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SC Court of Appeals

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF ANDERSON

4 Vernon Merchant,
5 Plaintiff,

6 vs. Transcript of Record
7 2025-CP-04-03160

8 Jeremiah Jones d/b/a Woodland Carpentry,
9 Defendant.

10

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September 4, 2025
Anderson, South Carolina

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13 B E F O R E:

14 The HONORABLE VERNON F. DUNBAR

15

16 A P P E A R A N C E S:

17 Thomas E. Dudley, III, Representing the plaintiff

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19 J. Kirkman Moorhead, Representing the defendant

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SHARON G. HARDOON, CSR
Official Circuit Court Stenographer, III

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1 THE CLERK: The next case is a motion to appeal
2 case number 2025-CP-04-03160, Woodland Carpentry, LLC vs.
3 Vernon Merchant.

4 THE COURT: Good afternoon, gentlemen. Please let
5 me know when you're ready.

6 MR. DUDLEY: I'm ready.

7 Judge, I'm Tom Dudley. I represent Woodland
8 Carpentry. We were the defendants in a brought by
9 Dr. Merchant, who is Mr. Moorhead's client. And, yes,
10 two lawyers showed in Powdersville to try this case as
11 favors to our clients.

12 THE COURT: Well, I truly appreciate your
13 appearance. It makes things a lot easier.

14 MR. DUDLEY: I hope that I can be as concise as
15 the last -- the lady that was here. I hope to do that.

16 One thing on this, I did file a bench brief, just
17 a four-page summary. I can just hand it up to Your Honor.

18 THE COURT: Yes, sir.

19 MR. DUDLEY: As he rolls his eyes. We'll be
20 quick.

21 Judge, my client is a carpenter, did some work for
22 the Merchants on their lake house. They asked him to
23 do some work on their house, a sham clear agreement.
24 There were two parts of the contract; one was for
25 siding and one was for replacing windows. The bottom

1 line -- so they paid some money. After the first
2 night, they were upset with the windows and so my
3 client says, *We're even and we'll just stop.* So then
4 Dr. Merchant sued my client in magistrate and we tried
5 the case.

6 What are you to consider is very simple. We tried
7 the case, a couple hours. And, Judge, Tucker, issued a
8 very long order, and I just want to draw your attention
9 to one thing. He says, "The plaintiff has failed to
10 meet their burden of proof to show liability on the
11 part of the defendant." That's all you need to know on
12 this. So he goes into very, very detail as to why he
13 arrived at that decision. And, again, the complaint
14 was Dr. Merchant hand wrote in he wanted to be
15 reimbursed a 50 percent check for the windows and a 100
16 percent check for some siding. Now, my client never
17 did any of the siding, but he did install all of the
18 windows and was only paid for half of those up front.
19 So he applied the deposit from the siding and said,
20 *We're good.* And so we don't even need to ask whether
21 or not the judge considered the reasonableness of
22 what -- the kind of accounting that my guy did. He
23 said it not just once, but twice; in the order and then
24 also in the order denying my motion to reconsider.

25 The only inequitable thing here, Judge, is, if you

1 don't grant my motion, then Dr. Merchant and his wife would
2 have gotten all their windows replaced by my client for
3 \$2500. And the Court has said my guy did it right, it was
4 timely, he was entitled to be paid, and there was no claims
5 against him, and my client would then have not even gotten
6 half the deposit back for the windows that have been in the
7 Merchants' house for the last couple years. That's the only
8 thing.

9 He says in the beginning, "Plaintiff failed to
10 meet their burden...", that's Mr. Moorhead's client. He got
11 hung up on -- one the checks says, you know, the siding
12 deposit for \$4,200, and he got hung up on that because there
13 is a case in South Carolina that talks about, if a creditor
14 receives a check from one of its debtors, one of its
15 clients, and it says paid -- for example, the contractor,
16 *Paid for the Smith house*, then that creditor has to apply
17 that payment on whatever the account is for the Smith house.
18 I mean, that is the case law. I'm not contesting that at
19 all. That case absolutely says what it says is right. It's
20 the Maddox Supply case that the Court referenced. That
21 case, however, was a mechanics lien case, and it had to do
22 with a creditor, whether they were going to apply funds from
23 a contractor that multiple projects out there.

24 There was -- first of all, the Merchants are not a
25 creditor. That's the first distinguishing thing.

1 There is not any multiple projects out there. There
2 was one that included siding in the windows. And even
3 the Court in that one said, ordinarily, a creditor is
4 supposed to apply according to that. So even they're
5 saying it's not black letter law that you always have
6 to do it.

7 So for reason, the Court got twisted about that
8 said, " Plaintiff can't meet their burden." And their
9 burden was, they were saying we want the reimbursement
10 checks that we paid Woodland Carpentry. But in the
11 end, because the check was made for the siding and my
12 didn't do siding, that my client needs to pay \$4200 to
13 the Merchants.

14 So they don't meet their burden and my client has
15 to pay them \$4200. So they get all of their windows,
16 which the Court has said they're all fine, they get
17 them for \$2500 and that's only half of the windows for
18 the purchase and supplies.

19 Again, as I said, the only inequitable, if you
20 deny my motion, we're not asking for anything else. My
21 client didn't have a counterclaim. He was fine with the way
22 things were financially. And the Court ruled in our
23 client's favor, but got twisted about this check. And I
24 think the case is clear. I filed a motion to reconsider.
25 The magistrate's case doesn't apply, Judge, and he still

1 didn't. We're just asking the Court to correct that error,
2 correct this inequity and we'll be good.

3 THE COURT: All right. Thank you very much.

4 Mr. Moorhead.

5 MR. MOORHEAD: Yes, Your Honor.

6 So Mr. Dudley does a nice job, but the one
7 thing -- the one thing that's really important in this
8 case that Mr. Dudley has not mentioned, this was two
9 separate projects. There was one project for -- to
10 replace six windows. And then around the corner over
11 here on the other side of the house, there was some
12 cypress siding boards that were -- that needed
13 replacing. Dr. Merchant paid a down payment for the
14 windows and Woodland Carpentry, Mr. Dudley's client,
15 came in and began that work. He also paid later a down
16 payment, \$4 200 for the cypress boards. The check
17 itself says for the cypress boards.

18 And in the course of the trial the defendant,
19 Woodland Carpentry, said, *Yeah, I had this \$4200 for cypress*
20 *boards. I ordered the cypress boards. We're waiting on*
21 *them to come in. We got into a kerfuffle because I finished*
22 *the windows and the Merchants didn't like them. They didn't*
23 *like the dimensions. They didn't match the other windows*
24 *that were on the home.*

25 The Court found we didn't meet our burden of proof

1 to get our money back for what we paid for those windows.

2 The Court found significantly that there were separate
3 projects. That's a finding of fact that is supported by
4 substantial evidence in the record.

5 So with got projects. The second project was the
6 siding boards for which we paid \$4200.

7 When we got into the kerfuffle over the windows,
8 it was sort of an interesting occurrence, my client
9 hung up with the contractor and then accidentally
10 dialed him back, and then said some terrible things
11 about the contractor to his wife, which the contractor
12 overheard. And said, you know, *We don't like this.*
13 *We're not paying any more. We're done.* So the
14 contractor grabbed the money that he had that was set
15 aside for the siding boards, the boards were
16 actually -- he testified that the boards were actually
17 in at the supplier. Calls the supplier, says send them
18 back, he takes the money and applies it to the window
19 project.

20 So the Judge ruled, you can't apply that money --
21 you can't take money from a separate project, which was
22 a finding of fact it was a separate subject, and apply
23 it to another project for which it is not designated.

24 And there were numerous findings in the course
25 of -- or there was numerous testimony that got recited

1 in here somewhere that the check was made, it had \$4200
2 on it and "for cypress boards" specifically, that it
3 was held -- that those funds were held for cypress
4 boards, those cypress boards were ordered, and cypress
5 boards were refused and sent back, and then the money
6 was swept over.

7 So at the beginning -- the status at the beginning
8 of this was, Dr. Merchant had windows he didn't like
9 and he had paid a deposit for cypress boards that he
10 didn't get.

11 Woodland Carpentry, they had their money. They
12 didn't file a claim in this case. They only filed
13 defenses to our claims for, *Give us our money back for*
14 *our windows, give us our money for the cypress boards.*
15 And by failing to do that they don't have anything --
16 the offensive of anything. They don't assert a claim
17 for setoff in their defenses, which I'm not even sure
18 setoff is a defense or claim, but it's not asserted.

19 So, we came in with two claim. We lost on the
20 windows issues because the Court says -- *You know, it's*
21 *close, it's good enough. Woodland wins. But,*
22 *Woodland, you took money that money that was designated*
23 *for cypress boards, that you treated has designated for*
24 *cypress boards, that you ordered cypress boards for,*
25 *and then refused cypress boards when they're going to*

1 *be a problem on the other project. And, therefore,*
2 *that money cannot be allocated over the windows*
3 *project. You got to pay that back.*

4 So we won on that and we lost of that, but the
5 significant part is, it's two separate projects, a finding
6 of fact, the facts in the are record.

7 THE COURT: All right. Thank you very much.

8 MR. DUDLEY: Judge, just two things. One, just
9 look at the order. Read the order -- bother of the
10 orders that Judge Tucker wrote. And look at the
11 complaint. They lumped all together. And you don't
12 have the record. Plaintiff's -- I'm sorry --
13 defendant's exhibits 3 and 6, because I was the
14 defendant. I have copy here, if I can hand them up to
15 you.

16 THE COURT: Let me see if I have the exhibits.

17 MR. DUDLEY: 3 and 6, the quotes. And the reason
18 I hand those up is because it's not two projects. One,
19 there's two quotes, both quotes have windows and trim,
20 and then they quoted a second time. So instead of
21 doing 14 windows, they did six windows and it's all
22 windows and trim. There are not two projects. There
23 is but one. They make one claim to be reimbursed their
24 money. And the Court did not say, *I find that you're*
25 *okay on the windows but not on the siding.* The Court

1 said, "The plaintiff did not their burden of proof."
2 It did not call it a -- the issue about two different
3 projects came in my to motion to reconsider and I was
4 challenging the Court on the designation of the check,
5 and that's not even consistent.

6 The record, the only thing that was -- there was
7 one project and they just terminated it early.

8 So I just say, look at the complaint, look at the
9 order, you will see it doesn't make any sense with the
10 way the Court spends the time talking about the
11 windows, they got the benefit of it, they should get
12 paid for that. It's not -- I don't have a counterclaim
13 because I'm not seeking money from them. It actually
14 would be a recoupment, not a setoff. A setoff would
15 be, if I had some second contract there to apply. A
16 recoupment is, I get paid when I get paid. The Judge
17 goes into great length to say the accounting that my
18 guy did to kind of balance and settle things up was
19 fair and equitable.

20 The only inequitable thing would be for you to not
21 deny -- or for you deny my notion and then the Merchants
22 would have gotten all of their windows for \$2500 when that
23 was half the material costs and the labor.

24 That's all I have.

25 THE COURT: All right. I understand.

1 MR. DUDLEY: Thank you, sir.

2 THE COURT: But I will need to do some reading, as
3 you've indicated. You've also given me additional
4 materials. I'll take it under advisement.

5 Thank you very much.

6 (The hearing was concluded.)

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