THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Appellate Case No. 2024-000753
Case No.: 2019-CP-10-01108

Balfour Beatty Construction, LLC, Appellant,

v.

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants,

And

Library Associates, LLC, Third-Party Plaintiff,

v.

Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc., Third-Party Defendants.

Of which Strong Tower Construction, LLC d/b/a Koch Corporation and Watson Electrical Construction Co., LLC are the Respondents.

APPELLANT'S INITIAL REPLY BRIEF TO WATSON ELECTRICAL'S RESPONDENT'S BRIEF

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INTRODUCTION

Appellant Balfour Beatty Construction, LLC ("Balfour") hereby replies to the arguments by Respondent Watson Electrical Construction Co., LLC ("Watson") in this matter. Watson's arguments are misplaced and incorrect. For the reasons set forth in Balfour's Appellant's Brief, and reiterated here, the Court should issue an order reversing the Master's September 13, 2021 order granting partial summary judgment and awarding attorneys' fees to Watson.

ARGUMENTS IN REPLY

I. The Master erred in granting partial summary judgment in favor of Watson.

A. Balfour preserved the arguments raised to this Court regarding the Master's error in granting partial summary judgment in Watson's favor.

Watson argues that Balfour did not adequately preserve the issues for appeal because it did not confront the Master specifically enough with the argument that he could not grant only partial summary judgment. Thus, Watson argues that Balfour did not preserve that issue and cannot address the Master's error in this appeal, because it did not argue specifically to the Master that the law does not allow partial summary judgment even if the Master believed Watson had established it was entitled to some of the damages it claimed.

At its core, issue preservation merely requires that an issue be raised to and ruled upon by the Master in order for that issue to be available for appeal. *See Chastain v. Hiltabidle*, 381 S.C. 508, 514-15, 673 S.E.2d 826, 829 (Ct. App. 2009). In explaining and interpreting the requirements of issue preservation for practical application, the appellate courts of this State have stated, the purpose of issue preservation rules is to provide the Master with a fair opportunity to rule on the issues, and to provide the Court of Appeals with a platform for meaningful appellate review. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 372-73, 628 S.E.2d 902, 919 (Ct. App. 2006). It is not necessary that the issue be raised using the wording and

precisely the same arguments and authorities at each phase of the proceedings. Indeed, the South Carolina Supreme Court has stated that it is "mindful of the need to approach issue preservation rules with a practical eye and not in a ridged, hyper-technical manner." *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644–45 (2011); *see also Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 332, 730 S.E.2d 282, 287 (Toal, C.J., concurring in result and dissenting in part) ("[A]n over-zealous application of appellate preservation rules denigrates the primary purpose of the judiciary, which is to serve the citizens and the business community of this state by settling disputes and promoting justice"). As an example of this practical approach, the court in *Herron* specifically concluded that a party is not required to use the exact name of a legal doctrine to preserve an issue for appeal. *Herron*, 395 S.C. at 466, 719 S.E.2d at 642.

Applying this principle and the guidance from the prior decisions, the question is whether Balfour sufficiently argued to the Master that he could not grant Watson's motion for summary judgment because Watson failed to carry its burden to establish that "no genuine issue as to any material fact" relevant to Watson's claim for breach of contract existed. Not only did Balfour argue that issue to the Master, the Master acknowledged that genuine issues as to the amount of damages claimed by Watson did exist, and that he could not grant Watson the summary judgment it sought. The issue of whether the Master could award Watson a partial summary judgment never even arose until the Master issued his Order on the motion purporting to do exactly that. When the Master committed such error, Balfour raised that error in its timely Rule 59(e) Motion. Balfour argued that any grant of summary judgment was improper because the record, indeed the Master's own Order, recognized that genuine issues as to material facts regarding the amount of damages associated with the alleged breach of contract continued to exist. Thus, Balfour argued that any

award of summary judgment was error. Therefore, Balfour did sufficiently argue the relevant point to the Master and it met its burden to preserve the issue for appeal.

In its Memorandum in Opposition to Watson's Motion for Summary Judgment, Balfour plainly raised the argument and asserted the position that a genuine issue of material fact existed as to whether Watson was entitled to the summary judgment it sought on its breach of contract cause of action and for the amounts of damages it claimed. (Balfour Memo in Opp., pp. 3, 10). In short, Balfour argued that the Master could not grant Watson judgment on the whole breach of contract cause of action or for all the relief or damages sought in that cause of action. Balfour asserted repeatedly that there were genuine issues of material fact that prevented such a judgment.

In its Motion to Alter or Amend the Order granting Partial Summary Judgment in favor of Watson, Balfour again raised the issue that genuine issues of material fact existed that prevented summary judgment being awarded to Watson. Balfour argued that Watson's entitlement to all of the amounts claimed as damages was still a factual issue that could not be fully resolved. (Balfour's Motion to Reconsider, p. 5).

In this appeal, Balfour, as is proper for it to do, again asserts, that the Master erred in granting any summary judgment in favor of Watson. The foundational position on which Balfour has opposed the motion for summary judgment remains consistent; a genuine issue of material fact exists as to whether Watson is entitled to recover the full relief sought and the damages claimed pursuant to its breach of contract cause of action. Balfour's Brief merely supports its position by pointing out that the Master himself specifically acknowledged he could not grant Watson summary judgment (or full relief) on its whole breach of contract claim or for all the relief (damages) on its whole breach of contract claim, and that Rule 56, SCRCP does not authorize partial summary judgment as set forth in the Master's Order.

An illustration of the point that an issue is preserved for appeal when it is raised more broadly below but brought into focus in considerably more detail in the appellate argument exists in the decision in *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). In that case, the South Carolina Supreme Court addressed a circumstance in which the plaintiff made only a general objection at trial to the defendant's evidence (admission of an amortization schedule as proof). On appeal, the plaintiff raised and argued more detailed and specific points regarding the use of the amortization schedule, as admissible and sufficient evidence. *Wilder*, 330 S.C. at 75, 497 S.E.2d at 733. And, the defendant argued in the appeal that the plaintiff's objection to the amortization schedule during trial was too general to preserve the various more specific objections or issues for appeal. *Id.* Nonetheless, the Court held that the plaintiff's objection was sufficiently specific to bring into focus the nature of the alleged error so that it could be understood by the trial court. *Id.*; *see also S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 641 S.E.2d 903 (2007) (finding that although SCDOT did not phrase objection in the exact terms used in the appeal, the objection was sufficiently specific to allow the trial court to rule on the issue). Thus, the Court found the issue and arguments were preserved.

Like the plaintiff in *Wilder*, Balfour raised to the Master the overarching issue that Watson was not entitled to the summary judgment for which it moved under Rule 56 because there were genuine issues as to material facts that prevented an award of the full or complete relief and damages sought in the motion for summary judgment. In this appeal, Balfour continues to press the issue and argument presented to the Master. Now Balfour permissibly and properly reinforces its opposition to the award of summary judgment by arguing that the Master's decision to grant "partial" summary judgment was reversible error under Rule 56(d). As evidenced by the fact the Master acknowledged in his own order the existence of genuine issues of material fact which

prevented him from granting Watson summary judgment on its whole cause of action for breach of contract, or for all of the relief it had requested, judgment on only some issues deemed to be uncontroverted is simply improper under Rule 56(d). As recognized by the Court in *Wilder*, Balfour is permitted in the appeal to provide further detail and further support for its preserved opposition and argument. Accordingly, the issue is preserved for review on appeal.

B. The Master erred in awarding "partial" summary judgment on only a portion of Watson's breach of contract cause of action.

Watson asserts that Rule 56, SCRCP, permits the Master to award "partial" summary judgment (in other words, judgment on only a portion of the claim in its cause of action for breach of contract). Watson is patently incorrect.

Rule 56(a), SCRCP, states:

> A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

However, Rule 56(d), SCRCP, applies when the court is unable to render judgment "upon the whole case or for all the relief asked." When the court is unable to award all of the relief requested in a motion for summary judgment (when a court is unable to fully adjudicate a cause of action at issue in a motion for summary judgment), then the court cannot enter judgment, but may only ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. *See* Rule 56(d), SCRCP. In such circumstance, the court may enter an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy. Beyond that, the Master may only direct such further proceedings in the action as are just, such as the trial

of the action, treating the facts so specified in the interim order as being deemed established for future proceedings. *See id*. Judgment on the partial determination is not authorized or proper.

When Rule 56(a) and Rule 56(d) are read together, the proper application of Rule 56 in a case such as this becomes clear. Under Rule 56(a) a party may move for summary judgment on one or more of its causes of action; however, if the court is unable to fully adjudicate the cause of action at issue, or grant the full relief sought in the motion, then under Rule 56(d), the court may only issue an order specifying the facts that appear without substantial controversy. Rule 56 does not authorize entry of judgment, let alone on only a portion of the claim upon which the summary judgment motion was presented. Contrary to Watson's arguments, the proper application of Rule 56, giving effect to both subparts (a) and (d), does not render "meaningless" subpart (a).

The court in *Arado v. Gen. Fire Extinguisher Corp.*, 626 F. Supp. 506, 508–09 (N.D. Ill. 1985) addressed this precise issue.[1] In *Arado*, the court stated that "Rule[] 56(a) . . . simply do[es] not permit the piecemealing of a single claim or the type of issue-narrowing sought by [the moving party]" and "Rule 56(a)'s reference to 'all or any part' of a claim . . . authorizes only the granting of appealable 'judgments' disposing of entire claims." *Arado*, 626 F. Supp. at 508–09 (quoting *Capitol Records, Inc. v. Progress Record Distributing, Inc.*, 106 F.R.D. 25 (N.D. Ill. 1985)). In the present case, Watson's entire claim for breach of contract involved more issues, more damages and more requested relief than resolved or disposed of in the Master's summary judgment order.

The court in *Arkansas-Best Freight Sys., Inc. v. Youngblood*, 61 F.R.D. 565, 570–71 (W.D. Ark. 1974) addressed a similar application of Rule 56. In *Youngblood*, the plaintiff filed a

[1] Prior to December 1, 2007, Rule 56(d) of the Federal Rules of Civil Procedure was identical to Rule 56(d) of the South Carolina Rule of Civil Procedure. Given this history, it is clear that reference to Federal Court decisions under Federal Rule 56(d) remain applicable to cases involving Rule 56(d), SCRCP.

complaint seeking $410,363.11 in total damages; however, in its motion for partial summary judgment the plaintiff sought to recover a sum of $200,000.00, leaving the remainder of the claim and complaint for damages for further adjudication. The court, quoting Volume 10, Wright & Miller, Federal Practice and Procedure: Civil § 2737, stated:

> According to Rule 56(d), if a court finds that summary judgment cannot be granted because there are genuine issues of material fact to be tried, it is empowered, when it would be practicable to save time and expense and to simplify the trial, to issue an order that specifies the facts that appear without substantial controversy. . . Rule 56(d) does not authorize the entry of a judgment on part of a claim or the granting of partial relief. It simply empowers the court to withdraw sham issues from the case and to specify those facts that really cannot be controverted. As one court has noted, the primary purpose of the rule is to 'salvage some results from the judicial effort involved in the denial of a motion for summary judgment.' Inasmuch as it narrows the scope of the trial, an order under Rule 56(d) has been compared to a pretrial order under Rule 16.

Based on this application of Rule 56(d), the court in *Youngblood* denied the plaintiff's motion for summary judgment on only the portion of its claim because "[i]n countless opinions federal courts have expressed a disapproval of piecemeal litigation." *Id*. at 572. The court concluded its reasoning by discussing the application of this principle based upon a claim for services such as was present in *Biggins v. Oltmer Iron Works*, 154 F.2d 214, 215 (7th Cir. 1946). The court stated that:

> Let us assume that in a claim for services such as was present in the *Biggins* case, it was first ascertained that two items were not in dispute, and then, a bit later, it was determined that liability on a third item, and still later, on a fourth item, was established. If the construction of the rule by [plaintiffs] in the case at bar is correct, there might well have been three summary judgments in the supposititious case with executions levied upon each of them. Such fragmentations of a cause of action would be obnoxious to the orderly administration of justice.'

Id.

In the Appellant's Brief Balfour cited the decision in *Chambers v. Pingree*, 334 S.C. 349, 354–55, 513 S.E.2d 369, 372 (Ct. App. 1999), as support for the proposition that a partial summary judgment such as the Master purported to award to Watson was improper. Watson now attempts to argue that *Chambers* is distinguishable or otherwise limited to a unique set of facts. Watson's argument is incorrect and it fails. In *Chambers*, the Court analyzed whether it was proper for the circuit court to grant partial summary judgment on a defendant's counterclaim to recover amounts due under a promissory note while simultaneously acknowledging that the issue of the total amount of damages to which defendant was entitled on its claim remained in dispute and required a subsequent damages hearing. The Court of Appeals found that "a party cannot establish the right to recover on a promissory note yet need a damages hearing to ascertain if any amount is due . . . In these circumstances, partial summary judgment is simply illogical." *Id*. at 354-55, 513 S.E.2d at 372. The Court explained its conclusion that such partial summary judgment is improper when it stated that "the circuit court's order implicitly acknowledge[d] that a question of fact exists regarding damages; otherwise, the court would not have noted the need for a damages hearing." *Id.* at 355, 513 S.E.2d at 373. The Court also stated that granting partial summary judgment in this fashion "is antithetic to our concept of summary judgment" because the facts will be re-litigated at a subsequent trial on the remainder of the claim. *Id.* 334 S.C. at 356, 513 S.E.2d at 373.

In its Brief, Watson argues that the Court's opinion in *Chambers* is not applicable to this appeal because the Court in *Chambers* stated that "[i]n these circumstances, partial summary judgment is simply illogical." Nothing in *Chambers* limits the application of that case to any unique set of facts. The "circumstance" at issue in *Chambers* is directly analogous to the issues before the Court presently. In this case, the Master concluded that Balfour breached the Subcontract by failing to pay Watson, but held that a genuine issue of material fact existed as to

the extent, or impact, or consequences of the breach and the amounts owed to Watson by Balfour as a result thereof. Thus, the Master acknowledged explicitly that further proceedings were required to resolve completely Watson's breach of contract cause of action and the amount of damages. This is the same illogical result of a summary judgment motion that the Court in *Chambers* held to be improper and reversable.

Watson also relies upon the court's opinion in *Bank of America v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013) to support its incorrect argument that Rule 56, SCRCP, permits a court to award partial summary judgment on a portion of a cause of action. The court's opinion in *Draper* contains no analysis of the propriety of awarding "partial" summary judgment on a portion of a cause of action. Rather, the court in *Draper* merely reversed the master's summary judgment award because a genuine issue of material fact existed as a result of conflicting affidavits that were submitted by the parties. The court offered no opinion and conducted no analysis of whether the master in that case was authorized to award partial summary judgment on a portion of a claim. As such, Watson's reliance on *Draper* is misplaced.

Furthermore, the cases from federal jurisdictions cited by Watson do not support the proposition that partial summary judgment on a portion of a single claim is appropriate. *See*, *e.g.*, *Capps v. Long*, No. 20-6789, 2021 WL 4843568, *1 - *2 (4th Circuit, October 18, 2021) (affirming a grant of summary judgment on a plaintiff's Fourth Amendment claim against two of the three defendants—not awarding partial relief on a portion of a single claim); *Gadsen v. Fripp*, 330 F.2d 545, 547 (4th Cir. 1964) (reversing the trial court's grant of summary judgment on both of the plaintiff's alleged claims because the plaintiff's claim for continuing trespass was not addressed during the summary judgment proceedings and, therefore, it was improperly dismissed by the trial court's order granting judgment on the plaintiff's other claim).

C. Watson's dismissal of the remainder of its causes of action does not permit it to avoid this Court's correction of the Master's error in granting summary judgment in favor of Watson on its breach of contract cause of action.

The error in the Master's order granting the partial summary judgment is not cured or rendered moot by Watson's independent and subsequent choice to dismiss or abandon other portions of its breach of contract claim and cause of action. The Master issued his order granting Watson partial summary judgment on the same day the trial of this case commenced (September 13, 2021). Not until December 1, 2021—after participating in the trial for approximately six (6) weeks and after Balfour and Library rested their cases-in-chief—Watson chose to voluntarily dismiss its remaining claims and cause of action for breach of contract against Balfour, **without prejudice**. Watson now argues that such a subsequent voluntary dismissal without prejudice of the remainder of its breach of contract cause of action against Balfour cures the error of the prior improper grant of partial summary judgment. Its argument is without merit.

Prior to Watson's voluntary dismissal of its remaining causes of action, the Master erred in granting partial summary judgment in Watson's favor. When Watson dismissed the remainder of its causes of action, the Master had already committed a reversible error—granting summary judgment on a portion of a cause of action while acknowledging that the existence of genuine issues of material fact prevented him from granting judgment on the entire claim and cause of action or for all of the requested relief. Watson's subsequent independent motion to dismiss its remaining claims, without prejudice, after it had benefited from and accepted the benefit of the Master improperly granting it partial summary judgment, cannot serve as a basis for Watson to avoid this Court's correction of the errors that had already been committed by the Master. Moreover, because Watson dismissed the remainder of its claims against Balfour *without prejudice*, Watson left the door open for it to attempt to reinstate its claims should its claim fail in this appeal.

A party is not permitted to dismiss portions of a cause of action in the middle of an ongoing litigation to manipulate appellate proceedings and avoid an appellate court's review and correction of errors already committed by the lower court. *See Microsoft Corp. v. Baker*, 582 U.S. 23, 37–38 (2017) (holding the plaintiff could not voluntarily dismiss his claims without prejudice to manipulate appellate proceedings); *Kiviti v. Bhatt*, 80 F.4th 520, 530 (4th Cir. 2023), *cert. denied*, 144 S.Ct. 2519 (2024). Nevertheless, that is what Watson has attempted to do in this case. After obtaining an erroneous order granting "partial" summary judgment in its favor and after sitting through the trial of this matter, Watson chose to dismiss its claims without prejudice.

Watson should not be permitted to take advantage of the Master's error and avoid this Court's review of those errors by dismissing its claims—months after obtaining an improper partial summary judgment and after sitting through the vast majority of the trial. Moreover, the Court should not reward Watson for the Master's error by permitting it to avoid review of the Master's errors by dismissing its claims—all the while leaving the door open for Watson to attempt to reinstate those claims if it does not like the result of this appeal. Accordingly, the Court should reject Watson's argument that its decision to voluntarily dismiss the remainder of its cause of action for breach of contract bars this Court from correcting the Master's errors on appeal.

II. The Master erred in awarding Watson attorney's fees pursuant to Article 10 of the Subcontract.

A. Balfour preserved its arguments regarding the Master's errors in awarding Watson attorneys' fees.

Watson now asserts that Balfour's arguments regarding the Master's error in awarding attorneys' fees to Watson is not preserved. It argues this position because it says Balfour raised that argument for the first time in its Motion to Reconsider. Watson's characterization of the proceedings below and its assertion about the issue of preservation is incorrect.

Watson's Motion for Summary Judgment which was the genesis of this entire appeal made no argument, and presented no evidence, in support of any entitlement to attorneys' fees. In fact, Watson's only reference to attorneys' fees in the motion is in the closing sentence of its Motion which states: "Watson seeks such further and additional relief this Court deems just and proper to include statutory interest, attorneys' fees, and costs." (Watson Motion for SJ. p. 4). In truth, Watson made the argument that it was entitled to attorneys' fees for the first time in the proposed order it submitted to the Master, after the hearing on the Motion for Summary Judgment.

During the hearing on Watson's Motion for Summary Judgment Watson made no reference to any contract provision authorizing or forming the basis for an award of attorney's fees. At the conclusion of Watson's summary judgment argument, the Master stated that he would issue an order awarding partial summary judgment to Watson in the amount of $921,671.39, but that he could not award judgment on the other elements of the claim or for the remaining $937,000 Watson claimed it was owed as damages on its breach of contract cause of action because there were genuine issues of material fact that prevented such an amount. The Master made no statement or finding at that time that he was awarding Watson attorneys' fees; however, during the same hearing the motion for summary judgment by another subcontractor was also addressed. At the conclusion of the hearing addressing the motion of the other subcontractor, the Master instructed that other subcontractor (Premier Exteriors, LLC) to submit a proposed order and permitting the subcontractors in their prepared orders to "argue the prejudgment interest, as well as your attorney's fees." (Aug. 31, 2021 Hearing Tran. 65:3-7). Despite not addressing Watson's claim for attorneys' fees during the hearing, when Watson submitted its proposed order to the Master it included a term awarding attorneys' fees pursuant to Article 10.D of the Subcontract.

After the Master issued his Order granting partial summary judgment in favor of Watson, and including an award of attorneys' fees to Watson, Balfour filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCP. Balfour asserted and argued in that Rule 59(e) motion that Watson is not entitled to attorney's fees pursuant to Article 10.D of the Subcontract. Balfour specifically asserted that because the dispute between Watson and Balfour involves the conduct of Library, and Article 10.D only applies to claims between Watson and Balfour that (1) do not involve the conduct of Library and (2) were not compelled to arbitration pursuant to Article 10.A's arbitration provision. (Balfour Motion to Reconsider, p. 2-5), the award of attorney's fees was error. As this was Balfour's first opportunity to respond to Watson's arguments and the Master's award of attorneys' fees pursuant to Article 10.D of the Subcontract, Balfour properly preserved the arguments raised in its Appellant's Brief regarding the error of any award of attorneys' fees to Watson in this case. *See In re Timmerman*, 331 S.C. 455, 460–61, 502 S.E.2d 920, 922 (Ct. App. 1998) (stating that when a party receives an order that grants certain relief not previously contemplated or presented to the trial court the party may preserve an issue for appeal by filing a motion pursuant to Rule 59(e), SCRCP). Therefore, Balfour properly raised its arguments in opposition to Watson's request and the Master's award of attorneys' fees pursuant to Article 10 of the Subcontract in its Motion to Reconsider. Accordingly, Balfour preserved the arguments raised in its Appellant's Brief regarding the Master's erroneous award of attorney's fees to Watson.

B. The Court reviews the Master's award of attorneys' fees based on an abuse of discretion—not whether a genuine issue of material fact exists in relation to the award of attorneys' fees.

Watson incorrectly argues that Balfour was required to present evidence to the Master that its claim involved the conduct of the Owner. However, Watson misconstrues the circumstances and the law, and incorrectly attempts to create factual and evidentiary issues having no relevance

to the issue of whether the Subcontract permitted the Master to award attorneys' fees pursuant to the Subcontract.

The proper standard of review of an award of attorneys' fees is an abuse of discretion. *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 340, 676 S.E.2d 139, 147 (Ct. App. 2009). An abuse of discretion occurs when the Master's decision is based on an error of law. *Id*. (citing *Gooding v. St. Francis Xavier Hosp.,* 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997)). The interpretation of an unambiguous contract is a question of law. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Thus, the Master's interpretation of the Subcontract, and analysis of Article 10 of the Subcontract, is reviewed for an abuse of discretion and the summary judgment standard of review is not applicable to this issue. Accordingly, Watson's arguments regarding whether Balfour presented evidence to create a genuine issue of material fact regarding the award of attorneys' fees are without merit.

C. Watson argues incorrectly that the Court is to determine whether its claims involve the conduct of the Owner when the Court considered Watson's request for attorney's fees and not at the proper time—the pleadings stage.

In its arguments regarding the application of Article 10 of the Subcontract, Watson attempts to mischaracterize the purpose of the contract provision and to apply it only at the time when the request for the award of attorneys' fees is made. That focal point is incorrect. Article 10 requires a threshold determination made at the time the claim is asserted or commenced. The issue is whether the claim in controversy is subject to arbitration, because if it is subject to arbitration there is no entitlement to attorneys' fees. That determination must be made at the inception (not at the conclusion). If the claim is subject to arbitration at Balfour's choice because it does not involve the conduct of Library, there is no basis for a request or award of attorneys' fees.

Based upon its mischaracterization of the issue, Watson tries to argue that Balfour had a specific duty to introduce evidence during the hearing on the Motion for Summary Judgment addressing Library's conduct. However, Watson's arguments fail because it is axiomatic that the issue of whether the dispute between Watson and Balfour involves the conduct of Library is a threshold determination to be made at the commencement of the dispute. Thus, the assessment of whether the dispute involves Library's conduct must be framed by the pleadings and the allegations at commencement. *See In re Little*, 610 B.R. 558, 565 (Bankr. D.S.C. 2020).

As stated in Balfour's Appellant's Brief, the pleadings demonstrate plainly that the dispute between Balfour and Watson involves Library's conduct. Relevant allegations by Watson evidencing the involvement of Library's (the Owner's) conduct in the dispute between Watson and Balfour include:

1. "Watson alleges that it is entitled to recover in *quantum meruit* from Balfour and Library (collectively "QM Defendants") the reasonable value of the labor, equipment and/or materials furnished by Watson that were utilized to improve the Property . . ." (Watson Answer ¶ 40);

2. "Library Associates breached its duty of care to Watson by interfering with the progress of Watson's work, and the orderly flow of Watson's work, which damaged Watson." (Watson Answer ¶ 61);

3. "Library Associates breached its duty of care to Watson by adversely impacting the schedule of Watson's work on the Project, which damaged Watson." (Watson Answer ¶ 63); and

4. "Library Associates knew that its actions as described above would adversely impact and damage Watson and other subcontractors work on the Project." (Watson Answer ¶ 66).

On their face, Watson's own allegations demonstrate from the inception that the dispute in issue in its claims involves Library's conduct. Accordingly, Watson's dispute with Balfour is not a dispute for which Watson is entitled to recover attorneys' fees pursuant to Article 10.D of the

Subcontract because Watson's breach of contract claim involves Library's conduct and, therefore, is subject to Article 10.B's dispute resolution provision—which does not provide for an award of attorneys' fees to the prevailing party. The Master erred in awarding such attorneys' fees that were not authorized by Article 10.D under the circumstances of Watson's claim.

CONCLUSION

Based on the foregoing, the Master's Orders granting summary judgment and awarding attorneys' fees in favor of Watson should be reversed.

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Columbia, South Carolina

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Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc., Third-Party Defendants.

Of which Strong Tower Construction, LLC d/b/a Koch Corporation and Watson Electrical Construction Co., LLC are the Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on July 10, 2025, a copy of **Appellant's Initial Reply Brief to Watson Electrical's Respondent's Brief** was served on all counsel of record via email containing the above referenced documents to counsels' individual AIS email addresses:

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