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SC Court of Appeals

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.

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STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE MASTER-IN-EQUITY ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF STRONG TOWER ON ITS BREACH OF CONTRACT CLAIM AGAINST BALFOUR WHEN THE ESSENTIAL ELEMENT OF STRONG TOWER'S CLAIMED DAMAGES WAS IN DISPUTE AND STRONG TOWER FAILED TO INTRODUCE COMPETENT, ADMISSIBLE EVIDENCE ESTABLISHING ITS DAMAGES.

II. WHETHER THE MASTER-IN-EQUITY ERRED IN GRANTING PARTIAL SUMMARY JUDGMENT ON STRONG TOWER'S MOTION FOR SUMMARY JUDGMENT ON ITS BREACH OF CONTRACT CLAIM AGAINST BALFOUR BECAUSE SUMMARY JUDGMENT ON LESS THAN THE ENTIRE BREACH OF CONTRACT CAUSE OF ACTION IS NOT AUTHORIZED BY RULE 56, SCRCP.

III. WHETHER THE MASTER-IN-EQUITY ERRED IN GRANTING PARTIAL SUMMARY JUDGMENT ON WATSON ELECTRICAL'S MOTION FOR SUMMARY JUDGMENT ON ITS BREACH OF CONTRACT CLAIM AGAINST BALFOUR BECAUSE SUMMARY JUDGMENT ON LESS THAN THE ENTIRE BREACH OF CONTRACT CAUSE OF ACTION IS NOT AUTHORIZED BY RULE 56, SCRCP.

IV. WHETHER THE MASTER-IN-EQUITY ERRED IN AWARDING ATTORNEYS' FEES TO STRONG TOWER AND WATSON ELECTRICAL AS A PART OF THE SUMMARY JUDGMENTS IN EACH OF THEIR FAVOR BECAUSE THERE WAS NO APPLICABLE STATUTE OR CONTRACT PROVISION AUTHORIZING SUCH ATTORNEYS' FEE AWARDS IN THIS CASE.

STATEMENT OF THE CASE

This appeal arises out of the construction of the Hotel Bennet (the "Hotel" or "Project"), a luxury hotel in Charleston, South Carolina owned by Library Associates, LLC ("Library") and the ensuing litigation arising out of that construction Project.

Balfour Beatty Construction, LLC ("Balfour") served as the Construction Manager for construction of the Hotel pursuant to a contract with Library. Balfour executed a subcontract with Strong Tower Construction, LLC d/b/a Koch Corporation ("Strong Tower") for installation of the ground level storefront bronze windows and doors. (R. 927-961). Balfour executed a subcontract with Watson Electrical Construction Co., LLC ("Watson") by which Watson became responsible

for the supply and construction of the electrical system in the Hotel and the Hotel's parking garage. (R. 333-374).

During the construction of the Hotel, Library stopped making payments to Balfour for the work, eventually leading to Balfour recording a mechanic's lien against the Hotel property on January 25, 2019, in the amount of $8,408,658.54. (R. 892).

On March 5, 2019, Strong Tower recorded a mechanic's lien against the Hotel property with the Charleston County Register of Deeds in the amount of $124,080.21, related to the labor and materials it supplied in the performance of its subcontract for the Project. (R. 898). On March 7, 2019, Watson recorded its mechanic's lien against the Hotel property in the amount of $1,859,359.00. (R. 903).

On March 5, 2019, Balfour commenced the action, C.A. No. 2019-CP-10-01108, against Library asserting causes of action for (1) foreclosure of mechanic's lien; (2) breach of contract; (3) quantum meruit / quasi-contract; (4) failure to make a reasonable investigation of a claim pursuant to S.C. CODE ANN. § 27-1-15; and (5) indemnity, among others. (R. 104).

In response to Balfour's Complaint, Library filed an Answer and alleged counterclaims against Balfour for (1) breach of contract; and (2) indemnity. (R. 130). On May 15, 2019, Library filed an Amended Complaint and Third-Party Complaint asserting counterclaims against Balfour for (1) breach of contract; (2) indemnity; and (3) declaratory judgment. Library's Third-Party Complaint alleged claims against certain subcontractors, including Strong Tower and Watson, for declaratory judgment. (R. 147-170).

On May 30, 2019, Strong Tower commenced a separate action against Library, and Library's construction lender (Metropolitan Life Insurance Company), C.A. No. 2019-CP-10-02868. In that action, Strong Tower asserted causes of action against Library for (1) mechanic's

lien foreclosure, and (2) quantum meruit / quasi-contract. Strong Tower also asserted causes of action against Balfour for (1) quantum meruit / quasi-contract; and (2) breach of contract. (R. 308-312).

On June 27, 2019, Watson filed an Answer to Library's Third-Party Complaint, and also asserted two cross-claims against Balfour, for (1) breach of contract and (2) quantum meruit and unjust enrichment. Watson also asserted counterclaims against Library for (1) quantum meruit and unjust enrichment; (2) mechanic's lien foreclosure; and (3) negligence. (R. 319-331).

On July 23, 2019, Balfour amended its statement of mechanic's lien and increased the amount of the lien to $12,066,147.09, at least in part based upon the mechanic's liens filed with regard to the Project by Strong Tower and Watson. (R. 909). Specifically, Balfour's amended mechanic's lien included a total amount of $104,859.21, associated with work performed in relation to Strong Tower's Subcontract.

After a motion, and by court order, Balfour amended its Complaint on October 3, 2019, to include foreclosure of its amended mechanic's lien along with its other causes of action. (R. 411-424). In response, Library filed an Answer alleging counterclaims against Balfour for: (1) breach of contract; (2) breach of contract accompanied by a fraudulent act; (3) indemnity; and (4) declaratory judgment. (R. 432-456). Library also asserted third-party claims against Watson and Strong Tower, among others, for declaratory judgment. (R. 451-453).

On November 18, 2019, the circuit court entered an order consolidating Strong Tower's mechanic's lien action with Balfour's suit against Library and referring the case to the Charleston County Master-In-Equity, the Honorable Mikell R. Scarborough (the "Master"). (R. 1, 5).

A. <u>Strong Tower Summary Judgment</u>

On October 19, 2020, Strong Tower moved for summary judgment, "or partial summary judgment," on its breach of contract claim against Balfour. (R. 919). In the Motion, Strong Tower

acknowledged that a dispute existed as to at least a $22,000 back charge assessed against it by Balfour based on assertions by Library that there were leaks occurring at the exterior doors at the Project installed by Strong Tower, as well as other delays. (R. 923). Nonetheless, Strong Tower argued that it was entitled to partial summary judgment "as to at least $82,859.21 owed by [Balfour] to [Strong Tower] under the parties' contract." (R. 924). The Master issued an order denying Strong Tower's Motion for Summary Judgment on January 8, 2021. (R. 9).

On May 6, 2021, Strong Tower moved again for summary judgment, "or partial summary judgment." (R. 1062). In its renewed Motion for Summary Judgment, Strong Tower acknowledged again that it was seeking "at least $82,859.21" for work performed pursuant to the Subcontract which it sought to characterize as the "uncontested" portion of its breach of contract claim against Balfour. (R. 1066). Strong Tower also acknowledged implicitly, if not explicitly, that a dispute existed as to at least the $22,000 back charge. (R. 1063-1064).

The Master held a hearing on Strong Tower's Motion for Summary Judgment on August 16, 2021. (R. 573). During the hearing, Strong Tower argued that it disputed the $22,000 back charge by Balfour and stated, "but I'm going to give them credit for it for the purposes of the summary judgment motion." (R. 673; 101:20–24). During the hearing, the Master announced his intention to grant summary judgment in favor of Strong Tower on its breach of contract claim against Balfour in the amount of $82,859.21. (R. 682, 110:7–8). After the Master announced his intention to grant Strong Tower's motion, counsel for Strong Tower acknowledged that the Master's granting of its Motion for Summary Judgment did not fully resolve its breach of contract claim. (R. 683, 111:24–112:1).

On September 9, 2021, the Master entered an order partially granting Strong Tower's Motion for Summary Judgment. The Master awarded Strong Tower: (1) $82,859.21 on its claim

for breach of contract; (2) $16,367.53 in prejudgment interest; (3) $64,927.50 in post-judgment interest and attorneys' fees; and (4) $404.88 in costs. (R. 25). In the Order, the Master stated that no genuine issue of material fact exists "as to a partial summary judgment award of $82,859.21, and [Strong Tower] is entitled to judgment as a matter of law against [Balfour] in the amount of $82,859.21 on its breach of contract claim." (R. 19). The Order further stated that "[b]ased on the absence of genuine issues of material fact with respect to ***at least*** $82,859.21, [Strong Tower] is entitled to judgment as a matter of law on that amount against [Balfour] on [Strong Tower's] breach of contract claim." (R. 25) (emphasis added).

On September 20, 2021, Balfour filed a motion for reconsideration of the order granting Strong Tower's Motion for Partial Summary Judgment, which the Master denied on April 4, 2024. (R. 1232; 96).

B. Watson Summary Judgment

On August 20, 2021, Watson moved for summary judgment or, in the alternative "partial summary judgment," on its breach of contract claim against Balfour. (R. 1137). Watson's breach of contract claim against Balfour sought $1,859,359, plus interest, costs, and attorneys' fees. (R. 1138-1139).

Watson alleged this amount was comprised of:

1. $597,546.28 for retainage under its Subcontract;
2. $62,091.71 for additional work performed pursuant to Change Orders 33 through 40;
3. $262,033.40 for work performed pursuant to changes and construction change directives Watson alleges Balfour ordered it to perform; and
4. $937,687.61 for "additional labor and services Watson provided" due to delays and inefficiencies caused by others.

(R. 1138-1139).

On August 31, 2021, during the hearing on Watson's Motion for Summary Judgment on its breach of contract claim against Balfour, Watson asserted that the $937,687.61 for "additional labor and services Watson provided" included:

1. $90,487.29 based on Watson's inability to prefabricate its work based on changes to the rooms;
2. $69,232.52 for material price escalation;
3. $78,211.78 for labor premium;
4. $45,906.07 for overtime;
5. $8,087.17 for temporary labor overtime;
6. $272,266.51 for extended job cost overhead; and
7. $373,497.28 for "cumulative impact."

(R.721-722, 34:16 - 35:10). Watson further clarified that the $373,497.28 for "cumulative impact" is "a calculation of the cost of labor that Watson expended on this project that was additional labor caused by mismanagement of th[e] project." (R. 728, 41:14 - 42:7).

During the August 31, 2021, summary judgment hearing, in response to Watson's claim and allegations, Balfour asserted expressly that a question of fact exists as to the $937,000 claimed by Watson because there was nothing in the record before the Master as to who was responsible for the claimed delays or how any of the claimed delays resulted in Watson having to perform additional work or incur additional costs. (R. 731, 44:9-21).

After Watson and Balfour concluded their arguments, the Master stated:

> So my ruling here is going to be a partial summary judgment . . . I tallied up the first, second, and third numbers, and I come to $921,671.39 as being owed by Balfour Beatty to Watson Electrical. **I do think it's a question of fact.** Maybe an additional question. But the additional claim of 937, so it's less than 50 cents on the dollar that you are asking for. But I'm going to grant partial summary judgment to the tune of $921,671.39. **You are going to**

> **need to be able to satisfy the Court as to the basis for the 937 figure**.

(R. 733-734, 46:23 - 47:10) (emphasis added).

On September 13, 2021, the Master entered an order granting Watson "partial" summary judgment and awarding Watson $921,671.39 on its breach of contract claim. (R. 39-40). The Order expressly acknowledged that, "as a matter of law, Watson must provide additional evidence in support of the amount of damages it seeks from [Balfour] above the $921,671.39 granted herein." (R. 36). In addition, the Master awarded Watson attorneys' fees and costs in the amount of $253,189.30; pre-judgment interest in the amount of $185,375.89; and post-judgment interest on the $921,671.39 at a rate of 7.25% compounded annually. (R. 39-40).

On September 23, 2021, Balfour filed a motion for reconsideration of the order granting partial summary judgment in favor of Watson. (R. 1238). The Master entered an order denying Balfour's Motion to Reconsider on April 12, 2024. (R. 101).

STANDARD OF REVIEW

When reviewing an order granting summary judgment, the Court of Appeals applies the same standard of review as was applicable to the master under Rule 56, SCRCP. *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 250, 734 S.E.2d 161, 163 (2012); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). Thus, in an appeal of an order granting summary judgment, the Court must decide whether the party moving for summary judgment established through competent, admissible evidence that there is no genuine issue as to any material fact and whether the undisputed, material facts entitle the moving party to judgment as a matter of law. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023); *Dawkins v. Fields*, 354 S.C. 58, 64, 580 S.E.2d 433, 436 (2003). When determining whether any genuine issues of material fact exist, the Court must view all evidence and all reasonable inferences

in the light most favorable to the non-moving party. *Callawassie Island Member Club, Inc. v. Martin*, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022).

When a master grants summary judgment on a question of law, the Court of Appeals reviews the ruling *de novo*. *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634–35, 776 S.E.2d 434, 437 (Ct. App. 2015). In a breach of contract case, the construction of an unambiguous contract is a question of law. *S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008).

In this appeal, the Court must decide whether Strong Tower and Watson established, through competent and admissible evidence, that there is no genuine issue as to any material fact such that each subcontractor is entitled to judgment as a matter of law on its claim for breach of contract against Balfour. In doing so, the Court must view all of the evidence submitted to the Master, and all reasonable inferences therefrom, in the light most favorable to Balfour. If the Court finds that a genuine issue of material fact exists as to any element of each subcontractor's claim for breach of contract, then it must reverse the Master.

In reviewing the Master's Order and entry of judgment on each motion for summary judgment, the Court must determine whether the judgment completely resolves the breach of contract cause of action at issue because an order that does not resolve all issues in the claim, and end the case, is improper. *See* Rule 56(d), SCRCP; *Chambers v. Pingree*, 334 S.C. 349, 356, 513 S.E.2d 369, 373 (Ct. App. 1999); *see also Evergreen Int'l, S.A. v. Marinax Const. Co.*, 477 F.Supp. 2d 697, 699 (D.S.C 2007); *Patrick Schaumburg Automobiles, Inc. v. Hanover Ins. Co.*, 452 F. Supp. 2d 857, 866 (N.D. Ill. 2006) ("Summary judgment may not be entered 'for a portion of a single claim in suit.'"); *Commonwealth Ins. Co. v. O. Henry Tent & Awning Co.*, 266 F.2d 200,

201 (7th Cir.1959); *Capitol Records, Inc. v. Progress Record Distrib., Inc.*, 106 F.R.D. 25, 28–29 (N.D. Ill. 1985).

ARGUMENT

I. THE MASTER-IN-EQUITY ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF STRONG TOWER ON ITS BREACH OF CONTRACT CLAIM AGAINST BALFOUR WHEN THE ESSENTIAL ELEMENT OF STRONG TOWER'S CLAIMED DAMAGES WAS DISPUTED AND STRONG TOWER FAILED TO INTRODUCE COMPETENT, ADMISSIBLE EVIDENCE OF ITS DAMAGES.

The Order granting summary judgment to Strong Tower, and the judgment entered thereupon, reflect error which must be reversed. The error arises because Strong Tower failed to introduce competent and admissible evidence to establish its claimed damages under the breach of contract, which is an essential element of its cause of action.

"Damages are an essential element to a breach of contract action that must be pled and proven by the plaintiff." *Cap. Corp. of Am., Inc. v. Teays River Invs., LLC*, No. CV 6:11-2796-HMH, 2012 WL 13006190, at *4 (D.S.C. Feb. 1, 2012) (citing *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). To recover damages pursuant to a breach of contract claim, the evidence submitted by the moving party "should be such as to enable the court . . . to determine the amount of damages with reasonable certainty or accuracy." *Monster Daddy, LLC v. Monster Cable Prod., Inc.*, No. CIV.A. 6:10-1170-MGL, 2013 WL 3337828, at *4 (D.S.C. July 2, 2013) (citing *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 611 S.E.2d 262, 269 (Ct. App. 2005)).

While Strong Tower moved for summary judgment on its breach of contract cause of action against Balfour, it never actually submitted evidence of the amount unpaid under the Subcontract or the amount it was entitled to be paid. Strong Tower never submitted invoices, affidavits or verified statements of account in support of its motion to establish the amount owed to it or its

damages resulting from the alleged breach. Strong Tower alleged that the breach was a failure by Balfour to pay amounts due under its Subcontract; however, Strong Tower never presented competent evidence of the actual amount due from Balfour.

Strong Tower sought to support its motion for summary judgment with interrogatories and Balfour's responses. The specific interrogatories relied upon were:

- **INTERROGATORY NO. 1: Set forth whether Balfour has included in, or claimed as part of, its $12,066,147.09 amended mechanic's lien the entirety of the value of the [Strong Tower's] $124,080.21 mechanic's lien.**

- **INTERROGATORY NO. 2: If the response to Interrogatories 1 is "no," or any variation, set forth what, if any, level of the Plaintiff's $124,080.21 mechanic's lien is included in, or claimed as part of, Balfour's $12,066,147.09 amended mechanic's lien.**

- **INTERROGATORY NO. 3: If Balfour has included in its mechanic's lien the entirety, or any portion, of the value of the [Strong Tower's] mechanic's lien, set forth the reasons why Balfour has not paid the [Strong Tower] that uncontested portion of [Strong Tower's] claim.**

(R. 963-965).

However, Balfour's responses to those interrogatories established only that its Amended Mechanic's Lien included $87,264.56 for amounts included in Strong Tower's Subcontract, including retainage, and $17,594.65 for amounts that Strong Tower had requested in change orders (which Balfour had, in turn, submitted to Library in requested change orders) but which had never been approved for payment. (Thus, Balfour's Amended Mechanic's Lien included a total of $104,859.21 associated with Strong Tower's Subcontract). Moreover, Balfour's responses, introduced by Strong Tower, expressly stated that "[t]he Owner of the Project has not paid Balfour in full for the value of the prime contract, as amended" and "the Owner of the Project claims it is owed damages for delays and/or defects in the construction and delivery of the Project," with "[o]ne of the defects identified [by the Owner] being leaks relating to the exterior doors installed

by Strong Tower." (R. 963-965). Balfour also responded specifically that "the Owner sent notice of these defects to Strong Tower on October 24, 2019." (R. 965). Finally, Balfour responded that "there is currently a $22,000 pending back charge that would reduce the contractual amount owed to Strong Tower." (R. 965).

In short, the interrogatories and responses offered by Strong Tower in support of its summary judgment motion did not constitute competent, admissible evidence establishing the actual amount owed or constituting Strong Tower's recoverable damages for the alleged breach of contract. They certainly do not negate the existence of genuine issues of material fact on the issue of damages or the amount owed.

In its Motion for Summary Judgment, Strong Tower merely asserted it was owed "at least" $82,859.21 under the Subcontract. (R 1066). This amount was apparently derived by Strong Tower acknowledging the $22,000 back charge by Balfour against its Subcontract and recognizing a deduction of that back charge amount from the $104,859.21 identified in Balfour's interrogatory responses as having been included in its calculation of the Amended Mechanic's Lien amount. At no point in its submissions to the Master did Strong Tower identify the actual remaining Subcontract balance at issue in its breach of contract cause of action. Strong Tower's inability to identify and provide competent evidence of the actual or specific amount owed pursuant to the Subcontract demonstrates plainly that a genuine issue of material fact existed on the breach of contract cause of action and the essential issue of damages.

Strong Tower's evidence submitted in support of its motion for summary judgment simply does not allow the conclusion that there is no genuine issue of material fact as to the amount Strong Tower is entitled to be paid under its Subcontract. Again, Strong Tower submitted no invoices, no requests for payment, no verified statement of accounts or other evidence to establish the

amount it was entitled to be paid for a breach of the Subcontract. Without such plain and clear evidence, summary judgment was inappropriate. Furthermore, in recognizing that only $82,859.21 was undisputed in its mechanic's lien claim of $124,080.21, Strong Tower admitted at least implicitly that $41,221 of its amount claimed to be due was in dispute. Accordingly, the Court should reverse the Master's Order granting (partial) summary judgment in favor of Strong Tower on its breach of contract cause of action. The breach of contract claim was not fully resolved and ended by the Master's Order and Judgment.

II. IT WAS ERROR FOR THE MASTER-IN-EQUITY TO GRANT PARTIAL SUMMARY JUDGMENT IN FAVOR OF STRONG TOWER SINCE STRONG TOWER AND THE MASTER SPECIFICALLY AND EXPRESSLY RECOGNIZED AND ACKNOWLEDGED THAT THE BREACH OF CONTRACT CAUSE OF ACTION WAS NOT FULLY RESOLVED BY THE MOTION FOR SUMMARY JUDGMENT OR ASSOCIATED ORDER, AND THERE REMAINED UNRESOLVED GENUINE ISSUES OF MATERIAL FACTS REGARDING THE BREACH OF CONTRACT CAUSE OF ACTION AND THE AMOUNTS ALLEGEDLY DUE THEREUNDER.

It is abundantly clear that the Order granting (partial) summary judgment in favor of Strong Tower, and the Judgment entered thereupon, were merely attempts at a partial summary judgment. The Order and Judgment did not completely resolve Strong Tower's breach of contract cause of action and certainly did not end the case on the breach of contract issue. Such a purported award or entry of partial summary judgment is not authorized by Rule 56, SCRCP, and is manifest error.

Rule 56(d), SCRCP, does not authorize "judgment" on a portion of a claim—even if that portion is undisputed while other portions of the claim are disputed. Rule 56(d) applies when the master is not able to render judgment for all of the relief requested by a party moving for summary judgment. In such a case, when the master is not able to resolve a claim in its entirety, Rule 56(d) authorizes the master only to: (1) deny the motion; or (2) make an order specifying the facts that do appear without substantial controversy and directing such further proceedings in the action as are just.

As the court in *Chambers v. Pingree*, 334 S.C. 349, 356, 513 S.E.2d 369, 373 (Ct. App. 1999) held, granting (partial) summary judgment when other genuine issues of material fact on the cause of action remain for future determination "is antithetic to our concept of summary judgment." In fact, the Court of Appeals held it to be "patently defective as an order granting summary judgment." *Id.* at 355, 513 S.E.2d at 373.

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.[1] In 2007, Rule 56 of the Federal Rules of Civil Procedure was revised to create two subsections. Federal Rule 56(d)(1) permitted courts to issue orders establishing facts that are not in dispute, and Federal Rule 56(d)(2) permitted courts to issue interlocutory summary judgment on liability alone when there is a genuine issue on the amount of damages. Under the 2007 amendment the practical application of Federal Rule 56(d) remained the same as the prior version. In 2010, Rule 56 of the Federal Rules of Civil Procedure was further amended and the prior language of Rule 56(d) was stricken. Under the 2010 amendment, Rule 56(g), FRCP, became a substitute applicable to cases and decisions formerly addressed under old Rule 56(d), FRCP. Given this history, it is clear how reference to federal court decisions under Federal Rule 56(d) or (g) remain applicable to cases involving Rule 56(d), SCRCP. Thus, consideration of such decisions is appropriate.

Numerous decisions by federal courts under Rule 56(d), FRCP, plainly establish that a party is simply not entitled to summary judgment if the judgment would not be dispositive of an

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[1] When a South Carolina Rule of Civil Procedure is substantially similar to a federal rule, South Carolina courts may look for guidance from cases interpreting the federal rules and such cases are persuasive. *See Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016); *Unisun Ins. v. Hawkins*, 342 S.C. 537, 542, 537 S.E.2d 559, 561–62 (Ct. App. 2000); *Gardner v. Newsome Chevrolet–Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991); *Roberts v. Peterson,* 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987) (noting that where the state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive).

entire claim. *Evergreen Int'l*, 477 F.Supp. 2d at 699; *see also Patrick Schaumburg Automobiles, Inc.*, 452 F. Supp. 2d at 866 ("Summary judgment may not be entered 'for a portion of a single claim in suit.'"); *Commonwealth Ins. Co. v. O. Henry Tent & Awning Co.*, 266 F.2d 200, 201 (7th Cir. 1959)(reversing "partial summary judgment" against plaintiff-insurers for the undisputed amount of the insured's claim, where an additional amount of that same claim remained disputed); *Capitol Records, Inc.*, 106 F.R.D. at 28–29 (holding that a party is not entitled to "partial" summary judgment with respect to a portion of damages that the defendant did not dispute).

In *Biggins v. Oltmer Iron Works*, 154 F.2d 214, 215 (7th Cir. 1946), the United States Court of Appeals for the Seventh Circuit analyzed whether the United States District Court for the Northern District of Illinois erred in granting partial summary judgment on the plaintiff's claim pursuant to Rule 56(d) of the Federal Rules of Civil Procedure—which mirrored Rule 56(d) of the South Carolina Rules of Civil Procedure at the time the opinion was issued. The issue was whether the grant of summary judgment was error because the lower court's order was only a partial grant of summary judgment, and it did not resolve the plaintiff's entire cause of action. The case involved a situation in which the plaintiff sought compensation for services rendered to the defendant and broke his claimed damages into five designated items but moved for summary judgment on only two of those five items. The defendant did not file a response or submit affidavits in opposition to the plaintiff's motion and the district court granted partial summary judgment in favor of the plaintiff on the two items of damages and ordered execution on the judgment. The defendant appealed the order granting partial summary judgment. The Seventh Circuit held that the grant of partial summary judgment was improper because Rule 56(d) does not authorize a court to grant summary judgment for less than the whole claim. Thus, the appeals court concluded that the judgment "was rendered in contravention and not in conformity with

[Rule 56(d)]." *Biggins*, 154 F.2d at 217. The Seventh Circuit noted that "[a]ll that plaintiff was entitled to at the time of the entry of the judgment was an order (not a judgment) fixing the amount of his claim no longer in dispute, which, under proper procedure would have ripened into a judgment only upon the ultimate disposition of the whole of his claim." *Id*.

In *Capitol Records, Inc. v. Progress Record Distributing, Inc.*, 106 F.R.D. 25, 28 (N.D. Ill. 1985), the United States District Court for the Northern District of Illinois analyzed a similar set of facts. Capitol Records brought suit against defendant Progress Record for amounts due in relation to goods sold by Capitol Records to Progress Record. Capitol Records sold and delivered merchandise to Progress Record valued at $17,571.50. Progress Record argued that Capital Records's claimed amount was not accurate due to Capital Records's failure to apply certain credits to its account. Capital Records moved for partial summary judgment only on the undisputed amount of its claimed damages ($9,009.93). Although Progress Record did not file a statement or submit evidence controverting Capitol Record's statement that $9,009.93 was the uncontested balance due, the court analyzed Rule 56(d) and held that the rule does not authorize the filing of a motion for partial adjudication of a claim. *Capitol Recs., Inc.*, 106 F.R.D. at 29. The court noted that "Rule 56(d) implicitly establishes that summary judgment is available only for an entire claim at a minimum" and "[f]raming the motion as one for partial summary judgment does not cure the fatal defect of moving for judgment on a portion of a claim." *Id*. at 28-29. The court elaborated further on the issues associated with such motions for partial summary judgment and stated:

> Were the court to hold otherwise, Rule 56(d) could be used to justify numerous and repetitive motions seeking to resolve limited factual issues in a piecemeal fashion. Such adjudications would not dispose of a claim or even become final until trial and would waste judicial resources in almost every case.

Id. at 29. Ultimately, the court held that it was not authorized to grant partial summary judgment on the cause of action because a genuine issue of material fact existed on the issue of the total amount of Capital Records's claimed damages.

Like the lower courts in *Chambers* and *Biggins*, the Master in this case improperly granted partial summary judgment in Strong Tower's favor. Similar to the lower court in *Biggins*, the very Order granting partial summary judgment by the Master in this case recognized that a genuine issue of material fact exists as to Strong Tower's claimed damages (including the $22,000 back charge) and, therefore, Strong Tower's claim for breach of contract was not, and could not be fully resolved by granting partial summary judgment on a portion of Strong Tower's claim for breach of contract. The Master implicitly recognized this fact by stating his conclusion as "[t]here exists no genuine issues of material fact as to ***at least*** $82,859.21 owed by [Balfour] to [Strong Tower] under the parties' contract." (R. 17). During the hearing on the motion, the Master recognized expressly that Strong Tower's claim for breach of contract was not fully resolved by granting partial summary judgment when he stated that Strong Tower may be permitted to request to present its case first during the trial of this matter. (R. 683, 111:1-23). In response, Strong Tower acknowledged that at least the $22,000 back charge was still in dispute. (R. 683-684, 111:24 - 112:1).

This recognition by the Master confirms that he knew he was granting only partial summary judgment on Strong Tower's breach of contract claim and that he was unable to grant a summary judgment which was dispositive of the entire breach of contract claim. Therefore, the Master's decision to grant summary judgment and order judgment on only a portion of Strong Tower's cause of action for breach of contract was, as this Court held in *Chambers*, "patent error." At most, the Master could only ascertain what material facts existed without controversy and enter

an order specifying the facts appearing without substantial controversy and directing further proceedings in the action under Rule 56. When the Master issued an order granting summary judgment to Strong Tower and entered a judgment thereupon, the Master committed reversible error.

III. IT WAS ERROR FOR THE MASTER-IN-EQUITY TO GRANT PARTIAL SUMMARY JUDGMENT IN FAVOR OF WATSON SINCE WATSON AND THE MASTER SPECIFICALLY AND EXPRESSLY RECOGNIZED AND ACKNOWLEDGED THAT THE BREACH OF CONTRACT CAUSE OF ACTION WAS NOT FULLY RESOLVED BY THE MOTION FOR SUMMARY JUDGMENT OR ASSOCIATED ORDER, AND THERE REMAINED UNRESOLVED GENUINE ISSUES OF MATERIAL FACTS REGARDING THE BREACH OF CONTRACT CAUSE OF ACTION AND THE AMOUNTS ALLEGEDLY DUE THEREUNDER.

As with the ruling on the summary judgment motion involving Strong Tower, the Master recognized he was unable to grant the full relief requested by Watson on its breach of contract action against Balfour. Therefore, the Master purportedly ordered a partial summary judgment. As in the case of Strong Tower, this attempt at an award or entry of partial summary judgment is not authorized by Rule 56 and is manifest error.

As discussed in the preceding section, Rule 56(d), SCRCP, does not authorize "judgment" on a portion of a claim, even if that portion is undisputed while other portions of the claim are disputed. In the case of Watson, just as Strong Tower, it is absolutely apparent the Master could not grant complete summary judgment to Watson on its breach of contract claim because genuine issues of material fact continued to exist. Although Rule 56(d) authorizes the Master only to: (1) deny the motion; or (2) make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just, the Master nonetheless ordered partial summary judgment and that Order was error.

Like the lower courts in *Chambers* and *Biggins*, the Master in this case improperly granted partial summary judgment in Watson's favor. During the hearing on Watson's motion, the Master

acknowledged expressly that he was granting only "partial" summary judgment to Watson and a question of fact existed as to Watson's claimed damages:

> So my ruling here is going to be a **partial summary judgment** . . . I tallied up the first, second, and third numbers, and I come to $921,671.39 as being owed by Balfour Beatty to Watson Electrical. **I do think it's a question of fact.** Maybe an additional question. But the additional claim of 937, so it's less than 50 cents on the dollar that you are asking for. But I'm going to grant partial summary judgment to the tune of $921,671.39. **You are going to need to be able to satisfy the Court as to the basis for the 937 figure**.

(R. 733-734) (emphasis added).

Similar to the lower court in *Biggins*, the very Order granting partial summary judgment by the Master in this case recognized that a genuine issue of material fact continued to exist as to Watson's entitlement to all of its claimed damages for breach of contract. In that Order the Master acknowledged that Watson "sought damages in the amount of $1,859,359, plus interests, costs and attorneys' fees." (R. 33). However, the Master awarded Watson only "$921,671.39, plus prejudgment interest, post-judgment interest, costs and attorneys' fees" and stated that "as a matter of law, that Watson must provide additional evidence in support of the amount of damages it seeks from [Balfour] above the $921,671.39 granted herein." (R. 33, 36). Notably, the Master did not award Watson the $937,687.61 in damages that Watson claimed were owed for "additional labor and services Watson provided" pursuant to its Subcontract. The Master's recognition that Watson must provide additional evidence to substantiate its claim for the remaining $937,687.61 evidences the fact that Watson's claim for breach of contract was not, and could not be fully resolved by granting partial summary judgment on a portion of Watson's claim for breach of contract. This recognition by the Master establishes that he was unable to grant a summary judgment which was dispositive of Watson's entire breach of contract claim against Balfour. Thus, because of this fact, the Master's decision to grant summary judgment on only a portion of Watson's cause of action

for breach of contract was, as this Court held in *Chambers*, "patent error." The most the Master could do under Rule 56 was ascertain what material facts existed without controversy and enter an order specifying such facts and directing further proceedings in the action. When the Master issued an order granting summary judgment to Watson, and entered a judgment thereupon, he also expressly recognized that further proceedings on the breach of contract cause of action were necessary. In entering such an Order and Judgment, the Master committed reversible error.

IV. THE MASTER-IN-EQUITY ERRED IN AWARDING ATTORNEYS' FEES TO STRONG TOWER AND WATSON AS A PART OF THEIR SUMMARY JUDGMENTS BECAUSE THERE WAS NO APPLICABLE STATUTE OR CONTRACT PROVISION AUTHORIZING SUCH ATTORNEYS' FEE AWARDS IN THIS CASE.

Under South Carolina law, an award of attorneys' fees to a party in litigation may be justified only if it is specifically authorized by an applicable statute or an applicable contract provision between the parties. *S.C. Dep't of Soc. Servs. v. Tharp*, 312 S.C. 243, 245, 439 S.E.2d 854, 856 (1994). In this case, the Master ordered an award of attorneys' fees to each of Strong Tower and Watson solely on the basis that they were each deemed to be a "prevailing party" and were entitled to the fee award under "Article 10.D" of their subcontracts with Balfour. (R. 36-37; R. 21-22). This conclusion by the Master, and the resulting awards of attorneys' fees to Strong Tower and Watson, were plain error.

Article 10 of each Subcontract is entitled "Contract Interpretation and Disputes. "Subsections "A" through "D" of Article 10 each describes a distinct dispute scenario. (R. 937).

Article 10.A describes and applies only to a dispute scenario in which the "disputes between Subcontractor and Contractor" do "not involv[e] the conduct of the Owner or the Contract Documents." (R. 937). In such a situation, Article 10.A authorizes the Contractor to elect to have such disputes resolved by arbitration. There is no attorney fee award provision in Article 10.A.

Article 10.B describes and applies to a dispute scenario in which the "disputes between Contractor and Subcontractor involve the conduct of the Owner or an interpretation or requirement of the Contract Documents." (R. 937). This is the situation presented in this case. In such dispute situations, the Subcontractor is required to follow all claim, notice and disputes procedures and requirements of the "Contract Documents" and may be joined into any court or arbitration proceedings and be bound to the Contractor by the decisions or determinations in such proceedings. (R. 937). There is no attorney fee award provision in Article 10.B and no such provision applicable in such situations.

Article 10.D describes and applies to disputes described and otherwise covered by Article 10.A—except that the Contractor elected not to compel the dispute to arbitration. In other words, Article 10.D—by its express terms—applies only to disputes between the Subcontractor and Contractor that do "not involve[e] the conduct of the Owner or the Contract Documents." (R. 937). Such dispute scenarios in which Contractor elects not to compel arbitration under Article 10.A "will be resolved through litigation…." (R. 937). "In connection with any such litigation [litigation of dispute between Subcontractor and Contractor in which the conduct of the Owner or the Contract Documents is not involved] "the prevailing party will be entitled to recover its reasonable attorney's fees and court costs in connection with any such litigation." (R. 937). The attorney fee award provision in Article 10.D is limited to the one distinct dispute scenario in which the dispute does "not involv[e] the conduct of the Owner or the Contract Documents." (R. 937).

It is axiomatic that the issue of whether the dispute between the Subcontractor and Contractor involves the conduct of the Owner or the Contract Documents is a threshold determination to be made at the commencement of the dispute. The assessment of whether the dispute involves the conduct of the Owner or the Contract Documents must be made at the

commencement of the dispute, not at the conclusion, because the Contractor's right to elect to compel arbitration—must be made at the commencement of the dispute resolution proceedings not at the conclusion. Thus, the assessment of whether the dispute involves the conduct of the Owner or the Contract Documents must be framed by the pleadings and the allegations at commencement.

In the case of Strong Tower and Watson, the pleadings and initial allegations by Strong Tower and Watson specifically allege and implicate the conduct of the Owner in the disputes between those subcontractors and Balfour. Relevant allegations evidencing the involvement of the Owner's conduct in the dispute between Strong Tower and Balfour include:

1. "Library, is retaining sums currently due and owing the Defendant, Balfour." (R. 311).

2. "[T]hese sums were generated partially through the use of [Strong Tower's] materials on the project." (R. 311).

3. "Library[] is currently holding the sums in a constructive trust for the benefit of [Strong Tower] who furnished goods and materials necessary to complete the project and generate these funds." (R. 311).

4. "Library[] should be ordered to pay [Strong Tower] enough of said funds to satisfy its indebtedness." (R. 311).

5. "Library and Balfour, have had the use of these materials, have been enriched by the provision of services and materials, and are unjustly retaining the benefit of these services and materials without paying [Strong Tower]." (R. 310).

6. "Library and Balfour, are liable to [Strong Tower] for the reasonable value of materials, One Hundred Twenty-Four Thousand Eighty and 21/100 ($124,080.21) Dollars, plus prejudgment interest at 8.75% per annum from the date said materials and service were supplied." (R. 310).

Likewise, relevant allegations evidencing the involvement of the Owner's conduct in the dispute between Watson and Balfour include:

1. "At the direction of Balfour, Watson performed work that was beyond the scope of the Watson Subcontract ("Additional Work").

Watson requested payment for the Additional Work. Balfour has not paid Watson for the Additional Work. Upon information and belief, Library Associates has not paid Balfour for the Additional Work." (R. 324).

2. "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, based upon the following:

   a. "QM Defendants were aware, or should have been aware, that Watson reasonably expected payment for providing labor, materials and equipment used to improve the Property";

   b. "QM Defendants knew that Watson provided labor, materials, and equipment for the improvement of the Property, and have accepted and received the labor, materials and/or equipment supplied by Watson and have benefited from the same, but have failed and refused to pay for such materials following demand by Watson";

   c. "As a result of QM Defendants' failure to make payment, after demand by Watson, QM Defendants have become unjustly enriched, at Watson's expense, in an amount equal to the reasonable fair market value of labor, materials, and equipment provided by Watson to improve the Property." (R. 325-326).

3. "Upon information and belief, during the course of the Project, Library Associates breached its duty of care to Watson by making repeated revisions to the Project which damaged Watson." (R. 329).

4. "Upon information and belief, during the course of the Project, Library Associates breached its duty of care to Watson by repeatedly failing to make Project design decisions within a reasonable time which damaged Watson." (R. 329).

5. "Upon information and belief, 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." (R. 329).

6. "Upon information and belief, during the course of the Project, Library Associates breached its duty of care to Watson by adversely impacting the schedule of Watson's work on the Project, which damaged Watson." (R. 329).

7. “Upon information and belief, Library Associates breached its duty of care to Watson by delaying Watson’s work on the Project, which damaged Watson.” (R. 329).

8. “Upon information and belief, Library Associates knew that its actions as described above would adversely impact and damage Watson and other subcontractors work on the Project.” (R. 329-330).

9. “As a direct and proximate cause of Library Associates’ negligence, willfulness, wantonness and recklessness, Watson has been damaged by, among other things, increases to its labor costs, and prolonged time working on the Project.” (R. 330).

Article 10.D of the Subcontracts between Balfour and each of Strong Tower and Watson only provides for a potential award of attorneys’ fees in a specific, limited situation. (R. 937). The attorneys’ fee provision in Article 10.D of each Subcontract is not a broad prevailing party provision applicable in all cases. In fact, the Article 10.D attorneys’ fee award provision in each express Subcontract applies only when (a) there exists a dispute between Balfour and the Subcontractor, (b) which dispute does not also involve “the conduct of the Owner or the Contract Documents,” and (c) which Balfour elects not to compel to resolution by arbitration. (R. 937). In only such a specific and limited situation does Subcontract provision, Article 10.D, apply to provide for a recovery of reasonable attorneys’ fees and court costs by the prevailing party (Balfour or the Subcontractor).

The Master made no analysis of whether disputes—the breach of contract claims by Strong Tower or Watson—qualified under the conditions of Article 10.D. He certainly made no finding or conclusion in his Orders on this critical issue which is determinative of whether any attorneys’ fee award was authorized.

Thus, the critical issue in determining whether an award of attorneys’ fees to any of these Subcontractors as the prevailing party in their breach of contract cause of action against Balfour is whether the breach of contract dispute between the Subcontractor and Balfour (a) involves the

conduct of the Owner, or (b) involves the Contract Documents. Despite merely assuming Article 10.D. applied, and awarding Strong Tower and Watson attorneys' fees in connection with the breach of contract claims against Balfour, the Master included no discussion, and made no finding, about whether the attorneys' fee award provision of Article 10.D of the Subcontract did, in fact, apply to the pending dispute. The Master never discussed and certainly never made the requisite finding that the breach of contract dispute between such Subcontractor and Balfour did not involve the conduct of the Owner or did not involve the Contract Documents.

The Record does not establish that either such condition existed. In fact, the Record in the case clearly reflects that the conduct of the Owner, and the Contract Documents, were very much involved in the payment (breach of contract) dispute between Balfour and each of the Subcontractors.

In the case of Strong Tower, it filed a mechanic's lien against the Library property for $124,080.21. (R. 898). By that lien claim, Strong Tower inherently claimed that it had supplied labor and materials to the Project in that amount, for which it claimed it had not been paid. When Strong Tower sued in this case, it not only asserted a breach of contract cause of action against Balfour, it also asserted an express cause of action against Library alleging a constructive trust on contract funds being held by Library. Specifically, Strong Tower alleged "Library, is retaining sums currently due and owing the Defendant, Balfour" and "these sums were generated partially through the use of [Strong Tower's] materials on the project." (R. 311). The $22,000 back charge against Strong Tower arose from Library's assertion that water intrusion occurred at the Project as a result of Strong Tower's work. In Strong Tower's Motion for Summary Judgment, filed October 19, 2020, it acknowledged the issue that Balfour had not paid Strong Tower the amount claimed "because of the Owner's claims for delay and defects." (R. 921). Those defects specifically

included the Owner's allegations of water intrusion at the exterior doors installed by Strong Tower. Those facts and circumstances plainly reflect that in asserting defects in the work (including specifically work by Strong Tower) and withholding payments to Balfour on account of those alleged defects, the conduct of the Owner (Library) is involved in the dispute between Strong Tower and Balfour.

The Record in this case further demonstrates that Library's conduct is involved in the dispute between Strong Tower and Balfour. In opposition to Strong Tower's Motion for Summary Judgment, Balfour submitted correspondence from Library raising issues related to water intrusion through the doors supplied by Strong Tower, which Library argued, "is causing damage to interior finishes, including but not limited to the wood floors." (R. 998). Balfour also submitted evidence related to the fact that in excess of 400 hours had been spent by Balfour to remedy leakage problems through the doors supplied by Strong Tower, and the associated back charge relates to costs and work performed to remedy the water intrusion issues asserted by Library.

Strong Tower even recognized and alleged that "Library[] is currently holding the sums in a constructive trust for the benefit of [Strong Tower] who furnished goods and materials necessary to complete the project and generate these funds" and "Library [] should be ordered to pay [Strong Tower] enough of said funds to satisfy its indebtedness." (R. 311). The essence of Strong Tower's allegations and cause of action for breach of contract was related to positions taken by (the involvement of) the Owner. Thus, Article 10.D does not apply in this case and does not afford the Master a basis to award Strong Tower its attorneys' fees. The Master's award of those attorneys' fees to Strong Tower under Article 10.D was error.

In the case of Watson, the Record likewise reflects that Library's conduct is involved in the dispute between Watson and Balfour. In Watson's Answer to Library's Third-Party Complaint

against it, Watson asserted a counterclaim against Library for negligence in which Watson alleged that "Library Associates breached its duty of care to Watson by adversely impacting the schedule of Watson's work on the Project" and "Library Associates breached its duty of care to Watson by delaying Watson's work on the Project." (R. 329). Since Watson's breach of contract claim against Balfour included alleged delay damages of $272,266.51 ("extended job cost overhead"), the dispute between Watson and Balfour involves Library's conduct because determination of that claim implicates the issue of whether Library's conduct caused the delay and at least some of the costs/damages claimed by Watson as a result of the delay.

Watson's breach of contract claim also included a claim for $373,497.28 for "cumulative impact"—which it described as costs incurred as a result of the Project lasting more than 500 days longer than anticipated—additional form of delay damages. (R. 728, 41:14 - 25). Whether Watson is entitled to recover costs it incurred as a result of the delay—which it alleged were delays caused by Library—again involves the issue of whether Library is a cause for delay in the completion of the Project. In support of its Motion for Summary Judgment, Watson submitted excerpts from the deposition of Balfour's Rule 30(b)(6) designee who testified that the delay in the completion of the Project was caused by Library and its numerous design changes. (R. 1156). Thus, the issue of who caused the delay in the completion of the Project, and Watson's entitlement to costs incurred as a result of the delay, directly involves Library's conduct.

Finally, Watson's claim for breach of contract includes a claim of $62,091.71, for additional work performed pursuant to changes orders. Article 9.A(iv) of the Subcontract states that Balfour's liability for costs arising from change orders issued by Library is limited to the amounts Balfour recovers from Library, and payment for such changes will only be made to Watson to the extent Balfour receives payment from Library. When Library fails or refuses to pay

Balfour for work performed pursuant to a change order, then Library's conduct is at issue in Watson's claim for payment pursuant to a change order. Thus, Watson's claim for breach of contract based upon an alleged failure to be paid for work performed pursuant to change orders directly involves the conduct of Library. 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. 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 Strong Tower and Watson should be reversed.

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