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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
William C. McMaster III, Circuit Judge

Appellate Case No. 2025-001203
Court of Common Pleas Case No. 2023-CP-23-00189

Icon Custom Masonry, Inc., Respondent,

v.

The Settlement, LLC; Levi Grantham, LLC; and Atlantic Specialty Insurance Company, Defendants,

Of which The Settlement, LLC and Levi Grantham, LLC are the Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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Appellants The Settlement, LLC and Levi Grantham, LLC ("Appellant") respectfully submit this Reply Brief in support of their appeal in this matter.

ARGUMENTS

I. THE MECHANIC'S LIEN STATUTE REQUIRES MATERIALS TO BE ACTUALLY USED, AND *HODGE* DOES NOT SUPPORT RESPONDENT'S POSITION.

Respondent argues that requiring materials to be actually used or incorporated into the property would create an opportunity for owners to evade payment simply by discarding or removing materials after delivery. Respondent's argument misunderstands the purpose and strict requirements of South Carolina's mechanic's lien law. Specifically, the fact that a claimant might be owed money under some other legal theory, such as breach of contract or quantum meruit/unjust enrichment does not entitle that claimant to encumber the owner's property with a lien. Recovery under those principles is wholly separate from, and does not alter, the statutory requirements for establishing a mechanic's lien. The critical distinction Respondent ignores is that South Carolina's mechanic's lien statutes confer a narrow, statutory remedy that attaches only when the claimant meets the strict statutory prerequisites, including materials furnished *and actually used* in the erection, alteration, or repair of a building or structure upon real estate. S.C. Code Ann. § 29-5-10. Similarly, S.C. Code Ann. § 29-5-20(B)(4) and (5) both reference actual use of the materials as a basis for a lien. The legislature's intent for lien rights to accrue based on "actual use" is further demonstrated in S.C. Code Ann. § 29-5-22.

Respondent's reliance on *Hodge v. First Federal Savings & Loan Ass'n of Spartanburg*, 267 S.C. 270, 227 S.E.2d 310 (1976), is misplaced. Importantly, *Hodge* did not address, let alone decide, whether materials must be actually used or incorporated into the property to be lienable. The "actual use" issue was simply not before the Court, was not argued by the parties, and was not

analyzed in the opinion. Instead, *Hodge* concerned two entirely different issues: (1) whether the lien was timely filed under the 90-day statutory period, and (2) whether materials furnished to a contractor could be deemed furnished to the owner based on agency and consent principles. Specifically, the factual dispute in *Hodge* centered on whether materials purchased were "furnished" within the statutory period, even though they were later diverted to a different job. The Court held that the materials were "furnished" because the owner had expressly consented to be responsible for any materials the contractor purchased for the construction of his home, and the purchase in question mirrored hundreds of prior purchases for that same project. The Court therefore applied ordinary principal–agent liability to determine whether the statutory definition of "furnishing" had been met.

Critically, because the only dispute concerned timeliness and agency, the Court did not analyze whether incorporation into the structure is required for a lien. Nothing in *Hodge* even suggests that the Court was presented with, or decided, any question regarding the lienability of materials that were never used, never incorporated, and never proven to have been intended for the specific improvement. Thus, Respondent's position reads into *Hodge* a holding that simply is not there. The case does not stand for the proposition that unused or unincorporated materials automatically support a mechanic's lien. It stands only for the much narrower principle that, in the context of the timeliness requirement, materials purchased by an agent authorized to buy them for the project may be deemed "furnished" even if later diverted. This is a far cry from the situation here, where the materials at issue were never shown to have been incorporated into the property and were never diverted for use elsewhere. Accordingly, *Hodge* provides no support for the Arbitrator's conclusion, because the "actual use/incorporation" issue was not part of the Court's analysis and was not decided.

Instead, the Court should rely on South Carolina law cited by Appellants. *See Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020), *aff'd as modified*, 440 S.C. 456, 892 S.E.2d 297 (2023) (analyzing "actual use" requirement under the mechanic's lien statute and finding contractor failed to show materials were actually used in property owner's home) (quoting 22 S.C. Jur. Mechanics' Liens § 14 (2020) ("Any material supplied for improving real estate by the erection of a building or structure ordinarily gives rise to a mechanics' lien. Materials must, of course, be incorporated into the structure or become fixtures")); *Nat'l Loan & Exch. Bank of Columbia v. Argo Dev. Co*., 141 S.C. 72, 139 S.E. 183, 186 (1927) ("The mere furnishing of such material with the intention that it should be used in the erection of houses on the property is not enough to meet the requirements of the mechanic's lien statute. There must also appear the use of the material in the erection or repair of some building or structure on the identical property against which the lien is claimed.").

II. THE ACTUAL USE REQUIREMENT SET FORTH IN *KITCHEN PLANNERS I* REMAINS BINDING PRECEDENT.

Respondent contends that because our Supreme Court removed the "actual use" discussion in *Kitchen Planners II*, the Court of Appeals' analysis of the actual use requirement in *Kitchen Planners I* is no longer binding. This is a misstatement of how precedent operates. The Supreme Court expressly affirmed, but modified, the Court of Appeals' opinion. *See Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). When a South Carolina Court of Appeals decision is "affirmed as modified," the Supreme Court generally agrees with the lower court's ruling while making specific, limited changes, and the remaining portions of the decision remain binding under the "law of the case" doctrine. *See S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 363 S.C. 67, 610 S.E.2d 482 (2005) ("A ruling not challenged on appeal is the law of the case, regardless of the correctness of the ruling"). Accordingly, "[a] portion of a

judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case." *Ulmer v. Ulmer*, 369 S.C. 486, 632 S.E.2d 858 (2006) (quoting *Austin v. Specialty Transp. Servc.*, 358 S.C. 298, 320, 594 S.E.2d 867, 878 (Ct. App. 2004)); *see also Taylor v. Grubbs*, 930 F.3d 611 (4th Cir. 2019) ("When a Supreme Court decision abrogates one portion of the rationale of the Court of Appeals in a prior case but not another, the rationale not abrogated by the Supreme Court nonetheless binds future panels of the Court of Appeals."); *United States v. Middleton*, 883 F.3d 485, 491 (4th Cir. 2018) (holding that although a Supreme Court case "abrogated a portion" of prior precedent, other parts remained "good law").

Here, the Supreme Court's omission of the "actual use" requirement actually strengthens Appellants' position, because it means the Court did not modify the Court of Appeals' analysis or ruling on that issue. Specifically, the only question before the Supreme Court in *Kitchen Planners II* was the standard of proof for summary judgment, clarifying that the "mere scintilla" standard does not apply under Rule 56(c), and that the proper standard is whether there exists a "genuine issue of material fact." *Kitchen Planners II,* at 463, 892 S.E.2d at 301. Therefore, the Court of Appeals' analysis regarding the actual use requirement remains binding and controlling law.

III. THE ARBITRATOR'S REFUSAL TO APPLY THE CORRECT MECHANIC'S LIEN STATUTE AFTER BEING MADE AWARE CONSTITUTES MANIFEST DISREGARD OF THE LAW.

Respondent argues that the Arbitration Award should not be vacated on the grounds that the Arbitrator manifestly disregarded the law by applying the incorrect mechanic's lien statute in determining the prevailing party for attorney's fees and costs after the parties submitted their offers of settlement. In support, Respondent cites *Lauro v. Visnapuu*, 351 S.C. 507, 519, 570 S.E.2d 551, 557 (Ct. App. 2002), in which the Court of Appeals held that the circuit court was not justified in

modifying the award to find that the lien holder was prevailing party and thereby entitled to fees where the Arbitrator failed to apply the amended mechanic's lien statute. There, the court concluded that the arbitrator did not manifestly disregard the law because his decision reflected a deliberate interpretation and application of the pre-amendment version of the mechanic's lien statute—which he believed governed the action since it was commenced before the amendment took effect—rather than a blatant or intentional disregard of the law.

Critically, however, the *Lauro* opinion does not indicate that the arbitrator was explicitly presented with the correct statute and then refused to apply it. That distinction is critical here. In the present case, the Arbitrator was specifically made aware of the applicable Mechanic's Lien statute but nonetheless chose not to apply it. *See* (R. pp. 92-93). This constitutes a far more direct and conscious disregard of the law than the interpretive judgment at issue in *Lauro*. Unlike in *Lauro*, where the arbitrator's statutory interpretation was arguably reasonable, here the Arbitrator's failure to follow the law after being properly notified demonstrates more than mere error as it creates substantial prejudice to the Appellant based on Mechanic's Lien fee shifting provision. This failure to follow the law by the Arbitrator is the type of manifest disregard necessary to warrant vacatur of the Arbitration Award.

CONCLUSION

Appellants respectfully request that this Honorable Court reverse the decision of the Circuit Court, remand the case to that court for further proceedings, if necessary, and grant Appellants such other and further relief as the nature of their cause may warrant.

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Respectfully submitted,

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