'm just trying to get in your own
6 words what the claims are against my clients. And
7 when I say my clients, I'm just referring to Abri and
8 Ray Consulting.

9 A Correct.

10 Q So you all are claiming that there was
11 deficient or inaccurate design documents that were
12 created by my clients, correct?

13 A We are claiming whatever is in this
14 exhibit.

15 Q Okay. And from your understanding as a,
16 you know, layperson, too, is that there was something
17 wrong with these design documents that caused the
18 HVAC problems.

19 A I don't know.

20 Q And let's read here from -- if you look
21 back from -- if you go to Paragraph 29 of the
22 Complaint, it says that ADS and/or RGCE -- those are
23 referring to my clients -- breached its contract in
24 multiple ways including but not limited to -- and the
25 Subparagraph A says, failing to properly design the

1 HVAC system.

2 And earlier you just said that you all are
3 claiming whatever's in here, so that is -- I read
4 that correctly in there, didn't I?

5 A Are you asking me if you read what
6 Number 29 says?

7 Q Yes.

8 A Yes, you read it correctly.

9 Q Okay. Thank you.

10 And so no one at A.R. Foods -- I know that
11 you don't have any HVAC stuff, you were talking about
12 you make subs and that kind of stuff.

13 A Correct.

14 Q And what about -- his name is Dave, and
15 I --

16 A Dave, correct.

17 Q Okay. And I forgot how to pronounce his
18 last name.

19 A Bockstahler.

20 Q Bockstahler.

21 Is he an HVAC guy or like a mechanical guy
22 or anything like --

23 A He is not.

24 Q Okay. Is there anyone else at A.R. Foods
25 that holds an engineering license or an architect

1 license?

2 A There is not.

3 Q Okay. And so have y'all had any licensed
4 engineer provide a merits affidavit concerning the
5 allegations in you all's complaint?

6 A I'm not sure.

7 Q Okay. And there wasn't one attached to
8 this one. I didn't see one.

9 And in you all's -- if we go back to -- I
10 forget which exhibit this is -- Exhibit 5, reading
11 Interrogatory Number 5, list the names and
12 addresses --

13 A Hold on one second.

14 Q Oh, I'm sorry. I didn't mean to --

15 A Number 5? Which number?

16 Q Yes. The interrogatory responses. Yes,
17 you're looking at the right one.

18 A Sorry.

19 Q Going to Number 5 it says, list the names
20 and addresses of any expert witnesses you propose to
21 use as a witness at the trial of this case, and it
22 says that plaintiff has not retained an expert
23 witness it intends to use at trial at this time.

24 Have you all engaged an expert to testify
25 at trial since you guys submitted these responses?

1 A I'm not sure.

2 Q And you just defer to counsel on that one?

3 But as you're sitting here right now, you
4 guys -- you're not aware of any expert that's been
5 retained to testify at trial.

6 A I don't know.

7 Q I mean as you're sitting here, like you --

8 A I specifically do not, no.

9 Q Okay. Okay.

10 And, the same thing, have you had a
11 licensed architect provide a merits affidavit
12 concerning the design deficiencies that you all
13 complain of?

14 A I don't know.

15 Q Okay. And in reviewing this document --
16 let's just go back to the Summons.

17 A The same one?

18 Q Not the Interrogatories, the one that says
19 Summons on there.

20 A Okay. Seven; is that right?

21 Q Yes. And I'm going to let you just look
22 through it real quick. And can you tell me if there
23 is an affidavit attached to this or not?

24 A I don't know what an affidavit would look
25 like. Would it say affidavit at the top?

1 Q It would typically say affidavit of so and
2 so and it would be attached to the Complaint, not to,
3 you know, give you legal advice.

4 A I don't see an affidavit attached to this.

5 Q Okay. So, to the best of your knowledge,
6 you're not aware of any affidavit from a licensed
7 engineer or a licensed architect verifying what you
8 all have laid out in this complaint.

9 A Not to my knowledge.

10 MR. NANNEY: Okay. Thank you. I believe
11 that's all of the questions I have. Thank you.

12 MS. HARDEN: No questions.

13 THE COURT REPORTER: Do either of you want
14 a copy from today?

15 MS. HARDEN: Yes.

16 THE COURT REPORTER: How about you,
17 Mr. Nanney? Would you like a copy?

18 MR. NANNEY: Just an e-trans is fine.

19 THE COURT REPORTER: Okay.

20 - - -

21 (Witness excused.)

22 - - -

23 (Deposition was concluded at 11:38 a.m.)

24 - - -

25

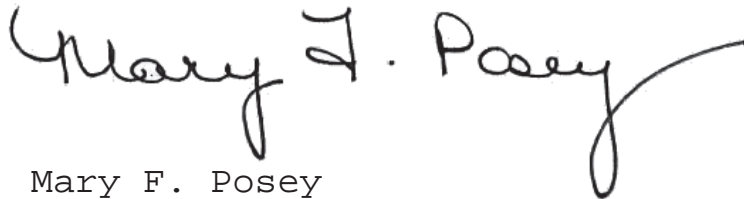
CERTIFICATE OF REPORTER

I, Mary Posey, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth, that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

WITNESS MY HAND, I have hereunto affixed my official seal this 18th day of January, 2024 at Pickens County, South Carolina.



Mary F. Posey
Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires
January 6, 2032

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1 STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT 13
2 COUNTY OF GREENVILLE) COURT C.A NO. 2023-CP-23-01626

3

4 A.R. Foods, Inc.,)
5 Plaintiff,)

6 Versus)

7 Carolina South Shore Construction,)
8 Inc., Abri Design Studio, Inc.)
9 and Ray Group Consulting Engineers,)

10 Inc.,)
11 Defendant.)

12

13 H E A R I N G

14

15 DATE: August 6, 2024

16

17 LOCATION: South Carolina Circuit Court 13

18

19 JUDGE: G.D. Morgan, Jr

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21 TRANSCRIBED BY: ERIN REILLY

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10 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS
11 REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)
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PROCEEDINGS

1
2 MS. HARDEN: In my firm until 4:50 p.m. yesterday
3 evening. So, my firm has not had -- me and my firm have not
4 had the ability to review this file and had the ability to file
5 --

6 THE COURT: For some reason we were off the Webex
7 record on that. So, I think just out of an abundance of
8 caution do you mind just -- I've got a read everything but just
9 re-summarize what you just said, we're now on and then I'll go
10 back kind of -- my apologies, technology is good and it's not.

11 MR. WALSH: That's fine, Your Honor. I mean, as far
12 as the motion for summary judgment, I'll rely upon the
13 briefing and the exhibits in there. We submit that there's no
14 evidence of -- that this is a case that the Plaintiff requires
15 expert testimony. That there is no -- in fact, I can provide
16 the Court with that citation again. It was *Babb versus Lee*
17 *County Landfill*, a 405 South Carolina 129.

18 This is not a case where the subject is within the common
19 knowledge of the jury. It is a case over whether a HVAC
20 system was correctly installed and/or although it -- this --
21 it doesn't pertain today to the engineering firm, co-
22 Defendants and design Defendants. It is -- they basically
23 allege that there was a defect of the design, which also would
24 require expert testimony. They have not produced any expert or
25 witness who can testify to a breach of contract, a breach of any

1 mechanical code, any industry standard, any contractual
2 requirement. Anything that has caused them damages.

3 And also, they cannot cite any testimony that they
4 have sustained damages. Their designee has no mechanical
5 experience training, licensing, and didn't even know what their
6 damages were. Just briefly back to the suggestion that
7 Plaintiffs did not know or that this motion was a surprise.
8 Well, their designated witness was deposed in January 15th of
9 this year, which was seven months ago. And we have cited that
10 witness's testimony, which basically asked, what did my client
11 CSSC do wrong? I don't know. Ms. Harden was at that
12 deposition. She -- I asked the same witness, what damages have
13 you sustained? I don't know, Ms. Harden and their firm was
14 there, they were represented.

15 So, they knew that this is an issue as to, "Hey, what is
16 the evidence to show liability against the Defendants? What is
17 the evidence related to damages?" This motion even if they want
18 to argue some sort of surprise, the motion was filed in May and
19 they've had from May 3rd until today August 6th to basically
20 know that our motion alleged there is no evidence of a breach
21 of contract, breach of warranty, breach of workmanlike service,
22 anything to show culpable conduct on behalf of my client.

23 So, the suggestion that, well, we just got your
24 memorandum yesterday is somehow a defense. It is not. They've
25 known about the -- basically, the lack of evidence for seven

1 months and definitely we're on notice of what was going to be
2 claimed here today. Now, back to the motion related to
3 Plaintiff's motion to permit additional evidence to be obtained
4 under Rule 56, we would submit that the Court should deny that
5 motion. This case has been pending for 2.8 years. It was
6 filed in Magistrate Court with -- through counsel in December
7 of 2021. It was removed in April of 2023; it has been pending
8 since April of 2023. In February of this year, 2024,
9 Plaintiff's counsel received a dormant file notice from the
10 clerk of court basically saying, "Hey, we need to hear
11 something from you within 30 days or we're going to dismiss the
12 case for lack of prosecution."

13 They didn't respond within 30 days. They did respond
14 on May 1st approximately 60, 90 days later, basically saying
15 that the case is active, the parties are exchanging discovery
16 and have completed depositions. But the only deposition that
17 has taken place is the one scheduled by my client and completed
18 in January.

19 I will attest to the Court that I have never received an
20 email, correspondence, letter or any other request from
21 Plaintiff's counsel to take my client's deposition nor have I
22 seen any such communication related to Mr. Tate's client's, the
23 Ray Group Consulting Engineers Inc. So, to the extent it is
24 suggested that, "Hey, we are communicating with counsel to get
25 dates," that hasn't happened, Your Honor. I do not have any

1 | emails to that effect through today's date. Mr. Crawford
2 | submits in his motion for Rule 56F continuance, that discovery
3 | is needed because he needs to identify an expert and basically
4 | that additional discovery will show something.

5 | Well, they've had two years and eight months to come
6 | up with that since they filed it with the Magistrate court.
7 | They didn't comply with the statute requiring an affidavit to
8 | sue an engineering firm. They haven't done it after our motion
9 | for summary judgment was filed on behalf of my client, a
10 | mechanical contracting company and/or a general contractor.

11 | And they haven't even suggested in the affidavit from Mr.
12 | Crawford what reasons would explain why they haven't done any
13 | discovery today. And I think that that is critical. I do want
14 | to mention one last thing and I'll wrap it up, Your Honor.
15 | There is a case *Dawkins versus Fields* 354SC58, which basically
16 | says that a 56F continuance was properly denied. And they say,
17 | "As to Respondent's argument the summary judgment was premature
18 | because they did not have a full and fair opportunity for
19 | discovery.

20 | We hold under -- that under the usual circumstances
21 | this case, the trial court appropriately granted summary
22 | judgment," and then they cite cases including *Middleborough*
23 | *Horizon Property Regime*, which is 320 South Carolina 470,
24 | "Affirming summary judgment where appellants defense no good
25 | reason why four months was insufficient time under the facts of

1 | this case to develop documentation in opposition to the motion
2 | for summary judgment." They also cite, you know, *Bauman*, 306
3 | South Carolina 112, "Non-moving party must demonstrate that
4 | further discovery will likely uncover additional relevant
5 | evidence." And another case is cited in that same one purpose
6 | of summary judgment of dispose of cases which do not require
7 | facts.

8 | THE COURT: A recent case from a couple of years ago,
9 | Pennsylvania National Coval, I think it's Coval. Pennsylvania
10 | National that has the same basis and reasoning on the 56S. All
11 | right. Yes, ma'am. Thank you.

12 | MS. HARDEN: Thank you, Your Honor. First, Your
13 | Honor, with regards to the motion for summary judgment, the
14 | first thing that I would like to go ahead and present is that
15 | while yes, this was filed on May 3rd 2024, is a one sheet
16 | motion. Literally stating that there is no evidence for breach
17 | of contract, no evidence that Plaintiffs incurred damages.

18 | Rather the Plaintiff's claims are based on speculation.
19 | That is the entire evidence that was presented with the motion
20 | at the time of filing. Yesterday at 3:22 p.m. included with
21 | the motion in support for summary judgment was two drawings
22 | that were done, I believe, by Aubrey Design Studios and
23 | snippets of Mr. Hill's testimony. Now, snippets is key because
24 | I'm going to -- actually, I submitted to the Court this
25 | afternoon, Mr. Hill's full testimony, and I'm going to review

1 to -- with you today some elements in which we are able to
2 demonstrate that there were damages and that their party was
3 responsible as a result.

4 So, first, the evidence was not presented properly
5 under Rule 7B of the South Carolina Rules of Civil procedure.
6 Therefore, the evidence in the memo should essentially be
7 disregarded. However, if the Court finds that the filing of
8 the memo and the evidence is proper -- my client, I would ask
9 on behalf of my client the opportunity to respond to the
10 specific allegations made within the complaint, specifically
11 that my client said that there were no damages with direct
12 citations to where those damages were listed, as well as
13 referenced -- as well as my client or as well as Mr. Hill's own
14 testimony that further evidence could be received from the
15 owner of AR Foods. Now, Mr. Hill was the individual who worked
16 with the general contractor. That was why we provided him as a
17 30B6. He was the one that purchased the -- or found the, the
18 original place of business.

19 He's the one that started with the construction and
20 the contracting and the input that they put on the property and
21 the advancements that they did on the property. That's why we
22 provided him as a witness. Now, CSSC was the general
23 contractor. They did all of the upfitting for the property
24 including the HVAC unit. In fact, there were multiple
25 conversations within the testimony that Mr. Hill alludes to

1 that he talked with the owner of CSSC about the issues that
2 they were having. In addition to that, let's go ahead and talk
3 about the stuff that was provided by Defendant with regards to
4 evidence. First, is the summons and complaint from the
5 magistrate's court. It was originally filed in magistrate's
6 court because the belief was that it was under \$7,500 in order
7 to keep court costs low. Under that we decided to file it
8 magistrate's court.

9 Upon getting to a point of mediation, we realized
10 that it was higher at 12,500. We therefore reached out to them
11 and let them know of the increased cost. They said that they
12 were not able -- they were not willing to mediate above that
13 7,500 limit unless we moved it to common pleas. We moved it to
14 common pleas.

15 We therefore moved from there and attempted to find
16 additional evidence and in finding the breach of contract.
17 Now, with regards to the two pieces of paper that -- or the
18 two drawings that were provided by Defense counsels of CSSC,
19 they're just drawings. There's no reference, there's no
20 affidavit interpreting those drawings. There's no evidence
21 that they were improperly or they were properly installed as to
22 these exhibits. It's just a drawing that's all that they've
23 provided. They haven't even provided whether or not this is
24 the final drawing, whether or not this was the approved one
25 that was installed but merely evidence.

1 And again, they showed these evidence and these
2 exhibits to my clients and asked him, is this the final
3 drawing? And Mr. Turner and -- actually said, I do not know if
4 this is the drawing, you would have to ask Aubrey. And so, the
5 idea that they're presenting this as evidence is further. And
6 then lastly, they included what I would label as snippets of
7 Mr. Turner's deposition. And the reason that I say snippets is
8 because they leave out very key testimony elements. On page 32
9 of the testimony, they're talking about invoices of the duct
10 system. So, there were multiple times in which professional
11 heating and cooling went out to there -- went out to AR Foods -
12 - to the location to look at the HVAC unit.

13 On line 19 it says, "this invoice indicates that the
14 duct system was inspected, correct?" It says that after.
15 "Yes." -- The answer is yes. Question, "inspected duct system
16 and there was -- and then there's language, determined, return
17 and supply duct undersized. And is this when it was discovered
18 that the duct work was not hooked up to the proper unit? I
19 believe so." If you go to page 35 of the testimony, "do you have
20 an understanding" -- on line 18, "do you have an understanding as
21 to what the air duct problem was that was fixed? Yes. Can you
22 tell me what it is? I cannot tell you specifically what it is
23 about -- what it is, but what I can say is that the duct work for
24 the two-ton unit and a four-ton unit were essentially hooked up to
25 the wrong units." So, my client has been able to state with

1 particularity what the issue was, what was told to him from
2 Professional Heating and the individuals. If you go on --

3 THE COURT: What page was that?

4 MS. HARDEN: That was on page 35, Your Honor. If you
5 go on to page 40 because Professional -- on line 6, because it
6 was an answer, because Professional Heating and Cooling, that's
7 the company that the landlord works with. So, that the company
8 that they were using, essentially. "Was CF Mechanical able to
9 fix the duct work? Yes. Did you have any additional problems
10 with the unit freezing after the work was done? Not that I
11 recall. Was the CF mechanical's work done in 2019? I don't
12 know."

13 But the idea is that at the end of the day, they had to
14 hire individuals to come in and fix the duct work which the
15 CSSC was the general contractor to provide for. Also, counsel
16 indicated that they did not provide any of the outdoor units,
17 that's actually incorrect. Mr. Hill testified that there were
18 three units and the fourth one was provided by CSSC. So, they
19 did in fact did provide an outdoor unit for the HVAC system.
20 So, at the end of the day, Your Honor, we are able to present
21 evidence at this point --

22 THE COURT: The testimony that you just referred to,
23 is that filed? Because I'm looking at page -- and you were
24 talking about the deposition of Mr. Hill. Is that right?

25 MS. HARDEN: Mr. Hill. Yes, Your Honor.

1 THE COURT: Okay. You were referring to page 40, but
2 the only thing that's filed -- I guess, was filed by the
3 Defendant. It doesn't have --

4 MS. HARDEN: Yeah.

5 THE COURT: -- it goes from 38 to 40.

6 MS. HARDEN: So, I filed one this afternoon, Your
7 Honor, it may not. And that's the essential of my argument is
8 that the Defendant did not include these pages in the evidence
9 that he presented to you today. Instead, he removed these
10 pages of the testimony and provided to you the answers in which
11 my client honestly didn't know because he is not the owner of
12 AR Foods.

13 Instead, he removed the sections in which my client was
14 able to show that in fact, there was a problem, that there were
15 invoices that showed it, that CF Mechanical was hired and was
16 able to fix that problem. Now, the issue is that we've sued --
17 we first went to Carolina or CSSC and we said there's a problem
18 with the HVAC system. They said we designed it how -- or we
19 put it in the way that it was designed. We then went to Aubrey
20 and said, "Hey, they're saying that the system is designed
21 incorrectly." Aubrey is saying, "No, we designed the system
22 perfectly. They installed it incorrectly."

23 THE COURT: Is there testimony about this?

24 MR. WALSH: There is not, Your Honor, because they
25 have not deposed either my client nor anybody from Mr. Tate's

1 clients.

2 THE COURT: We just need to make sure we stick to
3 what --

4 MS. HARDEN: Yes, Your Honor.

5 THE COURT: -- is in the record.

6 MS. HARDEN: However, is the conversation that is
7 taking place and was actually testified to -- well, was
8 discussed between the parties with regards to allegations. But
9 I understand, Your Honor. With regards to -- at the end of the
10 day, it's the other person indicating that the other one is at
11 fault. And we are attempting and requesting the Rule 56F
12 motion in order to determine who is at fault for this. Whether
13 or not it is CSSC, who did not install it correctly according
14 to the designs, or if it was Aubrey who didn't design the HVAC
15 unit in order to fit the system and the purpose of that unit
16 itself. And so, Your Honor, at this point in time, I believe
17 that motion for summary judgment is not appropriate. Motions
18 for summary judgment are only appropriate when the evidence,
19 when there's no genuine issue of material fact.

20 There is a genuine issue of material fact as to
21 whether or not the system was installed correctly or whether or
22 not it was something that was designed incorrectly. And at
23 this point in time, it is our purpose to get an expert witness
24 in order to determine that. If at a later date it is
25 determined that one or the other, of course, motion for

1 summary judgment is appropriate but at this point in time we
2 would request that the motion for summary judgment be denied.
3 Again, if Your Honor allows the evidence that Defendant
4 submitted yesterday to be into the record and to have weight on
5 the arguments today, we would request or I would request on
6 behalf of my clients to submit a memo in response.

7 THE COURT: Well, let me ask you this. Why -- has
8 nothing been done up until this point? Why -- under -- and I'm
9 talking about 56F, why do you need additional time now, when
10 you've had time leading up to today?

11 MS. HARDEN: In all honesty, Your Honor, we've
12 attempted to settle this case. It is at this point in time,
13 \$12,500. We have had multiple letters back and forth with
14 counsel on this. John Crawford, the lead attorney on this, has
15 spoken to these counsels a number of times with regards to
16 settlement numbers and documents and giving them letters and
17 attempting to resolve this without extensive amounts of
18 discovery.

19 And so, we have -- clearly this is not the case and
20 further evidence is going to be needed in order for us to come
21 to a resolution at least for my clients to be able to have
22 their day in court and to be able to show that, you know, they
23 paid for something, they paid for a general contractor, for a
24 architect and an engineer to do their job properly, it ended up
25 costing their business quite a bit of money and they had to

1 have their system redone. And so, in order to provide my
2 client that the 56F motion would be applicable, because my
3 client deserves the ability to show expert witness. Now, if
4 that expert witness says that CSSC has nothing to do with it
5 and they installed it correctly according to system, then a
6 motion for summary judgment is appropriate.

7 THE COURT: Well, I understand that part of it and I
8 understand where you're coming from, but that you need -- you
9 know, to get an expert witness. But my question is why has
10 that not been done to date? And I understand certainly to the
11 discussions about settling it, you're trying to get it
12 resolved, and I think that's always a good thing if you can get
13 resolved but -- get a case resolved. But is it a situation
14 where you've not or your client is not taking the steps to get
15 the expert or get discovery in reliance on anybody saying they
16 would hold off when they would settle the case?

17 MS. HARDEN: No, it's more of just -- it's the idea
18 that we are attempting it's -- we have not gone forward with
19 discovery in an attempt to settle. We have not answered
20 discovery request. We actually made sure that the amount was
21 below \$25,000 so that it would not require or allow for
22 additional interrogatories, request for production, et cetera.
23 We did it so that it was the most cost effective for our
24 clients and theirs. We attempted to do it in magistrate's
25 court, but again, they would not even allow to meet, they would

1 not even discuss a potential settlement figure above the 7,500
2 limit unless we were put into common pleas.

3 So, I understand the time and all of that different
4 stuff, but we've been attempting to settle the process. Now,
5 that settlement according to the Defendants is something that
6 is not possible. We are asking the Court at this point in time
7 to give us the opportunity to find an expert witness to prove
8 while we do have an invoices and we do have -- and we can get
9 an affidavit from the individual who performed the work at CF
10 Mechanical, stating the work that he was performed and what he
11 found to be deficient. I can provide that to the Court. But
12 in order for us to get an expert witness and in order for us to
13 do what Defendant is essentially accusing us not of doing is
14 providing an expert to the layman term -- to the laypeople of
15 the jury, then I believe that a 56F motion would be applicable.

16 THE COURT: Let me ask you this as far as the facts,
17 they installed it but they didn't design it. Is -- do you
18 agree with that?

19 MS. HARDEN: I do agree with that, Your Honor.

20 THE COURT: Okay. And so originally, and I read the
21 file last night when originally when it was designed, they
22 installed it and then you had the problem down the road and as
23 it turned out it was reversed role.

24 MS. HARDEN: Yes.

25 THE COURT: But the argument that they're making is

1 that's a design issue and that their client simply installed it
2 based on the drawings and the plans that were done by another
3 party.

4 MS. HARDEN: And my argument to the Court is that
5 there is no indication that they did that and I understand that
6 the same can be reversed onto me is that there's no indication
7 that they did. But at the same end of things, I do have
8 invoices, and I do have Professional Heating and Cooling who
9 went and inspected the property, say that they are switched
10 around. Now, RV --

11 THE COURT: Well, I think everybody is in agreement
12 to that. That even the Defendants agree that it was switched
13 around. I think -- would you agree with that there's no
14 contesting that issue? Did it --

15 MS. HARDEN: I mean --

16 THE COURT: It was switched around.

17 MS. HARDEN: Would agree with that. Yes.

18 THE COURT: Okay.

19 MS. HARDEN: I don't know whether or not Defendant
20 would agree with that, but with regards to the RV design, they
21 are the ones that did the design for the system.

22 THE COURT: But that's a different --

23 MS. HARDEN: But they weren't the ones that put it
24 in. They weren't the ones that installed it, and they weren't
25 the general contractor. It's not necessarily that they just

1 | hired them for the HVAC unit, they hired them as the general
2 | contractor. They did all of the upfitting for this place. And
3 | so, the issues with the HVAC while yes is minor, is something
4 | that it was a part of their entire job to make sure that the
5 | place was functioning and working as it should be. As
6 | according to the designs, I do understand that. But at the
7 | same end of things, there is a level of requirement from a
8 | general contractor when they're doing their work.

9 | They can't just get a place thing of designs and say,
10 | oh, this is how it's supposed to be. I guess that's how I'm
11 | going to do it. The end of the day, we never allow that
12 | argument to hold fast in court. So, what I'm -- the argument
13 | that I make to, Your Honor, is essentially that yes, they can
14 | say that, well, we designed it that way. That's the way that
15 | it's said in the script, but -- or what it said in the plans.
16 | But at the end of the day, they're the general contractor.
17 | They're required to make sure that their stuff is done
18 | according to the code, according to the requirements, and
19 | according to the contract.

20 | And so -- and it's not as if CSSC has not worked with AR
21 | Foods and has not worked with Jersey Mikes in the past. They
22 | in fact have done that and they've done it with multiple
23 | stores. So, they know the process and they know the things --
24 | the elements in which they have to go through in order to make
25 | sure that the project is completed with a certain

1 particularity, Your Honor.

2 THE COURT: All right. Thank you. Any rebuttal?

3 MR. WALSH: Just briefly, Your Honor, first I want to
4 point out that Ms. Harden's argument as to is not testimony or
5 evidence. So, her discussions about work that my client may or
6 may not have done for her client on other projects that's not
7 evidence. Nor is there any evidence from any witness who says
8 that we didn't do something according to the building or
9 mechanical code, according to a contractual requirement,
10 according to an industry standard, not one person. And the
11 only witness who's been deposed and the only evidence before
12 the Court today is the deposition transcript of the
13 Plaintiff's designee, Turner Hill, and Mr. Hill didn't know
14 what Plaintiff's damages are.

15 Ms. Harden says there's invoices out there. If that's the
16 case why wasn't Mr. Hill able to testify, we have invoices, we
17 have damages. I want to submit to the Court, I don't know if
18 she submitted the entire deposition transcript, but Defendant's
19 Exhibit 5 to Mr. Hill's deposition was the Plaintiff's answers
20 to Carolina South Shore Construction Inc's amended first set of
21 interrogatories.

22 And we actually asked the Plaintiff and we got
23 responses back in September of 2023 -- September 28th, 2023,
24 and I'm happy to submit this to the Court that asked for an
25 itemization of damages. This is back in 2023, and the response

1 was discovery is ongoing, Plaintiff reserves the right to
2 supplement this response as discovery progresses subject to and
3 without waiving the foregoing, see the invoices produced.
4 Well, there's been no invoices produced in response to our
5 motion for summary judgment, Mr. Hill was asked about them at
6 his deposition, which occurred on January of 2024. He didn't
7 know what their damages were. I have no idea where the 12,500
8 comes from. The other thing in these interrogatory responses
9 from 2023 was that we asked list names and addresses of any
10 expert witnesses you proposed to use as a witness at the trial
11 of this case.

12 And the answer was, Plaintiff has not retained an
13 expert witness and intends to use at trial at this time.
14 Plaintiff will supplement this response as required under the
15 SCRCPC once an expert is obtained. So, I would submit to the
16 Court that they've been on notice that, "Hey, if that -- we're
17 looking for anyone who's going to testify to an expertise in
18 mechanical trades or even engineering design, that there was
19 some breach of duty any breach and there isn't any evidence
20 before the Court today of that." We do not have the burden of
21 proof in this case, Your Honor, Plaintiff has the burden of
22 proof and I think that a lot of Plaintiff's argument today is
23 trying to just basically put the burden on us to disprove that
24 we did something wrong. We've met our burden of proof to come
25 forward with evidence to the Court.

1 There is no evidence of culpability or liability on
2 behalf of construction or Carolina South Shore Construction.
3 We'd ask the Court for summary judgment. Again, I do not
4 believe Mr. Crawford's affidavit in support of the Rule 56F
5 continuance explains why they could not have obtained an expert
6 or what -- even what additional discovery they want to do at
7 this point. The case has been pending for such a long time,
8 they got a dormant notice in February. They've had my motion
9 for at least 60 plus days.

10 And I probably would've looked at that and said, okay,
11 what do I need to do at that point? And so, we believe they've
12 had a fair and reasonable opportunity to discuss -- to conduct
13 discovery. They -- but in that intervening time period,
14 there's been no request to depose my client, nor I do not and I
15 can't speak for Mr. Tate, but I have certainly not seen any
16 email correspondence or letter correspondence asking that his
17 clients be deposed either.

18 THE COURT: Let me ask you this, the exhibit that you
19 attached to your memorandum, which is the original plan, what
20 is the -- what's the evidence that supports that or
21 authenticates it?

22 MR. WALSH: It was actually attached as Exhibit 4 to
23 Plaintiff's deposition. And it was actually produced by AR
24 Foods. So, it actually has an AR Foods. All of the exhibits
25 that was submitted in support of the memorandum for summary

1 judgment I believe are AR Foods document production that have
2 bates labels on them but I may be mistaken, I need to look.
3 Regardless of the plan, Your Honor, I think that it's still the
4 Plaintiff's affirmative burden of proof and that we've deposed
5 the corporate representative and there's simply just no
6 evidence that they have at the time of his deposition of
7 anything that we've done that was wrong.

8 THE COURT: I just want to make sure that all the
9 pieces of evidence that you argue -- that you're attached to
10 memorandum are properly authenticated. You know, even in
11 summary judgment, you have to have admissible evidence and the
12 evidence has to be authenticated and it can be authenticated if
13 you did, you know, with a deposition, you can authenticate a
14 document as you know, with either an affidavit in support of
15 motion for summary judgment or you can do it through your
16 deposition and you may -- I mean, you've attached deposition
17 testimony and it may be in there that was just --

18 MR. WALSH: I think I asked him about it, Your Honor,
19 and like many of the other questions he did not have much
20 information about it -- did not know much about it.

21 THE COURT: All right. Anything else from the
22 Plaintiff point?

23 MS. HARDEN: No, Your Honor.

24 THE COURT: All right. I'll take another look at it.
25 I've read about -- I'll consider your arguments. I will look

1 at it again and I'll have a decision for you this week.

2 MR. WALSH: Thank you, Your Honor.

3 MS. HARDEN: Would Plaintiff be allowed to submit a
4 memo and opposition responding to Defendant's allegations --
5 specific allegations regarding testimony?

6 THE COURT: Well, let me ask you -- what is your --
7 and I do want to remind everybody that the memorandum rule is
8 on the website, it's on the roster down there. Probably 25
9 years or whatever as long as I can remember as a lawyer. Just
10 -- it's not a deadline if you don't do it, I'm not going to
11 consider it, I'll consider it. I read everything as an FYI.
12 But I do -- because I like to read everything on every file
13 before a hearing. That 72-hour rule is there for a reason,
14 because I do read everything before a hearing. I did see your
15 memorandum yesterday and I did read it, and so just counsel on
16 the bar just reminded to follow that rule and get that to me.
17 I will let you know if I need something from you -- I'm going
18 to -- I'll take a look and if I need that, I'll let you know.

19 MS. HARDEN: Thank you, Your Honor. I appreciate it.

20 THE COURT: Thank you all.

21 [END OF HEARING]

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CERTIFICATE OF TRANSCRIBER

I, ERIN REILLY, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 13, South Carolina, on the 6th day of August, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 2nd, 2024

ERIN REILLY
TRANSCRIBER

