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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable Jane H. Merrill, Circuit Court Judge

Appellate Case No. 2025-002252
Trial Court Case No. 2023-CP-04-01493

T. Cox Builders, LLC,.....Appellant,

v.

Piedmont Vacant Properties, LLC and Watson Engineering, Inc.,.....Respondents.

APPELLANT T. COX BUILDERS, LLC'S INITIAL BRIEF

Respectfully submitted,

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INTRODUCTION

This appeal presents straightforward questions of law arising from a non-jury judgment that denied a licensed builder any recovery on a fixed-price construction contract and instead awarded the owners $149,939.41. The circuit court reached that result through three legal errors. It refused to apply a mandatory statutory stay—conceding the owners' construction-defect counterclaims were "actions" under the Notice and Opportunity to Cure Construction Dwelling Defects Act, yet denying the stay on a counterclaim exception and a timeliness requirement the statute does not contain. It denied the builder's claim for the sixth contractual draw by declaring an unambiguous milestone term ambiguous and then reading in conditions the parties never wrote. And it awarded damages built on a completion deadline the court itself supplied for a contract that, by the court's own findings, set no deadline at all.

Each error is independent, and each requires reversal or remand. The court further erred in dismissing the builder's equitable claim against Watson Engineering, Inc., a party that received and retained the benefit of a partially completed home but was never a party to the written contract the court invoked to bar that claim.

STATEMENT OF THE CASE

Appellant T. Cox Builders, LLC ("Cox"), a licensed residential builder, commenced this action on July 17, 2023, against Respondents Piedmont Vacant Properties, LLC ("Piedmont") and Watson Engineering, Inc. ("Watson"), asserting claims for breach of contract, quantum meruit, account stated, and relief under S.C. Code Ann. § 27-1-15 for unpaid balances arising from a fixed-price contract to construct a custom residence at 1011 Port Anne Cove, Anderson, South Carolina. (Order at 1, 12.)

Respondents answered and asserted counterclaims on August 21, 2023, for breach of contract, breach of the implied covenant of good faith and fair dealing, negligence, and promissory estoppel. (Order at 12 ¶ 33.) Cox filed its Reply to Counterclaims on September 20, 2023, raising Respondents' non-compliance with the Notice and Opportunity to Cure Construction Dwelling Defects Act. (Order at 1, 12 ¶ 33.)

The case was tried without a jury before the Honorable Jane H. Merrill on July 8, 9, and 10, 2025. (Order at 1.) At the close of the evidence, Cox moved to stay Respondents' construction-defect counterclaims under S.C. Code Ann. § 40-59-830 because Respondents had never served the statutory pre-suit notice of claim. (Order at 1–3.) The circuit court denied the motion. (Order at 3.)

By order filed September 9, 2025, the circuit court denied all relief sought by Cox and entered judgment for Respondents on their counterclaims for breach of contract and negligence in the amount of $149,939.41, comprising $89,261.32 in actual damages and $60,678.09 in consequential damages. (Order at 17 & nn.10–11, 24.) The court declined to award punitive damages. (Order at 23 ¶ 70.)

Cox timely moved under Rule 59(e), SCRCP, to alter or amend the judgment on September 19, 2025, challenging the denial of the statutory stay, the damages award, and the dismissal of its contract and equitable claims. The circuit court denied that motion by order filed October 6, 2025. Cox served and filed its Notice of Appeal on November 3, 2025, within thirty days of the order disposing of the Rule 59(e) motion. This Court has jurisdiction under Rule 203(b)(1), SCACR.

STATEMENT OF FACTS

On May 11, 2021, Cox and Piedmont entered into a written, fixed-price contract for the construction of a custom single-family residence at 1011 Port Anne Cove, Anderson, South Carolina (the "Home"), for a fixed price of $712,000.00. (Order at 4 ¶¶ 3–4; Pl.'s Ex. 1.) The contract incorporated plans and specifications (Exhibit A) and a milestone-based Draw Schedule (Exhibit B). (Order at 4 ¶¶ 4–5; Pl.'s Ex. 1.) The Draw Schedule set out nine draws, each tied to a designated construction milestone and a corresponding percentage of the contract price. (Order at 4 ¶ 5; Pl.'s Ex. 1.) Draw 6 was designated "10%—vinyl/gutters" and represented $71,200.00. (Order at 5–6 ¶¶ 8, 14; Pl.'s Ex. 1.) The contract set no fixed date for completion. (Order at 5 ¶ 6; Order at 15 ¶ 42.)

Between May 2021 and October 2022, Cox requested and was paid in full for Draws 1 through 5, totaling $462,800.00. (Order at 5 ¶¶ 8, 10; Defs.' Ex. 9.) Of the $712,000.00 contract price, $249,200.00 thus remained unpaid. In late January 2023, Cox requested Draw 6. (Order at 6 ¶ 14; Pl.'s Exs. 1–2; Defs.' Ex. 18.) A dispute arose: Cox's position was that it had completed the vinyl and gutter milestone that triggered Draw 6, while Respondents contended that work remained incomplete and pointed to broader dissatisfaction with the project as a whole. (Order at 6 ¶¶ 15–18.) Cox submitted an invoice for Draw 6 and was never paid. (Order at 6 ¶¶ 14–18; Pl.'s Ex. 3.) On March 30, 2023, Cox, through counsel, served a demand for payment of Draw 6 under S.C. Code Ann. § 27-1-15. (Order at 8 ¶ 21; Pl.'s Ex. 12.) Cox last performed work at the Home on February 21, 2023. (Order at 8 ¶ 21; Defs.' Ex. 6.) Cox also asserted four change orders totaling $20,800.00. (Order at 12 ¶ 32; Pl.'s Ex. 5.)

It was undisputed at trial that the contract contained no fixed deadline for completion. (Order at 5 ¶ 6; Order at 11 ¶ 29.) The circuit court itself recognized that "[n]o fixed time was set for the completion of the Contract" and that Cox's testimony to that effect was "undisputed."

(Order at 5 ¶ 6; Order at 11 ¶ 29.) Notwithstanding the absence of any contractual deadline, the court later supplied one, finding that "18 months is a reasonable time for the Home to be constructed," measured from execution of the contract. (Order at 15–16 ¶ 42; Order at 17 n.10.)

Respondents engaged Glenn Construction, LLC to repair and complete work for which Cox had been paid, and presented invoices totaling $89,261.32 as their actual damages. (Order at 8–9 ¶¶ 22–23; Defs.' Ex. 9.) The court awarded $60,678.09 in consequential damages, itemized as rental costs of $10,627.20 and $10,500.00, increased financing costs of $37,200.89, and increased material costs of $2,350.00—each measured from the court's judicially-determined 18-month completion date. (Order at 17 nn.10–11.) The court rejected Respondents' claimed loss-of-use damages as "speculative." (Order at 17 n.10.) The court awarded $149,939.41 in total and denied punitive damages. (Order at 23 ¶ 70, 24.)

Cox's position throughout was that Respondents' construction-defect allegations were subject to the Notice and Opportunity to Cure Construction Dwelling Defects Act, and that Respondents had never served the statutory pre-suit notice of claim. (Order at 1–3.) The circuit court agreed, as a threshold matter, that "Defendants' counterclaims are 'actions' as defined in the Act." (Order at 2.) It nonetheless denied the stay on two grounds: first, that requiring compliance "does not comport with [the Act's] purpose" because Respondents "did not initiate a suit, but only engaged in litigation after they were sued by [Cox]"; and second, that even if the Act applied, the motion "was not timely made." (Order at 2–3.)

STANDARD OF REVIEW

The standard of review varies by issue. The construction and application of a statute (Issue I) present questions of law, which this Court decides de novo and without deference to the circuit court. Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 568–69, 703 S.E.2d 197, 200 (2010); Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006).

Breach of contract (Issue II) and a claim for money damages (Issue III) are actions at law. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). In a non-jury action at law, the trial court's factual findings will not be disturbed if there is any evidence to support them, but the appellate court decides questions of law with no particular deference. Id. Whether a contract is ambiguous, and the construction of an unambiguous contract, are questions of law reviewed de novo, Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997); S. Glass & Plastics Co. v. Kemper, 399 S.C. 483, 491–92, 732 S.E.2d 205, 209 (Ct. App. 2012); and the legal measure of damages is likewise reviewed de novo, with damages requiring proof to a reasonable certainty rather than conjecture, S.C. Fin. Corp. of Anderson v. West Side Fin. Co., 236 S.C. 109, 113, 113 S.E.2d 329, 330 (1960); Maro v. Lewis, 389 S.C. 216, 222, 697 S.E.2d 684, 688 (Ct. App. 2010).

Quantum meruit (Issue IV) sounds in equity; in an equitable action tried without a reference, the appellate court may find facts in accordance with its own view of the preponderance of the evidence, while giving due regard to the trial court's superior position to assess credibility. Townes Assocs., 266 S.C. at 86, 221 S.E.2d at 775. Account stated is an action at law reviewed under the any-evidence standard. Id.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN DENYING COX'S MOTION TO STAY UNDER THE RIGHT-TO-CURE ACT.

The Right-to-Cure Act establishes a mandatory pre-suit procedure for construction-defect claims relating to a dwelling. Section 40-59-840 requires a claimant, "no later than ninety days before filing the action," to serve a written notice of claim on the contractor. S.C. Code Ann. § 40-59-840. The Act defines "action" broadly as "any civil lawsuit or action or arbitration proceeding for damages or indemnity asserting a claim for injury or loss to a dwelling . . . caused by an alleged defect." S.C. Code Ann. § 40-59-820. Where a claimant files an action without first complying, the remedy is not discretionary:

> "[I]f the notice is not provided before filing an action in court, on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article." S.C. Code Ann. § 40-59-830 (emphasis added).

The word "shall" is mandatory. Our Supreme Court has held that the Act's notice provisions must be applied according to their terms, describing them as "a new procedural timeline for asserting existing litigation rights." Grazia, 390 S.C. at 573, 703 S.E.2d at 202. A court may not resort to a forced construction that limits or expands a statute whose language is plain, and may not read into a statute words the General Assembly omitted. Capco, 368 S.C. at 142, 628 S.E.2d at 41. Two limitations the circuit court placed on section 40-59-830 appear nowhere in the statute, and each was outcome-determinative.

A. THE COUNTERCLAIM EXCEPTION HAS NO BASIS IN THE STATUTE'S TEXT.

The court expressly found, as "a threshold matter," that "Defendants' counterclaims are 'actions' as defined in the Act." (Order at 2.) Having so found, the statute supplied the answer: "the court shall stay the action." S.C. Code Ann. § 40-59-830. The court nonetheless denied the

stay on the theory that requiring compliance "does not comport with [the Act's] purpose" because Respondents "did not initiate a suit, but only engaged in litigation after they were sued." (Order at 2.) But nothing in sections 40-59-820, -830, -840, or -850 excludes counterclaims, distinguishes between plaintiffs and counterclaimants, or makes the stay turn on who filed first. A construction-defect counterclaim is a civil "action . . . for damages . . . caused by an alleged defect," and the court found it to be exactly that. § 40-59-820. The court's resort to legislative "purpose" to override the enacted text is precisely the forced construction that Grazia and Capco forbid; Grazia rejected an atextual limitation on the same stay provision, and the same result follows here. 390 S.C. at 573, 703 S.E.2d at 202.

B. THE TIMELINESS LIMITATION HAS NO BASIS IN THE STATUTE'S TEXT.

The court alternatively held that the stay was properly denied because the motion "was not timely made" and because Cox "waited too late in the process." (Order at 3.) But section 40-59-830 contains no deadline. It does not require that the motion be made "promptly," "before trial," or "within a reasonable time." It conditions the stay on a single fact—the claimant's failure to serve pre-suit notice—and directs that the court "shall stay the action" on the motion of "a party." § 40-59-830. The court's "strategic delay" rationale imports an equitable, laches-like defense the General Assembly did not provide; because the Act is in derogation of the common law, its mandatory remedy may not be narrowed by judicial gloss. Capco, 368 S.C. at 142, 628 S.E.2d at 41.

The timeliness rationale also conflates strategy with preservation. Cox pleaded Respondents' non-compliance in its Reply to Counterclaims, moved for the statutory stay at trial, obtained a ruling, and renewed the issue in its Rule 59(e) motion. (Order at 1–3, 12 ¶ 33.) The issue is squarely preserved. The dispositive question is not whether Cox sought the stay at the

optimal moment; it is whether the circuit court had legal authority to deny a mandatory statutory stay based on limitations the statute does not contain. It did not. Because Respondents served no pre-suit notice and the court found their counterclaims to be "actions," section 40-59-830 required a stay, and its denial should be reversed and the matter remanded with instructions to apply the Act according to its terms.

II. THE CIRCUIT COURT ERRED IN DENYING COX'S BREACH-OF-CONTRACT CLAIM FOR DRAW 6.

A court must enforce an unambiguous contract according to its plain terms; it has "no authority to alter a contract by construction or to make a new contract for the parties." C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n, 296 S.C. 373, 373 S.E.2d 584 (1988). A contract is ambiguous only when it "is capable of more than one meaning when viewed objectively by a reasonably intelligent person." Hawkins, 328 S.C. at 592, 493 S.E.2d at 878. A court may not manufacture ambiguity to add terms the parties did not write; and where a contract is genuinely ambiguous, the court must ascertain the parties' intent, Ebert v. Ebert, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995), not impose conditions the writing does not contain.

A. THE DRAW 6 MILESTONE TERM IS UNAMBIGUOUS.

The Draw Schedule tied Draw 6 to a single, designated milestone: "10%—vinyl/gutters." (Order at 5–6 ¶¶ 5, 8, 14; Pl.'s Ex. 1.) That term is not "capable of more than one meaning." It made Draw 6 payable upon completion of the vinyl and gutter work. The proper legal inquiry was therefore whether the vinyl/gutter milestone had been completed—not whether Respondents harbored broader dissatisfaction with the project or wished to convert the milestone-based draw structure into a generalized percentage-of-completion model. The circuit court instead found the payment terms "ambiguous" as to whether the milestones required completion before payment, whether each draw corresponded only to the work specified on the Draw Schedule, and whether

the milestones tracked percentages of overall completion. (Order at 14 ¶ 38.) The phrase "10%—vinyl/gutters" identifies one trade milestone and one payment percentage; it does not condition Draw 6 on completion of prior-draw work or on a global completion percentage. By treating the term as ambiguous, the court created a vehicle to read in conditions the parties never expressed. Where a term has a plain meaning, the court must enforce it. Hawkins, 328 S.C. at 592, 493 S.E.2d at 878; C.A.N. Enters., 296 S.C. at 373, 373 S.E.2d at 584.

B. THE COURT'S CONSTRUCTION REWROTE THE PARTIES' PAYMENT TERMS.

Even accepting the court's ambiguity premise, its construction improperly rewrote the payment provisions. When a contract is ambiguous, the court must ascertain the parties' intent, Ebert, 320 S.C. at 338, 465 S.E.2d at 125; it may not use the occasion to add conditions the parties never agreed to. The contract made each draw payable on completion of its designated milestone; it did not make Draw 6 contingent on the owners' satisfaction with the project as a whole or on a percentage-of-completion benchmark drawn from outside the Draw Schedule. By converting owner dissatisfaction and a self-generated completion percentage into preconditions to the sixth draw, the court made a new contract for the parties. That a court may not do. C.A.N. Enters., 296 S.C. at 373, 373 S.E.2d at 584. Nor does Cox's February 2023 request for a half draw support the judgment. The court treated that request as evidence the full draw was not due. (Order at 7 ¶ 17.) But the record reflects that Cox proposed the half draw to keep the project moving to its next phase: the heat-and-air units had to be installed before the hardwood flooring could go in, and Cox sought the interim contractual payment rather than finance that next phase of work out of his own pocket. (Pl.'s Ex. 4 (Cox needed the draw "as soon as possible so that I can go on to the next phase" and to "move forward"). A good-faith effort to compromise a payment dispute and advance construction is not a binding interpretation of the written contract, and it cannot supply a condition

the Draw Schedule omits. The denial of Cox's Draw 6 claim should be reversed and the matter remanded for construction of the contract under the milestone language the parties actually used.

III. THE CIRCUIT COURT ERRED IN AWARDING $149,939.41 IN DAMAGES.

"The proper measure of damages for breach of contract is the loss actually suffered by the contractee as a result of the breach." S.C. Fin. Corp., 236 S.C. at 113, 113 S.E.2d at 330; accord Maro, 389 S.C. at 222, 697 S.E.2d at 688. Contract damages are compensatory only; they place the non-breaching party in the position performance would have produced, not a better one. Consequential damages are recoverable only where they flow naturally from the breach or were within the parties' contemplation at contracting, and only where proven with reasonable certainty. Drews Co. v. Ledwith-Wolfe Assocs., Inc., 296 S.C. 207, 209–10, 371 S.E.2d 532, 533 (1988).

A. THE CONSEQUENTIAL DAMAGES REST ON A DEADLINE THE CONTRACT DID NOT CONTAIN.

The consequential-damages award cannot stand because it rests on a completion deadline the contract did not contain. The court found—twice—that the contract set "no fixed time . . . for the completion of the Contract," and that this fact was "undisputed." (Order at 5 ¶ 6; Order at 11 ¶ 29.) Where a contract sets no time for performance, the obligation must be performed within a reasonable time. Drews Co., 296 S.C. at 209, 371 S.E.2d at 533. But the court did not stop there; it fixed a specific eighteen-month deadline ("18 months is a reasonable time for the Home to be constructed") and measured Respondents' rental, financing, and material-cost damages from the date eighteen months after execution. (Order at 15–16 ¶ 42; Order at 17 nn.10–11.) Every dollar of the $60,678.09 consequential award—rental costs of $10,627.20 and $10,500.00, increased financing costs of $37,200.89, and increased material costs of $2,350.00—was computed from that judicially-selected date. (Order at 17 nn.10–11.) The court thus supplied a contractual term the parties omitted and then awarded damages for breach of the term it supplied. That is legal error

in the measure of damages. The unreliability is compounded by the court's own rejection of Respondents' loss-of-use damages as "speculative" (Order at 17 n.10); a model the factfinder found partly speculative cannot be assumed reliable as to its remaining, deadline-dependent components, each of which required proof to a reasonable certainty. Drews Co., 296 S.C. at 209–10, 371 S.E.2d at 533.

B. THE AWARD DOES NOT REFLECT A NET LOSS UNDER THE FIXED-PRICE CONTRACT.

The award also does not reflect the loss Respondents actually suffered under the fixed-price bargain. S.C. Fin. Corp., 236 S.C. at 113, 113 S.E.2d at 330. Respondents paid Cox $462,800.00 of the $712,000.00 contract price, leaving $249,200.00 unpaid and available to complete and repair the Home. (Order at 5 ¶¶ 8, 10; Defs.' Ex. 9.) The court awarded $89,261.32 in repair-and-completion costs without reconciling that figure against the substantial unpaid contract balance, the contract allowances, or the difference between the cost of obtaining the bargained-for Home and any betterment. A finding that the expenditures were "reasonable" and "mitigated" (Order at 17 ¶ 45) is not a finding that Respondents suffered a net, compensable loss under the contract they made.

C. RECASTING THE AWARD AS NEGLIGENCE DOES NOT CURE THE DEFECT.

The court awarded the identical $149,939.41 on both its contract and negligence theories. (Order at 22 ¶ 69, 24.) Although a builder may be liable in tort, Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335, 345–46, 384 S.E.2d 730, 737 (1989), and the economic loss rule does not bar the owner's negligence claim, Carroll v. Isle of Palms Pest Control, Inc., 918 S.E.2d 532, 537 (S.C. 2025), the tort recovery is still measured by the loss actually sustained. Cost of repair is a recognized measure, Kincaid v. Landing Dev. Corp., 289 S.C. 89, 94, 344 S.E.2d 869, 873 (Ct.

App. 1986), but only to the extent it compensates for a real loss; the court applied it without crediting the unpaid contract balance or accounting for betterment. The negligence label cannot supply what the damages proof lacked. The award should at a minimum be vacated and the matter remanded for a determination of the loss actually suffered.

IV. THE CIRCUIT COURT ERRED IN DISMISSING COX'S QUANTUM MERUIT CLAIM AGAINST WATSON AND IN REJECTING COX'S ACCOUNT STATED CLAIM.

To recover in quantum meruit, a plaintiff must establish (1) a benefit conferred upon the defendant, (2) the defendant's realization of that benefit, and (3) retention of the benefit under circumstances making it inequitable to retain it without paying its value. Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 8–9, 532 S.E.2d 868, 872 (2000); Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). Recovery is measured by the value of the benefit unjustly retained. Dema v. Tenet Physician Servs.-Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009); Stringer Oil Co. v. Bobo, 320 S.C. 369, 373, 465 S.E.2d 366, 369 (Ct. App. 1995). A plaintiff uncertain which theory it can prove may plead an express contract and quantum meruit in the alternative without being put to an election. Adams v. Grant, 292 S.C. 581, 586, 358 S.E.2d 142, 144 (Ct. App. 1986).

A. THE EXPRESS-CONTRACT BAR DOES NOT REACH WATSON.

The circuit court dismissed Cox's quantum meruit claim primarily because "a valid contract exists between Plaintiff and Defendant PVP that covers the issue of compensation," thereby barring the claim. (Order at 18 ¶ 50.) But Cox asserted its quantum meruit claim against Watson, not Piedmont, and the written contract was between Cox and Piedmont alone. (Order at 4 ¶ 3, 17 ¶ 46; Pl.'s Ex. 1.) While an express contract bars quantum meruit as to the compensation that contract governs, Johnston v. Brown, 290 S.C. 141, 148, 348 S.E.2d 391, 395 (Ct. App. 1986),

that bar by its nature operates only between the parties to the contract; it does not reach Watson, a stranger to the agreement. Watson received and retained the benefit of a partially completed residence; the equitable question was whether Watson was unjustly enriched by the value it retained without paying for it. Myrtle Beach Hosp., 341 S.C. at 8–9, 532 S.E.2d at 872. By applying the express-contract bar to a non-party, the court resolved the claim on an incorrect legal premise.

B. THE COURT MISAPPLIED THE MEASURE OF UNJUST ENRICHMENT.

The court's alternative "value to the owner" rationale (Order at 18 ¶ 51) applied the measure too rigidly. Unjust enrichment is measured by the value of the benefit unjustly retained by the defendant, Dema, 383 S.C. at 123, 678 S.E.2d at 434, and the labor and materials Cox incorporated into the Home were probative of the value Watson retained. The court erred to the extent it treated that evidence as categorically incapable of establishing benefit. Reviewing the equitable claim under its own view of the preponderance of the evidence, this Court should reverse the dismissal of the quantum meruit claim against Watson and remand for a determination of the value of the benefit Watson retained.

C. THE UNCLEAN-HANDS FINDING DOES NOT BAR RELIEF AGAINST WATSON.

The doctrine of unclean hands bars equitable relief only where the claimant's inequitable conduct related to the very matter in litigation and worked to the prejudice of the party invoking it. First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998); Ingram v. Kasey's Assocs., 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000). The conduct the court identified—Cox's demands on Piedmont over the disputed draw and percentage-of-completion representations (Order at 18 ¶ 52)—concerned Cox's dealings with Piedmont over payment, not inequitable conduct toward Watson with respect to the benefit Watson retained. The

doctrine cannot be stretched to absolve a non-contracting owner of paying for value it knowingly received and kept.

D. ACCOUNT STATED.

Cox's account stated claim should be reviewed as a secondary alternative theory. The elements of an account stated are that the account was actually stated and that the parties, expressly or impliedly, agreed it was a true statement of the amount due. S. Welding Works, Inc. v. K & S Constr. Co., 286 S.C. 158, 164, 332 S.E.2d 102, 106 (Ct. App. 1985). Cox stated an account through its invoices and statutory demand, and the running account reflected the balance Cox claimed due. (Order at 8 ¶ 21; Pl.'s Exs. 3, 12.) To the extent the circuit court rejected the claim, the issue is preserved and is properly before this Court should the Court conclude Cox's legal and equitable theories warrant further proceedings.

CONCLUSION

For the foregoing reasons, Appellant T. Cox Builders, LLC respectfully requests that this Court reverse the circuit court's denial of Appellant's motion to stay under S.C. Code Ann. § 40-59-830 and remand with instructions to apply the Notice and Opportunity to Cure Construction Dwelling Defects Act according to its terms; reverse the denial of Appellant's breach-of-contract claim for Draw 6 and remand for construction of the contract under the language of the written Draw Schedule; vacate the damages award and remand for a determination of the loss actually suffered; reverse the dismissal of Appellant's quantum meruit claim against Watson Engineering, Inc. and remand for further proceedings; and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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