

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Lower Court err in making conclusions of law based on facts that were not in evidence?
- II. Did the Lower Court err in holding a Cabinetry Quote was a contract between Appellant and Respondent?
- III. Did the Lower Court err in construing the ambiguities of the Cabinetry Quote in favor of the drafter?
- IV. Did the Lower Court err in holding that the Cabinetry Quote met the requirements of the Statute of Frauds?
- V. Did the Lower Court err in holding that Respondent was entitled to rely on his brother's contracting license to file a mechanic's lien?
- VI. Did the Lower Court err in finding that S.C. Code 29-5-10 applied to the facts in this case and permitted Respondent to recover damages in excess of what is owed to the general contractor?
- VII. Did the Lower Court err in finding Respondent was entitled to reasonable attorney fees?

STATEMENT OF THE CASE

This is a mechanic's lien case that was filed by Respondent Mevers Kitchen and Baths, LLC on February 21, 2007 against a general contractor, Stipp Contracting, LLC and Appellant homeowner. (Compl.) Stipp Contracting, LLC (hereinafter "Stipp") declared bankruptcy while the case was pending so the case was stayed on August 24, 2009. (Order Staying Case Pending Bankruptcy.) On March 24, 2011, the bankruptcy stay was lifted. (Order Lifting Bankruptcy Stay.) On June 22, 2011, the case was referred to the Master with the consent of the parties. (Order Referring Case to Magistrate.) Appellant thereafter filed a Motion to Dismiss for Lack of Prosecution, and an Order was issued by the Master on April 10, 2012 granting Appellant's Motion and awarding Appellant attorney fees. (Order Granting Def. Wagner's Motion to Dismiss.)

Respondent obtained new counsel and filed a Motion to Reconsider which was subsequently granted. (Motion to Reconsider.) On March 8, 2013, the Master summarily dismissed Respondent's cause of action for quantum meruit against Appellant. (Order Partially Granting Def. Wagner's Summ. J. Motion and Dismissing Pl's Quantum Merit Claim.) Respondent did not appeal the dismissal of that cause of action.

On May 15, 2013, a bench trial was held before the Master regarding Respondent's two remaining causes of action against Appellant; a breach of contract claim and an action to foreclose on a mechanic's lien. The Master issued an Order dated October 3, 2013 finding in favor of Respondent on both causes of action, and this appeal ensues. (Trial Order.)

STATEMENT OF FACTS

Respondent Mevers Kitchens and Baths, LLC is a business that sells and installs kitchen cabinets. (Tr. Tran. p. 8, l. 20-23; p. 6, l. 7-22.) Billy Mevers is the managing member of Respondent. (Tr. Tran. p. 8, l. 14-19.) Neither Respondent Billy Mevers nor his kitchen cabinet business, Mevers Kitchens and Baths, LLC, are licensed as residential builders or contractors by the State of South Carolina. (Def.'s Tr. Ex. 2, 3: Tr. Tran. p. 22, l. 14-17.) Respondent's brother, Roy Mevers, is a licensed home builder and his business is called Mevers Construction Company. (Pl.'s Tr. Ex. 1.) However, Roy Mevers did not personally do any construction at Appellant's home and his business, Mevers Construction Company, did not perform any construction at Appellant's home. (Tr. Tran. p. 6, l. 22-24; p. 7, l. 20-25.) Respondent and its managing partner Billy Mevers are not members of Roy Mever's Construction Company. (Tr. Tran. p. 8, l. 1-3.) Respondent's managing partner Billy Mevers testified that he operates his kitchen

business under his brother's contractor's license and that his brother is a partner in his kitchen cabinet company. (Tr. Tran. p. 12, l. 21-25; Tr. Tran. Index.)

Stipp Contracting LLC (Stipp), a general contractor, entered into a contract to build Appellant's house on or about December 5, 2005. (Def.'s Tr. Ex. 5; Tr. Tran. p. 36, l. 17-19.) The contract between Appellant and Stipp states that Appellant agreed to a 10% surcharge being added by Stipp to all materials and subcontractors. (Id.) Stipp agreed to furnish all labor, materials and equipment necessary for the proper construction and completion of the home. (Id.) Respondent acknowledges that Stipp was the general contractor of Appellant's home. (Tr. Tran. p. 10, l. 22 – p. 11, l. 1.)

While the house was being built, Appellant was told by Stipp to go to Respondent's store to pick out her kitchen cabinets. (Tr. Tran. p. 38, l. 14-20.) After Appellant chose her cabinets, she was provided a document labeled "Cabinetry Quote" which was approved by an employee of the general contractor. Appellant signed below the approval line on the quote. (Tr. Tran. p. 56, l. 7-p. 57, l. 6.) Appellant testified she signed below the line to indicate she was merely approving the cabinets. (Tr. Tran. p. 44, l. 12-p. 45, l. 4; p. 56, l. 4-p. 57, l. 17.) The term "contract" does not appear anywhere on the Cabinetry Quote, which document Respondent contends is a contract. (Tr. Tran. p. 15, l. 3-23; Def.'s Tr. Ex. 1.) The Cabinetry Quote is not signed by anyone representing Respondent Mevers Kitchens and Baths, LLC. (Def.'s Tr. Ex. 1.) The Cabinetry Quote does not indicate who is responsible for paying for the kitchen cabinets. (Tr. Tran. p. 16, l. 8-10; p. 17, l. 23-p. 18, l. 1; Def.'s Tr. Ex. 1.) The Cabinetry Quote does not state when the cabinets will be ordered or when the 50% deposit is due. (Tr. Tran. p. 18, l. 2-8; Def.'s Tr. Ex. 1.) The Cabinetry Quote also does not state who is going to pay the 50%

deposit or when the cabinets will be delivered. (Tr. Tran. p. 18, l. 9-p. 19, l. 1; Def.'s Tr. Ex. 1.) Appellant testified she knew she was choosing cabinets but she did not know who would install them. (Tr. Tran. p. 57, l. 7-17.)

Respondent's managing partner Mevers testified that he understood Stipp was supposed to pay the 50% deposit on the cabinets so Respondent never billed Appellant for the cabinets. (Tr. Tran. p. 19, l. 2-p. 20, l. 4.) In fact, when Respondent did not receive the 50% deposit, Mevers billed Stipp, not Appellant. (Tr. Tran. p. 20, l. 11-21.) When Mevers was in Appellant's kitchen during the cabinet installation, he never asked Appellant to pay for the cabinets. (Tr. Tran. p. 21, l. 4-21.)

Appellant was concerned that the quoted price of \$20,760 for the cabinets exceeded the \$15,000 allowance for kitchen cabinets Stipp had included in her contract, but Stipp told Appellant in an email that Respondent had quoted her the general contractor's price and that Stipp would continue to work with Respondent to get the price down. (Tr. Trans., p. 39, l. 22-p. 41, l. 1; Def.'s Tr. Ex. 7.)

Before the kitchen cabinets were installed, Stipp invoiced Appellant the cost of the kitchen cabinets minus his 10% commission, which Appellant paid in full to Stipp. (Id.; Def.'s Tr. Ex. 8-13.) Stipp thereafter signed two (2) waivers of lien regarding the cabinets on May 26, 2006 and August 29, 2006 when he received payment in full for the invoiced cabinets from Appellant. (Def.'s Tr. Ex. 8-13.) The Lien Waivers both stated that the general contractor "agrees it is responsible for paying any of its subcontractors involved in such work." (Id.) Stipp later provided Appellant a list of all of the subcontractors he had used to build her home, including Respondent, and Stipp requested

in writing Appellant not contact any subcontractors directly if she had problems. (Def.'s Tr. Ex. 6.)

On November 20, 2006, Respondent first notified Appellant through a filed statement that he had not been paid for the kitchen cabinets. (Tr. Trans., p. 46, l. 5-12.) Appellant Wagner contacted Respondent and told him she had already paid Stipp in full for the cabinets several months earlier. (Tr. Trans., p. 23, l. 4-18.) Appellant Wagner refused to pay Respondent as she had already fully paid the invoiced cost of the cabinets to Stipp. Respondent filed a mechanic's lien against Stipp and Appellant. (Lien.) There is no contractor license number listed on the face of the mechanic's lien. (Id.)

Appellant's contract with Stipp required Appellant's home to be built to code. (Def.'s Tr. Ex. 5) Appellant's home was not built to code. (Def.'s Tr. Ex. 14-18.) After Stipp stopped working on Appellant's home and declared bankruptcy, Appellant spent \$14,322 to repair work Stipp performed and Appellant's interior stair case is still not to code; it will cost Appellant an additional \$21,653 to fix the stairs. (Tr. Tran. p. 46, l. 18-p. 51, l. 7; Def.'s Tr. Ex. 19 and 20.) Respondent admitted he did not know if any money is owed by Appellant to Stipp for the cabinets. (Tr. Tran. p. 24, l. 1-11.)

ARGUMENTS

Applicable Standard of Review

"In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action." Townes Associates, Ltd. v. Greenville, 266 S.C. 81, 86,

221 S.E.2d 773, 775 (1976) (citing Chapman v. Allstate Ins. Co., 263 S.C. 565, 211 S.E. 2d 876 (1974)). A breach of contract action is an action at law and, in an action at law, the appellate court can correct errors of law but will not disturb factual findings of the jury “unless a review of the record discloses that there is no evidence which reasonably supports the jury’s findings.” Townes Associates, Ltd. v. Greenville, supra; Sterling Development Co. v. Collins, 309 S.C. 237, 421 S.E.2d 402 (1992).

I. There is no evidence in the record to support many of the Lower Court's conclusions of law.

a. Lack of facts regarding whether a contract existed.

The Lower Court held that the "Cabinetry Quote" at issue (Pl.'s Tr. Ex. 1.) was a contract on the basis that Appellant accepted and signed a quote. (Trial Order, ¶ 10). However, Appellant testified at the trial of this case that she signed the quote below the approved line to indicate she was not signing a contract; she was just agreeing to the cabinets. (Tr. Tran. p. 44, l. 12-p. 45, l.4; p. 56, l. 4-p. 57, l. 17.) Further, the Lower Court made no finding of fact regarding the significance of Respondent failing to sign the Cabinetry Quote or of the fact that an employee of Stipp's signed the quote. The Lower Court erred in holding that Appellant was responsible for paying Respondent for the cabinets when there is no such language in the contract. (Def.'s Tr. Ex. 1.) The only testimony at trial was Appellant's testimony that she signed under the line to show she was not responsible for payment. The Lower Court also failed to find as fact that Appellant prepared and had Stipp sign two (2) lien waivers confirming he had been paid and had paid Respondent for the cabinets. (Trial Order, Findings of Fact, p. 1-2.)

b. Lack of facts regarding Respondent's brother's relationship with Respondent.

The Lower Court erred in finding it was "undisputed that Roy and William Mevers are both members and equal owners" of Respondent company. (Trial Order, p. 4.) In fact, there are no facts in evidence to support this fact as the Lower Court's conclusion is based on statements made in a deposition that was never entered in as evidence at the trial. Finding of Fact No. 7 in the Trial Order states it is based on deposition testimony; and no depositions were made part of the record.¹ (Tr. Order p. 2; Tr. Tran. Index.)

c. Lack of facts regarding the mechanic's lien issues.

The Lower Court erred in finding that Respondent "contracted directly with [Appellant] to provide material and labor for the delivery and installation of the cabinetry." (Trial Order, p. 5.) Respondent never signed the Cabinetry Quote so he could not have contracted directly with Appellant. Further, the contract between Appellant and the general contractor Stipp was entered into evidence which indicated that S.C. Code §29-5-20 applies, not S.C. Code 29-5-10, which limits the amount a subcontractor can recover to the amount owed by the homeowner to the general contractor, in this case zero. As the Order does not find sufficient facts to support several key holdings and as other holdings are based on evidence not in the record, the Lower Court's Order should be overturned.

II. The Cabinetry Quote at issue is not a contract between Respondent and Appellant; it is merely a price quote.

The Lower Court held that the document entitled "Cabinetry Quote" which both Stipp and Appellant signed, but which Respondent did not sign, was a binding contract between Respondent and Appellant, and that Appellant breached the contract by failing

¹ This finding of fact is only in the Order because Respondent drafted the Order for the Lower Court.

to pay Respondent for the cabinets it installed in her home. (Trial Order.) It is undisputed that there is no indication on the face of the Cabinetry Quote as to whether Stipp or Appellant was responsible for paying the required 50% deposit or the remaining 50% cost of the cabinets.

Further, the Cabinetry Quote does not state on its face who is the purchaser of the cabinets, Stipp or Appellant. The Cabinetry Quote also fails to state the total price of the cabinets including the sales tax and contains no order or delivery dates. Therefore, because the Cabinetry Quote is not signed by a necessary party (Respondent), is ambiguous as to the terms of payment (the total cost and who is responsible for making payment), and is silent as to when the cabinets will be ordered or delivered, there are too many essential terms missing from this document for it to be considered a contract and there can be no meeting of the minds as to its terms. See, e.g., Walker v. Preacher, 188 S.C. 431, 435, 199 S.E.2d 675, 677 (1938) (A contract must contain all the essential elements and the terms and conditions stated with reasonable certainty with no essential term omitted, and it must be obvious that the terms are agreed upon). The document at issue is more along the lines of a seller's price quotation, which is an invitation for an offer with the offer usually taking the form of a purchase order providing pricing and terms of delivery. See, e.g., Audio Visual Assoc. v. Sharp Electronics, 210 F.3d 254 (4th Cir. 2000).

The Cabinetry Quote at issue is only an invitation for an offer. See, id. at 259 (“Typically, a seller’s price quotation is an invitation for an offer, and the offer usually takes the form of a purchase order, providing product choice, quantity, price and terms of delivery”). Not only does the Cabinetry Quote lack many of the essential elements of a

contract, on its face it indicates there was clearly no meeting of the minds as to who is responsible for payment. Both the general contractor's agent and the homeowner signed it and the Lower Court could only guess as to who should pay. A Court should not construe a contract to give one party an advantage over the other when there is no meeting of the minds. Mishoe v. General Motors, 234 S.C. 182, 107 S.E.2d 43 (1958). Respondent admitted he did not request payment from Appellant because he was waiting for Stipp to pay him. In short, there is no evidence that Appellant was the party responsible for paying for the cabinets. There is no written requirement in the Cabinetry quote that Appellant pay for the cost of the cabinets and Respondent never asked Appellant to pay until after he knew Stipp would not to pay him.

III. Even if this purchase quote was considered a contract, ambiguities must be construed against the drafter of any contract.

Further, as there are questions on the face of the Cabinetry Quote as to who is responsible for payment; the payment amount; and the terms of delivery, the document is ambiguous. If terms are susceptible of more than one meaning, ambiguities are construed against the drafter of the contract, here the Respondent. See, e.g., Wallace v. Day, 390 S.C. 69, 700 S.E.2d 446 (Ct. App. 2010); Myrtle Beach Lumber Co. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (1981); Hann v. Carolina Casualty Ins. Co., 252 S.C. 518, 167 S.E.2d 420 (1969); Ringer v. Graham 293, S.C. 238, 359 S.E.2d 523 (Ct. App. 1987); Silver v. Aabstract Pools & Spas. Inc., 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008). Construing this contract against Respondent, Appellant is not responsible for paying for the cabinets, Stipp is.

- a. When a contract is ambiguous, the parties' conduct is relevant to determine their intent.**

If the Cabinetry Quote is a contract, as its terms are ambiguous, parole evidence is necessary to determine the intent of the parties and the Lower Court failed to consider parole evidence. As stated in Speed v. Speed, 213 S.C. 401, 49 S.E.2d 588 (1948), a contract can be comprised of several documents. One relevant document in evidence which was completely ignored by the Lower Court is the construction contract between Stipp and Appellant (Def. Tr. Ex. 5.) That contract provided an allowance to Appellant for the cabinets in the total price paid to Stipp. (Id.) The contract between Appellant and Stipp also provided that Stipp would be paid 10% over the cost of the subcontractors and materials. (Id.) Both of these facts and Appellant's testimony indicate that the general contractor, not Appellant, was supposed to pay Respondent for the cabinets.

Further, Stipp instructed Appellant in his contract with her and in a letter addressed to her after the home was completed, not to contact the subcontractors if she had any concerns, thereby confirming that he was dealing with the subcontractors, not Appellant. (Def.'s Tr. Ex. 6.) Stipp also indicated in an email to Appellant that he was still negotiating the cabinet price with Respondent after the quote was signed. (Def.'s Tr. Ex. 7.) Finally, Respondent invoiced Stipp, not Appellant, and Respondent testified he was waiting for Stipp to pay him. (Tr. Tran. p. 19, l. 18-p. 20, l. 4.) It was only after Stipp failed to pay, that Respondent contacted Appellant. (Tr. Tran. p. 20 l. 11-p. 21, l. 21.)

The cardinal rule in the interpretation of a contract, if one exists here, is to ascertain the intention of the parties and give effect to that intention. Bolt v. Ligon 144, S.C. 218, 142 S.E.2d 504 (1928). In this case, based on the conduct of the parties, it is clear the intent was for Stipp, not Appellant, to pay Respondent for the cabinets.

b. Respondent could have obtained payment for the cabinets if he had requested it in a timely manner.

Respondent had the opportunity to ask Appellant to pay for the cabinets, but never did so, even when he was in her kitchen installing the cabinets and had at that time not yet even been paid the 50% deposit. The one whose negligence makes a fraud possible must bear the loss. Clanton's Auto Auction Sales Inc. v. Young, 239 S.C. 250, 122 S.E.2d 640 (1961) (court refused to protect seller of car when his conduct permitted and enabled another to commit a fraud); Willis v. Page, 213 S.C. 156, 48 S.E.2d 627 (1948) (negligence or fault on the part of the seller that is reasonable likely to mislead or deceive an innocent purchaser will support a plea of estoppel). In this case, Respondent's inaction contributed to him not being paid as he should have followed through with the collection of the deposit and/or asked for full payment before the cabinets were installed. Had he done so, he and Appellant would have learned that Stipp pocketed the money he should have paid Respondent.

c. Respondent is not a Licensed Contractor so he cannot enforce a contract.

Plaintiff has admitted he is not a licensed contractor or registered builder but contends that because his brother has a general contracting license for a different business, has Respondent satisfied the statutory requirements for filing a lien. Respondent's manager Billy Mevers, not his brother Roy Mevers, sold and installed Appellant's kitchen cabinets. Per S.C. Code §40-11-370(A), "It is unlawful to use the term "licensed contractor" or to perform or offer to perform general or mechanical construction without first obtaining a license as required by this chapter." Further, pursuant to subsection (B) of this statute, it is "unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this

chapter. "Engaging in construction" includes marketing, advertising, using site signs, and submitting contracts." (Id.) Respondent engaged in construction, not his brother. As Respondent's brother did not engage in any construction at Appellant's home, his contractor's license under a different company is irrelevant to this case.

As Respondent is not a licensed contractor, he cannot enforce the document he alleges is a contract. Per S.C. Code §40-11-370(C), an entity which does not have a valid license cannot bring an action in law or equity to enforce a contract. ("An entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract. An entity that enters into a contract to engage in construction in a name other than the name that appears on its license may not bring an action either at law or in equity to enforce the provisions of the contract.") (Id.)

IV. Even if the Cabinetry Quote could be considered a contract, it is an unenforceable contract under the Statute of Frauds.

The Lower Court held that the essential terms of a contract were present in the Cabinetry Quote and that it was signed by the party to be charged so it met the requirements of the Statute of Frauds. (Trial Order, p. 3-4.) This holding is in error as many terms of the alleged contract are missing or ambiguous and Stipp's representative also signed the price quote, so it is unclear on the face of the document which party was to be charged.

A contract for the sale of goods (kitchen cabinets) of \$500 or more is not enforceable unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent. S.C. Code §36-2-201. Here, two different parties

(Stipp and Appellant) signed the alleged contract so the party responsible is not determinable and the contract violates the statute of frauds. See, e.g., Walker v. Preacher, supra. (If the provisions of a contract differ and cannot be reconciled or oral testimony is needed to supply the necessary terms and conditions, the statute of frauds provides no protection.) (Id. at 435-436, 677).

V. Respondent cannot file or enforce a mechanic's lien as he is not a licensed contractor.

“No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for general contracting or greater than five thousand dollars for mechanical contracting without a license issued in accordance with this chapter.” S.C. Code §40-11-30.

S.C. Code §29-5-15(A) states:

To file a mechanic's lien, a contractor must provide the clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed. (emphasis added)

Per S.C. Code §29-5-15(A), Respondent's mechanic's lien is invalid on its face as there is no contractor's license listed on it. (“To file a mechanic's' lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed.”) Respondent's contractor's license number is not recorded on the lien. As no contractor's license is

listed on the lien at issue, the lien is invalid.

VI. Respondent's Mechanic Lien claim fails because Appellant owes the general contractor no money and a subcontractor can only recover funds owed to the general contractor.

The Lower Court erred in applying S.C. Code §29-5-10, as that statute applies to a supplier who deals with an owner. Here, there was ample evidence that Respondent dealt with the general contractor, not Appellant. Respondent billed the general contractor and expected him to pay for the cabinets. When Respondent was installing the cabinets even though he had not been paid, Mevers said nothing to Appellant about paying for the cabinets. The general contractor directed Appellant not to deal with the subcontractors and Appellant was sent to Respondent's business to choose cabinets by the general contractor. The statute that the Lower Court should have applied is S.C. Code §29-5-20 which protects suppliers who deal with general contractors.

Respondent admitted he has no evidence that any money is owed to Stipp for the cabinets. (Tr. Tran. p. 24, l. 1-11.) If there is no money owed by Appellant to Stipp, there is no money owed to the subcontractor even if there is a valid lien. S.C. Code §29-5-20(B) states:

In no event shall the aggregate amount of the lien filed by a subcontractor or supplier exceed the amount due by the contractor to the subcontractor... in no event shall the aggregate amount of liens on the improvement exceed the amount due to the owner.

Therefore, assuming *arguendo* Respondent is entitled to file a lien, the value of the lien is zero dollars as Stipp is owed nothing by Appellant. In fact, Stipp owes Appellant money because her home was not up to code as he agreed to do by contract (Def.'s Tr. Ex. 15-20; Tr. Tran. p. 46, l. 13-p. 52, l. 19.) and Appellant had to finish the construction work Stipp failed to finish. (Def.'s Tr. Ex. 19 and 20.)

Even if Respondent was a licensed contractor capable of filing a lien, S.C. Code §29-5-20(B) states, “In no event shall the aggregate amount of any liens filed by a sub-subcontractor or supplier exceed the amount due by the contractor to the subcontractor to whom the sub-subcontractor or supplier has supplied labor, material, or services...” Here, there was ample evidence to establish that at the time Respondent filed his mechanic’s lien, Appellant homeowner had already paid Stipp in full the amount he invoiced her for the cabinets and Stipp had signed lien waivers. (Def.’s Tr. Ex. 9, 12.) As no money was owed to Stipp by the Appellant, no money is owed to Respondent subcontractor by the Appellant. See, e.g., Stoudenmire Heating & Air Conditioning Co. v. Craig Bldg. Ptnrshp., 308 S.C. 298, 417 S.E.2d 634 (Ct. App. 1992) (liability limited to the balance due to the contractor when notice received from the subcontractor); Stovall Bldg. Supplies v. Mottet, 305 S.C. 28, 406 S.E.2d 176 (Ct. App. 1990).

VII. Appellant is entitled to attorney fees as the prevailing party.

For purposes of the award of attorney's fees, the determination of the prevailing party is based on the verdict. S.C. Code §29-5-20(C). In the event this Court reverses the Lower Court’s decision, Appellant respectfully requests this matter be remanded for a determination of attorney fees owed Appellant.

CONCLUSION

Appellant respectfully requests this Court reverse the Lower Court’s Order and remand for an assessment of attorney fees against Respondent per S.C. Code §29-5-20(C) as she is the prevailing party in this case and she is entitled to attorney fees from Respondent in an amount to be determined after Appellant submits a petition for attorney fees.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

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Defendants,

of whom,

Maryann Wagner is

Appellant.

**DESIGNATION OF MATTERS
TO BE INCLUDED IN THE RECORD ON APPEAL**

Nancy Bloodgood, Esq., SC Bar No. 6459

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Attorneys for the Appellant

TO: HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

COME NOW the Appellant, pursuant to Rule 209 of the South Carolina Appellate Court Rules, who hereby designates the parts of the transcripts, Orders, pleadings, Affidavits, exhibits, and/or other materials which she proposes to include in the Record on Appeal.

PORTIONS OF THE TRANSCRIPT

1. Index
2. Page 6, lines 7-24
3. Page 7, lines 20-25
4. Page 8, lines 1-3; lines 14-19; lines 20-23
5. Page 10, line 22 to Page 11, line 1
6. Page 12, lines 21-25
7. Page 15, lines 3-23
8. Page 16, lines 8-10
9. Page 17, line 23 to Page 18, line 1
10. Page 18, line 2 to Page 19, line 1
11. Page 19, line 2 to Page 20, line 4
12. Page 20, lines 11-21
13. Page 21, lines 4-21
14. Page 22, lines 14-17
15. Page 23, lines 4-18
16. Page 24, lines 1-11
17. Page 36, lines 17-19

18. Page 38, lines 14-20
19. Page 39, line 22 to Page 41, line 1
20. Page 44, line 12 to Page 45, line 4
21. Page 46, line 5 to Page 52, line 19
22. Page 56, line 7 to Page 57, line 6
23. Page 56, line 4 to Page 57, line 17
24. Page 57, lines 7-17

ORDERS

1. Order Staying Case Pending Bankruptcy
2. Order Lifting Bankruptcy Stay
3. Order Referring Case to Magistrate
4. Order Granting Defendant Wagner's Motion to Dismiss
5. Motion to Reconsider
6. Order Partially Granting Defendant Wagner's Summary Judgment Motion and Dismissing Plaintiff's Quantum Meruit Claim
7. Trial Order

PLEADINGS

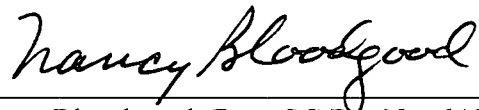
1. Complaint
2. Lien

EXHIBITS AND OTHER MATERIALS

1. Trial Exhibits
 - a. Plaintiff's Exhibit 1
 - b. Defendant's Exhibit 1
 - c. Defendant's Exhibit 2
 - d. Defendant's Exhibit 3
 - e. Defendant's Exhibit 5
 - f. Defendant's Exhibit 6

- g. Defendant's Exhibit 7
- h. Defendant's Exhibit 8
- i. Defendant's Exhibit 9
- j. Defendant's Exhibit 10
- k. Defendant's Exhibit 11
- l. Defendant's Exhibit 12
- m. Defendant's Exhibit 13
- n. Defendant's Exhibit 14
- o. Defendant's Exhibit 15
- p. Defendant's Exhibit 16
- q. Defendant's Exhibit 17
- r. Defendant's Exhibit 18
- s. Defendant's Exhibit 19
- t. Defendant's Exhibit 20

I, Nancy Bloodgood, Esquire, hereby certify pursuant to Rule 209(c), SCACR, the Designation of Matters to be included in the Record on Appeal submitted by the Appellant does not contain any matter and/or items which are not relevant to this Appeal.



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Date: 12-13-13

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

**PROOF OF SERVICE FOR APPELLANT'S BRIEF AND DESIGNATION OF
MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL**

RECEIVED
DEC 17 2013
SC Court of Appeals

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Attorneys for the Appellant

I, Nancy Bloodgood, Esquire, certify that on December 13, 2013, I served a copy of the Appellant's Brief and Designation of Matters to Be Included in the Record on Appeal via First Class Mail by placing a copy of the said documents in the United States mail with sufficient postage thereon on the following:

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The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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Nancy Bloodgood, Esquire