THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE KNOX MCMAHON
CIRCUIT JUDGE

CASE NUMBER 2011CP 32-01369

Carolina Refrigeration Services	Respondent
v.	
Claude L. Leitzsey, Sr., Claude L Leitzsey, Jr., Lisa M. Leitzsey and Branch Banking and Trust Company	Defendants
Of whom	
Claude L Leitzsey, Sr., Claude L. Leitzsey, Jr. and Lisa M Leitzsey are	Appellants

REPLY BRIEF OF APPELLANTS

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November 20, 2013

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Respondent relies extensively on the affidavits of its expert William Boling to prove that the Appellants acted unreasonably and negligently in this matter Mr Boling's is a senior computer network engineer obviously involved with sophisticated computer systems and networks of large businesses. Clearly he is using the standards for major business enterprises as the standards for judging the conduct of the Appellants This is not fair or proper. The corporate world needs and can afford more sophisticated computers and email systems than individuals like the Appellants. The standard for judging the conduct of the Appellants must be appropriate for individuals in their situation and not the standard used for the corporate world that must comply with extensive government regulations regarding their record keeping.

Furthermore, the opinions expressed by Mr. Boling are flawed. Appellants' computer expert Ryan Brown in his affidavit of July 12, 2012 shows that the opinions expressed by Mr. Boling should not be given any weight by the Court.

In his affidavit, Mr. Boling assets that the Leitzseys were unreasonable for the following reasons

1."Using an email service that is not reliable." (R. p. 293) Mr. Boling attached to his affidavit an article that he offered as proof. Mr. Brown points out in his affidavit that this article was in an internet blog, not in a professional journal, without independent fact checking The credentials of the writer are questionable and from the tone of the article, the writer clearly has an anti-Microsoft/Hotmail agenda. Mr. Boling's reliance on this article as proof of anything is misplaced Mr Brown points out that 350 million people worldwide use Hotmail as their email service.(R. p. 293)

2. "Not using return receipt request to verify deliver " Mr. Brown points out that most web-based email services such as Yahoo, Hotmail, and Personal Gmail do not offer this feature. Since it was not offered, it could not have been used. (R. pp. 293-294) These email services are the typical ones that most individuals use for their personal business Most businesses, especially major corporations, have more advanced systems that are able to better track email but this in not used by individuals.

3 "Not following Up with Mr Ormand to insure receipt." Admittedly the Appellants did not do this and this was a mistake If they had, they would have avoided much heartache and expense. But this mistake was reasonable under the circumstances. Apparently 350 million users of Hotmail believe that it is a reliable service

4. "Assuming that hitting the SEND button means it got delivered " Mr. Brown in his investigation found proof that Mr Leitzsey sent the email to Attorney Ormand when he stated that he did Mr. Brown found that the email was transmitted by at least two computer servers in Microsoft's Hotmail network. (R p 294)

5. "Not carbon copying another recipient such as himself to insure it got sent." Mr.Boling is incorrect. Mr. Boling apparently did not carefully review the copy of the email message sent by Mr Leitzsey, a copy of which he had and previously commented on. The email was sent by Mr. Leitzsey to Mr Ormand and to his wife Lisa Leitzsey and the messages was received into her email account as affirmed by Mr Brown. (R. p. 294) This receipt by Mrs Leitzsey of the email message gave Appellants the very reasonable impression that the email was properly transmitted and they were justified in relying on this.

6 "Failing to retain possession of the pdf files " This statement by Mr Boling proves nothing The files that were sent to Mr. Ormand containing the pleadings were located by Mr

Brown on Mr. Leitzsey Hotmail account in his "sent" folder and were printed and attached to Mr Brown's affidavit (R. pp. 294-295)

The lower court apparently relied on this unreliable information from Mr. Boling and committed error by finding:

"In this case, there is substantial, uncontroverted evidence that it is the negligence of the Defendants themselves and their disregard of the importance of legal process, that has led to their default" (R. p. 7)

Appellants were reasonable in using a form of communication that is used by millions of people everyday and that worked for them in the past communicating with their attorney. When the pleading were served on them, Appellants immediately initiated an email with the suit papers to their attorney Their only mistake, if any, was not calling Mr Ormand. That is the type of mistake that Rule 55(c)was designed to forgive and this Rule should be used to correct errors by ordinary citizens who are not accustomed to legal procedures.

The Court in Sundown Operating Co. Inc. v Intedge industries, Inc. 383 S C 601, 681 S E 2d 885 (2009) said the "good cause shown" is a less stringent standard than Rule 60(b). The Court in Limehouse v. Hulsey 397 S. C. 49, 723 S. E. 2d 211 (Ct App 2011) said.

"The good cause standard of Rule 55(c) requires, as a threshold burden, a party must put forth " an explanation for the default and give reasons why vacation of the default would serve the interest of justice."

Appellants submit that the lower court used a more rigorous standard for judging their conduct than that required by Rule 55 (c) and thus committed an error of law that is an abuse of discretion The fact is the Appellants sent the pleadings to their attorney by email on the same day they received it. The attorney was representing them in this matter and the Appellants

believed the attorney would have answered the complaint for them if he had received it. The failure of the Appellants to verify receipt was a mistake but not such an error as to constitute intentional disregard of legal process. The Appellants mistake does not rise to the level of negligence because a vast number of people, including the courts and court officials of this state, use email to transmit documents and do not verify receipt either electronically or by other means.

The second part of the threshold is that vacating the default would serve the ends of justice Appellants, by affidavit, have shown that they have meritorious defenses and are in fact innocent parties Respondent was not hired by Appellants, Respondent was a subcontractor of the general contractor that was building a home for the Appellants. Respondent extended credit to this general contractor and apparently did not require customary progress payments from the contractor during the project as the Respondent appears to be claiming the full amount for the work. On the other hand, Appellants have paid the general contractor in progress payments for the work done by Respondent but the contractor did not pay the Respondent If Respondent is successful, Appellants will pay for the heating and cooling system twice. Section of 29-5-40 of the S C Code Ann is specifically designed to prevent this from occurring

As an additional defense, Appellants claim the Notice of Mechanics lien filed by Respondent was defective because the Respondent did not include its license number on the Notice as required by Section 29-5-15 (Supp 2009) of the S. C Code Ann. This section provides that "As proof of licensure or registration, the contractor must record his contractor license number on the lien document when the lien document is filed " The Respondent did not do this and only filed this number with the court after this defense was raised by Appellants and almost ninety days from the filing of the original lien. Respondent relies on Cleo-Car Trucking

Company, Inc v Clifflure, 282 S. C. 573, 576, 320 S E. 2d 51, 53 (Ct. App.1984.) The reliance is misplaced The Court in that case says:

"[E]ven though[we] follow the view that the mechanic's lien law is to be construed in a most liberal and comprehensive manner in favor of lien claimants, a claim may not be sustained when that can be done only a forced and unnatural interpretation of the statute. . "

Here the statute says the licensed number "must" be on the Notice to be recorded. That is mandatory and accordingly the lien should not have been recorded and is fatally defective.

Conclusion

The lower court abused in discretion by not vacating the default Justice requires that the Appellants be given their day in Court for a trial on the merits

Respectfully submitted,

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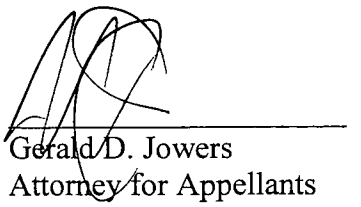
November 20, 2013

CERTIFICATION

I certify that this Reply Brief complies with the requirements of Rule 211(b), SCACR.



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PROOF OF SERVICE

I certify that I have served the Appellants' final Reply Brief on Carolina Refrigeration Services by depositing a copy of it in the United States Mail, postage prepaid, on November 22, 2013, addressed to their attorney of record, Jean P. Derrick, PO Box 929, Lexington, SC 29072.

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November 22, 2013

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