

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS

Solid Rock Construction Services, LLC)

Plaintiff,)

-vs-)

Mike Wheeler, Cindy Wheeler, Oconee)
Federal Savings and Loan Association,)

Defendants,)

AND)

Mike Wheeler and Cindy Wheeler)

Third-Party Plaintiffs)

-vs-)

MJ Custom Builders, LLC)

Third-Party Defendant.)

RECEIVED
Dec 16 2025
SC Court of Appeals

FINAL ORDER

Case No. 2022-CP-37-00067

DATE OF TRIAL: March 26-27, 2025
PRESIDING JUDGE: Steven C. Kirven
PLAINTIFFS' ATTORNEY¹: Townes Johnson
DEFENDANT'S ATTORNEY: Joshua B. Raffini
COURT REPORTER: Virginia Campbell

THIS MATTER came before the Court for trial on March 26, 2025. At the request of the attorneys the trial was held in Anderson, SC. The original Plaintiff filed its mechanic's lien foreclosure action, naming as Defendants the homeowners, Mike and Cindy Wheeler (the "Whealers"), and the bank which holds a first lien mortgage on the subject property. The

¹ This case originally involved additional parties who were dismissed prior to trial. For simplicity, the original Defendants Mike Wheeler and Cindy Wheeler shall be referred to as Plaintiffs. The original Third-Party Defendant, MJ Custom Builders, LLC, shall be referred to as Defendant.

Wheelers then filed a Third-Party Complaint against MJ Customer Builders, LLC (“MJ Custom”), the general contractor for this construction project, asserting various causes of action related to construction of their home. MJ Custom asserted counterclaims against the Wheelers for, *inter alia*, breach of contract. Prior to trial, the Wheelers entered into a separate settlement agreement with the original Plaintiff, Solid Rock Construction Services, LLC, resulting in dismissal of Solid Rock as a party. The remaining parties agreed that all claims between the Wheelers and MJ Custom were subject to the first priority lien of Oconee Federal Savings and Loan Association, and agreed to dismiss the bank as a party on that basis. Accordingly, the contested issues for trial were only as between the Wheelers and MJ Custom.

At the call of the case, the remaining parties- the Wheelers and MJ Custom- were present with their respective attorneys. The only two (2) members of MJ Custom, Jim Nichols and Marty Whitfield, were present. The parties presented testimony and evidence in support of their respective positions. Following trial, both parties were invited to submit post-trial briefs outlining their respective positions and both parties availed themselves of the opportunity to file post-trial briefs. Based on the evidence and testimony submitted, arguments of counsel, and all matters appearing of record, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Plaintiffs are citizens and residents of the County of Oconee, State of South Carolina.
2. The Defendant is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, with its principal place of business in the County of Anderson, State of South Carolina.

3. This action concerns a contract to construct a residence on real property situated in Oconee County, therefore, venue is proper in Oconee County, although the parties consented to hold the trial in Anderson County.
4. The parties do not dispute that their relationship is governed by a valid, enforceable contract, a copy of which was introduced into evidence by both parties at trial.
5. The parties largely agree on the factual background as follows: the subject contract involved normal residential construction; the payment terms of the contract are clear and unambiguous; based on the testimony of both parties, it is apparent that toward the end of construction, the Wheelers were pressing MJ Custom to get a certificate of occupancy because their temporary living arrangements were coming to an end and they needed to get into the new house; MJ Custom accommodated the Wheelers by moving as rapidly as possible and ultimately obtained a certificate of occupancy which allowed the Wheelers to move in; the parties do not dispute that the Wheelers moved into their residence before all final work was completed and certainly before any “punch list” items could be addressed; the parties do not dispute that during construction MJ Custom submitted regular draw requests and that the Wheelers, or their bank, made timely payment on draw requests; however, the testimony of both parties was clear that near the end of construction, and certainly once the Wheelers moved into their home, the relationship between the parties deteriorated; at that time, the Wheelers began disputing the balance due on the contract and questioning significant overages beyond the original contract price, some of which were caused by material shortage issues and some by changes in the project.

6. As the relationship between the parties deteriorated, both parties refused further performance under their contract. The Wheelers refused to pay the final balance in full and began raising issues about the completion of construction and alleged defects. MJ Custom insisted that final payment be made before further work was done including the punch list items which had been presented after the Wheelers moved into their residence. MJ Custom acknowledged that there were some items which needed to be addressed and indicated its willingness to do so once final payment was made.
7. Based on the contract language, the Wheelers had an obligation to pay the final payment when presented and MJ Custom had the right to stop work until payment was made. Accordingly, the Wheelers committed the first breach of the subject contract. Furthermore, based on the testimony and evidence submitted the billing disputes raised by the Wheelers were not raised until long after the litigation was initiated and the Wheelers pointed to several alleged discrepancies as the basis for non-payment. While the Wheelers assert, and MJ Custom did not dispute, that minor billing issues may constitute a technical breach, not every breach of contract is substantial or material such that it would relieve the other party of its obligation to perform. The breaches complained of by the Wheelers were not substantial enough to constitute truly material breach or relieve the Wheelers of their performance obligations.
8. As part of the Court's findings, I also find that credibility of witnesses is relevant to the Court's resolution of these claims. I find that MJ Custom, through testimony of both its members, explained how its principles and methodology were very straight-

- forward. It appears from testimony that MJ Custom was more than willing to correct any billing errors or disagreements which were belatedly raised by the Wheelers. The Court notes that any billing issues were included in the monthly reports provided to the Wheelers but they never raised questions about them until much later in the process and even after commencing litigation. On the other hand, the Wheelers, and primarily Plaintiff Mike Wheeler, appeared to hedge in their answers and inflate some of the construction issues they complained about. It also appeared that the Wheelers were short of financial resources to deal with the contract overages. Mr. Wheeler stated on numerous occasions that they did not have ‘expendable assets’.
- Both parties testified that while the initial representation by the Wheelers was that they would pay cash for construction, a bank loan was obtained at the latter stages of construction. It appears to the Court that the Wheelers financial condition factored into some of their complaints and impacted their credibility.
9. I find that as the Wheelers were guilty of breach, MJ Custom is entitled to an award of damages due to the Wheelers’ breach. Based on the evidence presented, beyond competing allegations of which party is responsible for breach, this case is essentially a billing dispute. Testimony and evidence presented reflect three (3) different types of billing disputes between the parties, as follows:
- a. The parties identified certain billing errors where the charges to the Wheelers did not correspond to actual charges for MJ Custom. The primary dispute was about charges for an on-site portable toilet, where the Wheelers were billed a rounded amount of \$100.00 but actual charges were approximately \$92.00 per month. MJ Custom readily acknowledged the error and agreed to afford the

Wheelers credit for these charges and applicable builder fee related thereto.

The total adjustment to the balance from this dispute is \$106.01 in favor of the Wheelers.

- b. The parties also identified a dispute about builder discounts obtained by MJ Custom. This dispute concerned whether MJ Custom was entitled to retain credits for prompt payment to certain suppliers or whether the final amount actually paid should be that charged to the Wheelers. While it appears to the Court that these charges would be savings realized by effective business management rather than indicative of cost as contemplated by the contract, MJ Custom has again offered to adjust the balance in this regard. The total adjustment as to this dispute is \$1722.75 in favor of the Wheelers, which is inclusive of the 15% builder fee.
- c. The final disputed billing category concerns charges to the Wheelers which they claim were not adequately documented. While receipts and cancelled checks would certainly document expenses incurred, that is not the only method for doing so. Furthermore, it appears that the dispute here concerns adequate documentation as the Wheelers did not contend that any particular item billed had not been performed or incurred. Nevertheless, MJ Custom had an obligation to properly document costs pursuant to their contract. Based on the evidence presented, the following adjustments are appropriate due to disputes over billing documentation reflecting the amount billed and the amount the Court allows to MJ Custom for each item:
 - i. Insurance \$2500 billed, \$0.00 allowed

- ii. Framing (partial billing for this item) \$2500 billed, \$0 allowed
- iii. Siding (partial) \$1000 billed, \$500 allowed
- iv. Window install \$2500 billed, \$1250
- v. Door install \$800 billed, \$400 allowed
- vi. Door install \$400 billed, \$200 allowed
- vii. Re-do work \$200 billed, \$0 allowed
- viii. Dump haul and fee to Marty Whitfield, \$465.60 billed, \$465.60 allowed.

d. The total adjustment as to billing documentation disputes is \$8,682.50 in favor of the Wheelers which includes disallowed amounts of \$7,550.00 plus the 15% builder fee of \$1,132.50.

10. MJ Custom asserts a total amount due of \$68,198.59 after adjusting the original amount claimed for the separate settlement with Solid Rock. Based on the above findings, the Court finds that total reductions are in the amount of \$10,511.26. Accordingly, the final amount due to MJ Custom on its counterclaim for breach of contract is \$57,687.33.
11. While this was primarily a contract case, the Wheelers asserted multiple causes of action. However, the evidence presented does not establish any of Wheeler's other causes of action for fraud, unfair trade practice, negligence, or any related causes of action. Furthermore, Plaintiffs failed to prove any conduct that would serve as a basis for awarding punitive damages. Accordingly, Plaintiffs other claims are denied.
12. Defendant MJ Custom, in addition to contract claims, brought a cause of action to foreclose its filed mechanic's lien. MJ Custom readily admits it did not serve and file

- a Lis Pendens as required by the mechanic's lien statute. While MJ Custom raises several arguments as to why such should not be necessary in this case, the statute must be strictly construed, and it clearly mandates that the Lis pendens is a requirement to pursue a mechanics lien foreclosure. The purpose of the Lis pendens is to give notice that an action is pending based on the claimed lien which may affect title to specified real estate. In this case the original plaintiff, Solid Rock, did file a Lis pendens regarding its mechanic's lien claim, but MJ was not even a party to the action at that time and reference to the Solid Rock Lis pendens would give no notice of the subsequent MJ Custom claim. Accordingly, the mechanics lien claim of MJ must be dismissed.
13. While the Court's finding as to breach are dispositive of contract damage claims by the Wheelers, the Court also finds that the Wheelers are not entitled to recover any damages claimed for remedial work to landscaping. Testimony presented established that the Wheelers did not provide a meaningful opportunity to MJ Custom to address any concerns about landscaping. The parties did not dispute that the Wheelers did not file their Notice and Right to Cure until they filed their Third-Party Complaint. Indeed, it appears that MJ Custom and its landscaping subcontractor inspected the Wheeler residence upon request and scheduled the subcontractor to address any landscaping issues. However, the planned work was delayed by the death of a close family member of the subcontractor and the Wheelers did not wait to reschedule instead proceeding immediately with another contractor. Accordingly, even if the Wheelers were entitled to any damages, they could not recover damages from landscaping issues for this additional reason.

14. I find that both parties assert claims for attorney's fees. The subject contract is silent as to attorneys fees. In this case the Wheelers are the prevailing party as to the mechanics lien issue and are entitled to an award of such based on the expense incurred in defending the mechanics lien claim. However, it appears that very little time and expense was spent by Wheeler's attorney regarding the mechanics lien claim by itself. Almost all the time and effort involved in the mechanic's lien defense would have been incurred in defense of the breach of contract claim and assertion of its various issues. An award of \$1000.00 is reasonable in this situation especially because MJ Custom is the prevailing party on the contract issues. The attorney's fees awarded to the Wheelers shall be an offset against the judgment owed to MJ Custom.

CONCLUSIONS OF LAW

To recover on a claim for breach of contract, a plaintiff must prove (1) existence of a valid contract, (2) its breach, and (3) damages proximately caused by breach. *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962). The parties do not dispute the existence of a valid contract. The parties dispute who breached the subject contract. South Carolina follows the majority rule regarding prior breach, or the "first breach rule." The Court finds that even if MJ Custom did breach its contractual obligations, such breaches were merely technical in nature and not material and did not relieve the Wheelers from their obligation to perform. By refusing performance when due, the Wheelers committed the first meaningful breach. *See, Silver v. Aabstract Pools*, 376 S.C. 585 (S.C. App. 2008); *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E. 2d 271 (1993); *Palmetto Mortuary Transport, Inc. v. Knight Systems, Inc.*, 424 S.C. 444, 818 S.E. 2d 724 (2018).

To prevail on a claim for breach of contract accompanied by a fraudulent act, a plaintiff must prove, in addition to the elements for any breach of contract, a fraudulent intent related to breach and a fraudulent act. *See Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374 (1986). In order to prevail on a fraud claim, a plaintiff must prove (1) a representation, (2) its falsity, (3) its materiality, (4) either knowledge of its falsity or a reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury. *Kahn Construction Co. v. South Carolina National Bank of Charleston*, 275 S.C. 381, 271 S.E.2d 414 (1980). In this case, the Wheelers did not provide any evidence of specific fraudulent acts and as such any claims based on fraud fail.

As to warranty claims, the Court concludes that a builder, in the course of construction, has provided an implied warranty to complete work in a workmanlike manner. *Smith v. Breedlove*, 377 S.C. 415, 661 S.E.2d 67 (Ct.App. 2008). However, Plaintiffs failed to present sufficient proof of such breach as to any specific claim. Furthermore, any obligation by Defendant to perform under warranty was suspended or relieved by Plaintiffs' breach.

Plaintiffs assert additional claims for unfair trade practices. To prevail, Plaintiffs would have to prove both conduct that was unfair or deceptive and its impact on the public interest. The evidence simply does not reflect wrongful conduct sufficient to constitute unfair trade practices and Plaintiffs' claims as to this cause of action are denied.

As an additional grounds for denial of damages to the Plaintiffs, prior to recovery of damages for repairs Plaintiffs are required to serve a Notice and Right to Cure pursuant to SC Code 40-59-830. Plaintiffs failed to do so until some three (3) months after they had hired another

contractor to perform work on their property. Defendant did schedule an inspection with the original subcontractor before Plaintiffs made clear they would not wait for further inspection.

To pursue foreclosure of a mechanic's lien, the party seeking to foreclose must strictly follow the applicable statutory scheme codified at SC code 29-5-10 et seq. In this case, MJ Custom failed to file a separate Lis Pendens as required and therefore they may not proceed with foreclosure of their mechanic's lien. Damages claims by MJ Custom are limited to their contract causes of action. *See, Muller v. Myrtle Beach Golf & Yacht Club*, 303 SC 137, 399 S.E.2d 430 (S.C. App. 1990); *Shelley Constr. Co. v. Garden Homes, Inc.*, 287 S.C. 24, 336 S.E. 2d 488 (S.C. App. 1985). As the prevailing party on the mechanic's lien, the Wheelers are entitled to an award of reasonable attorneys fees. For the reasons stated above, I conclude that an award of \$1,000.00 in attorneys' fees to the Wheelers is appropriate and shall be an offset in that amount against damages awarded to MJ Custom.

IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED:

1. Plaintiffs claims are denied.
2. Defendant is entitled to recover \$57,687.33 on their breach of contract claim.
3. Plaintiffs are entitled to an award of attorney's fees in the amount of \$1,000.00 as an offset against damages awarded to MJ Custom.
4. Defendant shall have judgment against Plaintiffs in the amount of \$56,687.33.

IT IS SO ORDERED this _____ day of September, 2025.

Anderson, South Carolina

Steven C. Kirven, Master in Equity
Anderson and Oconee Counties,
Tenth Circuit



Oconee Common Pleas

Case Caption: Solid Rock Construction Services Llc VS Mike Wheeler , defendant, et al
Case Number: 2022CP3700067
Type: Master/Order/Form 4

And it is so ordered

s/ Steven C. Kirven, Master in Equity, #3081