

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

RECEIVED
MAR 28 2012

S. Jackson Kimball, III, Special Circuit Court Judge **SC Court of Appeals**

Case No. 2010-CP-46-01951

Hard Hat Workforce Solutions, LLC.Plaintiff
Appellant,

v.

Mechanical HVAC Services, Inc, Liberty Mutual Insurance Company, and Great
American Insurance
Company..... Defendants
Of whom Great American Insurance Company is theDefendant
Respondent.

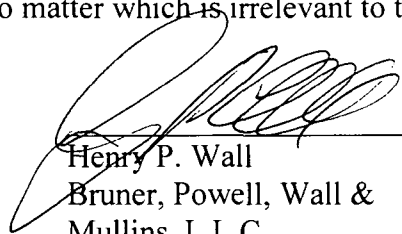
DEISGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal;

1. Order of October 13, 2011
2. Complaint
3. Answer
4. Motion for Summary Judgment
5. Affidavits and exhibits in support of motion
6. Affidavits and exhibits in opposition to motion
7. Transcript of Hearing and exhibits offered to court.

I certify that this designation contains no matter which is irrelevant to this appeal.

March 26, 2012



Henry P. Wall

Bruner, Powell, Wall &

Mullins, L.L.C.

P.O. Box 61110

Columbia, South Carolina 29260

(803) 252-7693

Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

RECEIVED
MAY 28 2012
SC Court of Appeals

S. Jackson Kimball, III, Special Circuit Court Judge

Case No. 2010-CP-46-01951

NEW C/A No.: 2011202168

Hard Hat Workforce Solutions, LLC.Plaintiff Appellant,

v.

Mechanical HVAC Services, Inc, Liberty Mutual Insurance Company, and Great American Insurance Company..... Defendants
Of whom Great American Insurance Company is theDefendant Respondent.

PROOF OF SERVICE

I, Bridget S. Steele, a Legal Assistant of Bruner, Powell, Wall & Mullins, LLC, attorneys for Appellants, Hard Hat Workforce Solutions, LLC do hereby certify that on the 26th day of March 2012, I served the *Appellant's Initial Designation of Record* upon opposing counsel by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

Charles H. McDonald, Esq.
Robinson McFadden & Moore, PC
P.O. Box 944
Columbia, SC 29202

Bridget Steele

Bridget S. Steele
BRUNER, POWELL, WALL
& MULLINS, LLC
1735 St. Julian Place, Suite 200 (29204)
Post Office Box 61110
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(803) 252-7693

Columbia, South Carolina

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ATTORNEYS AND COUNSELORS AT LAW
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JAMES L. BRUNER, P.A.
WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
E. WADE MULLINS, III, P.A.
BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

WRITER'S E-MAIL: HWALL@brunerpowell.com

March 26, 2012

VIA U.S. MAIL

The Honorable Tonya Gee
Clerk of South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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MAR 28 2012

SC Court of Appeals

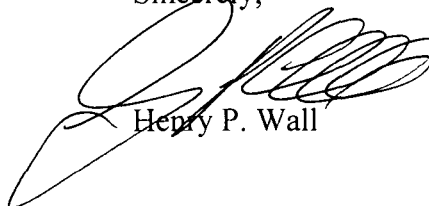
**Re: Hard Hat Workforce Solutions, LLC v. Mechanical HVAC Services, Inc., &
Great American Insurance Company
Our File No.: 9-2112.100
C/A No.: 2010-CP-46-01951
Case Tracking #: 2011202168**

Dear Ms. Gee:

Enclosed please find the original and two (2) copies of the Appellants' Initial Designation of Record and Proof of Service in the above referenced matter. Please file the original, clock-in the copies and return them to me via our self-address stamped envelope that is provided. By copy of this letter to opposing counsel we are notifying him of this filing and serving him with a copy of the same.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Henry P. Wall

HPW/bss

Enclosure

Cc: Charles H. McDonald, Esq.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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April 18, 2012

Henry P. Wall, Esquire
Bruner, Powell, Robbins, Wall & Mullins, LLC
P O Box 61110
Columbia, SC 29260-1110

Re: Hard Hat Workforce v. Mech. HVAC (GAIC)
2011202168

Dear Counsel:

We have received your Appellant's Initial Brief in the above matter. However, you must include the Designation of Matter with a Certificate of Counsel as required in Rule 209 of the SCACR. Please provide the Designation of Matter with Certificate of Counsel within ten days of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

JAK/laf

cc: Charles H. McDonald, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, III, Special Circuit Court Judge

Case No. 2010-CP-46-01951

NEW C/A No.: 2011202168

Hard Hat Workforce Solutions, LLC.Plaintiff Appellant,

v.

Mechanical HVAC Services, Inc, Liberty Mutual Insurance Company, and Great American Insurance Company..... Defendants
Of whom Great American Insurance Company is theDefendant Respondent.

PROOF OF SERVICE

I, Bridget S. Steele, a Legal Assistant of Bruner, Powell, Wall & Mullins, LLC, attorneys for Appellants, Hard Hat Workforce Solutions, LLC do hereby certify that on the 26th day of March 2012, I served the **Appellant's Initial Brief** upon opposing counsel by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

Charles H. McDonald, Esq.
Robinson McFadden & Moore, PC
P.O. Box 944
Columbia, SC 29202

Bridget Steele

Bridget S. Steele
BRUNER, POWELL, WALL
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WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

WRITER'S E-MAIL: HWALL@brunerpowell.com

March 26, 2012

VIA HAND DELIVERY

The Honorable Tonya Gee
Clerk of South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

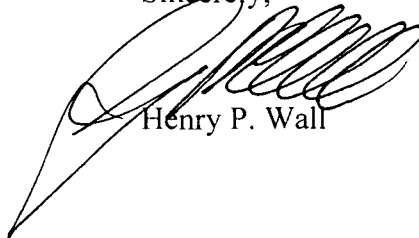
**Re: Hard Hat Workforce Solutions, LLC v. Mechanical HVAC Services, Inc., &
Great American Insurance Company**
Our File No.: 9-2112.100
C/A No.: 2010-CP-46-01951
Case Tracking #: 2011202168

Dear Ms. Gee:

Enclosed please find the original and two (2) copies of the Appellants' Initial Brief and Proof of Service in the above referenced matter. By copy of this letter to opposing counsel we are notifying him of this filing and serving him with a copy of the same.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Henry P. Wall

HPW/bss

Enclosure

Cc: Charles H. McDonald, Esq.

RECEIVED

MAR 26 2012

SC Court of Appeals

The South Carolina Court of Appeals

Hard Hat Workforce Solutions, LLC, Appellant,

v.

Mechanical HVAC Services, Inc.,
Great American Insurance Company,
and Liberty Mutual Insurance
Company, Defendants,

Of Whom Great American Insurance
Company is the, Respondent.

The Honorable S. Jackson Kimball, III
York County
Trial Court Case No. 2010-CP-46-01951

ORDER

For good cause having been shown, the time for the Appellant's Initial Brief and Designation of Matter to be served and filed in the above entitled matter is hereby extended until March 26, 2012.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY V. Claire Allon, Deputy
CLERK

Columbia, South Carolina
cc: Henry P. Wall, Esquire
Charles H. McDonald, Esquire

FILED
3/6/12 LAF

BRUNER, POWELL, WALL & MULLINS, LLC

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BENJAMIN C. BRUNER

MATTHEW H. STABLER

* Also Admitted in District of Columbia

WRITER'S E-MAIL: HWALL@brunerpowell.com

February 20, 2012

VIA U.S. MAIL

The Honorable Tonya Gee

Clerk of South Carolina Court of Appeals

1015 Sumter Street

Columbia, South Carolina 29201

RECEIVED

FEB 22 2012

SC Court of Appeals

Re: Hard Hat Workforce Solutions, LLC v. Mechanical HVAC Services, Inc., & Great American Insurance Company

Our File No.: 9-2112.100

C/A No.: 2010-CP-46-01951

Case Tracking #: 2011202168

Dear Ms. Gee:

On behalf of the Appellant in this matter, I would request a 30 day time extension until Monday, March 26, 2012 to file the initial brief in this appeal. I have enclosed the requisite check in the amount of twenty five dollars and a proof of service of this request on opposing counsel.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

H. P. Wall / *HP*

Henry P. Wall

HPW/bss

Cc: Charles H. McDonald, Esq.
Mr. Marc Holcomb

2/24/12

3/26/12

1st

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, III, Special Circuit Court Judge

Case No. 2010-CP-46-01951

NEW C/A No.: 2011202168

RECEIVED
FEB 22 2012
SC Court of Appeals

Hard Hat Workforce Solutions, LLC. Plaintiff-Appellant,

v.

Mechanical HVAC Services, Inc, Liberty Mutual Insurance Company, and Great American Insurance Company..... Defendants
Of whom Great American Insurance Company is theDefendant Respondent.

PROOF OF SERVICE

I, Bridget S. Steele, a Legal Assistant of Bruner, Powell, Wall & Mullins, LLC, attorneys for Appellants, Hard Hat Workforce Solutions, LLC do hereby certify that on the 20th day of February 2012, I served the **First Time Extension Request for Initial Brief** upon opposing counsel by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

Charles H. McDonald, Esq.
Robinson McFadden & Moore, PC
P.O. Box 944
Columbia, SC 29202

Bridget S. Steele

Bridget S. Steele
BRUNER, POWELL, WALL
& MULLINS, LLC
1735 St. Julian Place, Suite 200 (29204)
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(803) 252-7693

Columbia, South Carolina
February 20, 2012

BRUNER, POWELL, WALL & MULLINS, LLC

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WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

WRITER'S E-MAIL: HWALL@brunerpowell.com

February 14, 2012

VIA U.S. MAIL

The Honorable Tonya Gee
Clerk of South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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FEB 15 2012

SC Court of Appeals

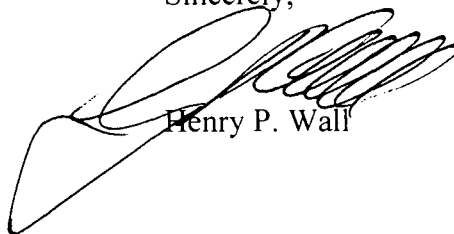
**Re: Hard Hat Workforce Solutions, LLC v. Mechanical HVAC Services, Inc., &
Great American Insurance Company
Our File No.: 9-2112.100
C/A No.: 2010-CP-46-01951
Case Tracking #: 2011202168**

Dear Ms. Gee:

On behalf of the Appellant in this matter, I am writing to let you know that we received a copy of the transcript in the above referenced matter on Wednesday, January 25, 2012.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Henry P. Wall

HPW/bss

Enclosure

Cc: Charles H. McDonald, Esq.



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
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February 3, 2012

Henry P. Wall, Esquire
Bruner, Powell, Robbins, Wall & Mullins, LLC
P O Box 61110
Columbia, SC 29260-1110

Re: Hard Hat Workforce v. Mech. HVAC (GAIC)
2011202168

Dear Counsel:

Our records indicate that the transcript in the above matter should have been delivered by January 9, 2012. As of today's date, we have received no information that the court reporter has been granted an extension, nor have we received your initial brief.

If you have not yet received the transcript, you must contact the Office of Court Administration per Rule 207 of the South Carolina Appellate Court Rules. The address for Court Administration is as follows:

South Carolina Office of Court Administration
1015 Sumter Street, Suite 201
Columbia, SC 29201

Be sure to copy the Court and opposing counsel with all correspondence concerning the transcript.

Please advise the Court of the status of the transcript with ten (10) days of the date of this letter, or your appeal may be dismissed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Charles H. McDonald, Esquire

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

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WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER

MATTHEW H. STABLER

* Also Admitted in District of Columbia

WRITER'S E-MAIL: BSTEELE@brunerpowell.com

November 10, 2011

VIA U.S. MAIL

The Honorable Kenneth A. Richstad
Clerk of South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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NOV 14 2011

SC Court of Appeals

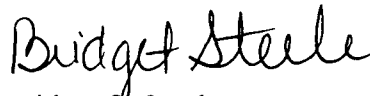
**Re: Hard Hat Workforce Solutions, LLC v. Mechanical HVAC Services, Inc., &
Great American Insurance Company
Our File No.: 9-2112.100
C/A No.: 2011202168**

Dear Mr. Richstad:

Enclosed please find a copy of my correspondence to the court reporter, Hilda Jordan in the above referenced matter requesting that we order a copy of the transcript for the hearing that was held on September 15, 2011 before the Honorable S. Jackson Kimball, III.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Bridget S. Steele

Legal Assistant to Henry P. Wall, Esq. S.C. Bar # 5797

/bss

Enclosure

Cc: Charles H. McDonald, Esq.

Bridget Steele

From: hmjordan3@aol.com
Sent: Wednesday, November 09, 2011 3:28 PM
To: Bridget Steele
Subject: Re: Hard Hat Workforce Solution v. Mechanical HVAC 2010-CP-46-01951

Thanks. Phew!!!! hmj

-----Original Message-----

From: Bridget Steele <bsteele@brunerpowell.com>
To: 'hmjordan3@aol.com' <hmjordan3@aol.com>
Sent: Wed, Nov 9, 2011 3:18 pm
Subject: RE: Hard Hat Workforce Solution v. Mechanical HVAC 2010-CP-46-01951

Mrs. Jordan – Hank said that we just had to have it ordered within 10 days. So whenever you can get it to us would be great. No rush!!

Bridget S. Steele
LEGAL ASSISTANT
BRUNER POWELL
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P.O. Box 61110 (29260)
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NOV 14 2011

SC Court of Appeals

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From: hmjordan3@aol.com [mailto:hmjordan3@aol.com]
Sent: Wednesday, November 09, 2011 3:12 PM
To: Bridget Steele
Subject: Re: Hard Hat Workforce Solution v. Mechanical HVAC 2010-CP-46-01951

Got it. Can you send me something that has the complete caption on it? Thanks. hmj

-----Original Message-----

From: Bridget Steele <bsteele@brunerpowell.com>
To: 'hmjordan3@aol.com' <hmjordan3@aol.com>
Sent: Wed, Nov 9, 2011 12:20 pm
Subject: FW: Hard Hat Workforce Solution v. Mechanical HVAC 2010-CP-46-01951

Mrs. Jordan,

Per our telephone conversation I have attached the letter from the Court of Appeals informing us that we have to order the transcript of the above case captioned within 10 days of the POS of the Notice of Appeal. The hearing was on 9.15.11 in front of Hon. S. Jackson Kimball, III. Please let me know if you need any more information. Thanks for your help.

Bridget S. Steele

LEGAL ASSISTANT
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The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 4, 2011

Henry P. Wall, Esquire
Bruner, Powell, Robbins, Wall & Mullins, LLC
P O Box 61110
Columbia, SC 29260-1110

Re: Hard Hat Workforce v. Mech. HVAC (GAIC)
Case Tracking #: 2011202168

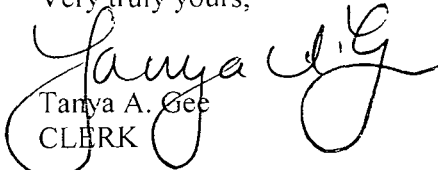
Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. Failure to file in the proper court may result in the dismissal of your appeal. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the bar number and firm name of any counsel shown must be included in his or her address.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

I further wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,


Tanya A. Gee
CLERK

TAG/laf

cc: Charles H. McDonald, Esquire

The Supreme Court of South Carolina

RE: Interim Guidance Regarding Personal Data Identifiers and
Other Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). Therefore, with some few exceptions,¹ documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts.

Parties shall not include, or will partially redact where inclusion is necessary, the following personal data identifiers from documents filed with an appellate court:²

1. Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.
2. Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only the minor's first name and first initial of the last name (i.e., John S.) should be used.
3. Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.
4. Home Addresses. If a home address must be included, only the city and state should be used.

Parties wishing to file documents containing the personal data identifiers listed above may file unredacted documents under seal, together with redacted versions for the public file. The sealed unredacted documents shall be filed in a separate Appendix and the bottom of each page of the Appendix shall be marked "Sealed." No order of the appellate court will be required to file this sealed Appendix. The number of copies of the Appendix to be served and filed shall be the same as that required for the brief, record on appeal, motion or other filing that includes the redacted documents.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend the caption to redact the identifier. This should be done contemporaneously with the filing of the notice of appeal or the commencement of the case with the appellate court. Without a motion to the appellate court, the caption of a juvenile delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e., In the Interest of John S., a Juvenile.)

A party seeking to seal material beyond those personal identifiers listed above, must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, supra, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed; the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E.C. Burnett, III J.

s/Costa M. Pleicones J.

Columbia, South Carolina

August 13, 2007

¹ See, e.g., Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR; Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR; Rule 402(n), SCACR; and Rule 403(l), SCACR.

² This restriction shall not apply when this information is required or requested by the appellate court. For example, the application for admission to practice law under Rule 402, SCACR, requires many of these personal identifiers to be disclosed.

PM Hand
POS 10/31/11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, III, Special Circuit Court Judge

Case No. 2010-CP-46-01951

Hard Hat Workforce Solutions, LLC.Plaintiff Appellant,

v.

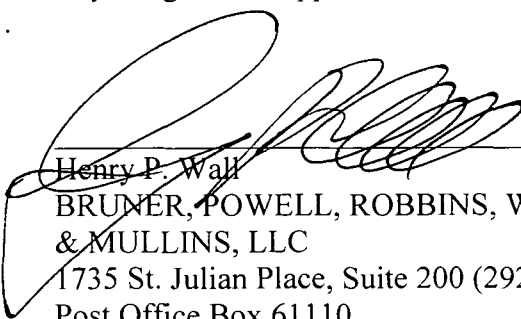
Mechanical HVAC Services, Inc, Liberty Mutual Insurance Company, and Great American Insurance Company..... Defendants
Of whom Great American Insurance Company is theDefendant Respondent.

NOTICE OF APPEAL

Hard Hat Workforce Solutions, LLC appeals the order of the Honorable S. Jackson Kimball, III, Special Circuit Court Judge, dated September 30, 2011, but filed October 13, 2011, granting Defendant Respondent's Motion for Summary Judgment. Appellants received written notice of entry of this order on October 14, 2011.

October 31, 2011

RECEIVED
OCT 31 2011
SC Court of Appeals


Henry P. Wall
BRUNER, POWELL, ROBBINS, WALL
& MULLINS, LLC
1735 St. Julian Place, Suite 200 (29204)
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Attorneys for Appellants

Other Counsel of Record:

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STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF YORK

CASE NO: 2010CP4601951

IN THE COURT OF COMMON PLEAS

Hard Hat Workforce Solutions LLC vs. Mechanical HVAC Services Inc

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other:
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Order (Granting Summary Judgment & Dism Clm w/Prejudice)

Dated at York, South Carolina, this 30th day of September, 2011.

Court Reporter:

s/ S. Jackson Kimball III

PRESIDING JUDGE - S. Jackson Kimball III

This judgment was entered on the 13th day of October, 2011, and a copy mailed first class this 13th day of October, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Henry Pickett Wall Bruner Powell Robbins
Wall&Mullins,LLC P.O. Box 61110 Columbia,
SC 29260

Charles Harry McDonald Robinson
McFadden & Moore, PC P.O. Box 944
Columbia, SC 29202
Mechanical HVAC Services Inc Attn: Willie
Carver 5 Hallie Henderson Rd Tifton, GA
31794

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

SCRPC APP-24/FORM 4

David Hamilton - Clerk of Court

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

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BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.

JOEY R. FLOYD, P.A.

WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER

MATTHEW H. STABLER

* Also Admitted in District of Columbia

WRITER'S E-MAIL: BSTEELE@brunerpowell.com

October 31, 2011

VIA HAND DELIVERY

The Honorable Kenneth A. Richstad
Clerk of South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

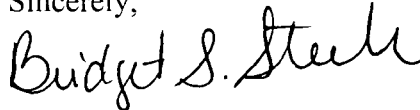
**Re: Hard Hat Workforce Solutions, LLC v. Mechanical HVAC Services, Inc., &
Great American Insurance Company
Our File No.: 9-2112.100
C/A No.: 2010-CP-46-1951**

Dear Mr. Richstad:

Enclosed please find an original and one (1) copy of the Notice of Appeal in the above referenced action. Also included is a check for the filing fee in the amount of \$100.00. Please file the original, clock-in the copy and return them to me via our courier.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Bridget S. Steele

Legal Assistant to Henry P. Wall, Esq.

/bss

Enclosure

Cc: Mr. Marc Holcomb
Charles H. McDonald, Esq.
Honorable David Hamilton (York Clerk)

RECEIVED
OCT 31 2011
SC Court of Appeals

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

Hard Hat Workforce Solutions, LLC,) Case No.: 2010-CP-46-01951
)

Plaintiff,)
)

vs.)
)

Mechanical HVAC Services, Inc., Great)
American Insurance Company, and Liberty)
Mutual Insurance Company,)

Defendant.)
)

ORDER

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DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter came before me on September 15, 2011, on Defendant Great American Insurance Company's ("Great American") motion for summary judgment on all claims against it pursuant to Rule 56, S.C.R.C.P. Appearing on behalf of Great American was Charles H. McDonald. Henry P. Wall appeared on behalf of Hard Hat Workforce Solutions, LLC ("Hard Hat"). In support of its motion, Great American relies on the pleadings, the interrogatory responses of Hard Hat, and the affidavits of Amy Miller, J.T. East, Linda Schilling and Robert White, all of which were filed with the motion. In opposition to the motion, Hard Hat, filed affidavits from Eric Byrd and Eric Schmidt. Based on the record presented, I find and conclude as follows.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), S.C.R.C.P. In determining whether genuine issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997).

The purpose of summary judgment is to expedite disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). "[I]nterpretation of a statute is a question of law for the court." *Catawba Indian Tribe of South*



Carolina v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007); *Charleston County Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995); *Bostic v. American Home Mortgage Servicing, Inc.*, 375 S.C. 143, 147, 650 S.E.2d 479, 481 (Ct.App. 2007). Thus, where there are no issues of fact to consider, summary judgment is the appropriate disposition of the issue.

FACTS NOT IN DISPUTE

This matter arises out of the construction of a new high school in York County known as York Comprehensive High School and Floyd D. Johnson Tech Center (the "Project"). Edifice, Inc., was the general contractor for the Project and Walker White, Inc. ("Walker White"), was the mechanical subcontractor to Edifice, and had responsibility for constructing the mechanical and plumbing work for the Project. Walker White in turn subcontracted certain work to Mechanical HVAC Services, Inc. ("MHS"). MHS entered into an agreement with Hard Hat wherein Hard Hat would provide temporary skilled labor to assist MHS with performing the work under its subcontract with Walker White.

As part of the requirements of its subcontract with Edifice, Walker White furnished a labor and materials payment bond covering its work on the Project. Great American acted as surety on this payment bond with Walker White as the principal on the bond. Hard Hat made a claim against this payment bond seeking to recover \$108,337.68, an amount owed by MHS to Hard Hat, and for which Hard Hat has a judgment against MHS. Hard Hat ultimately gave notice of its claim to Walker White, as the bonded contractor, by certified mail on March 5, 2010. Hard Hat subsequently filed this action on May 12, 2010, seeking recovery on the payment bond.

The parties placed in the record three e-mail messages sent from Eric Schmidt, Hard Hat's Territory Manager, to J.T. East, Walker White's assistant project manager. These e-mails are dated August 4, 2009, September, 29, 2009 and October 22, 2009. J.T. East worked from a jobsite trailer located at the Project in York County, and received the e-mails on his computer at the jobsite trailer. Walker White maintains its permanent office at 5728 Shakespeare Road, Columbia, S.C., 29223. This is also the same address shown for Walker White on the records of the Department of Labor, Licensing and Regulation, and on the payment bond at issue.

DISCUSSION

Claims against a payment bond such as that at issue in this case are governed by S.C. Code Ann. § 29-5-440 (1976, as amended). In this matter, the issue is interpretation of certain

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notice requirements set forth in this statute. As already stated, interpretation of a statute is a question of law for the court. Thus, “. . . determination of legislative intent is a matter of law.”

Charleston County Parks & Recreation Comm'n, supra, 319 S.C. at 67, 459 S.E.2d at 843.

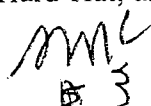
The pertinent provisions of § 29-5-440 are as follows:

Every person who has furnished labor, material, or rental equipment to a bonded contractor or its subcontractors in the prosecution of work provided for in any contract for construction, and who has not been paid in full . . . shall have the right to sue on the payment bond for the amount . . . unpaid at the time of the institution of such suit

A remote claimant shall have a right of action on the payment bond . . .
. . . However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless **the remote claimant has provided notice of furnishing** labor, materials, or rental equipment to the bonded contractor. **Such written notice . . . shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid, to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation.** After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. (Emphasis added.)

I find and conclude that Hard Hat is a “remote claimant”, and that Walker White, as principal on the bond sued on, is the “bonded contractor” as those terms are defined and used in § 29-5-440. As provided by § 29-5-440, Great American, through Walker White as the bonded contractor, asserts as a complete defense to Hard Hat’s bond claim that Walker White had paid MHS in full prior to receiving the notice of claim from Hard Hat. Great American submitted the affidavit of Walker White’s project manager, Amy Miller, attesting that as of February 8, 2010, Walker White owed no money to MHS. Hard Hat submitted no evidence to the contrary. Therefore, I find that there is no genuine issue of material fact on this issue and conclude that as of February 8, 2010, Walker White owed no money to MHS.

While § 29-5-440 provides a “payment defense” to the surety and the bonded contractor against claims on the payment bond, it also provides for the means for a remote claimant such as Hard Hat to avoid this defense. If a remote claimant provides proper and sufficient notice of furnishing labor or material to the bonded contractor (“notice of furnishing”), then no payments made after receipt of such notice reduce the amount that the remote claimant may recover on the payment bond. The issue here is whether Hard Hat, as a remote claimant, gave Walker White,



the bonded contractor, proper and sufficient “notice of furnishing” as required by § 29-5-440.

There are four requirements for giving “notice of furnishing” labor under § 29-5-440. They are: (1) notice must be in writing; (2) notice must be to the bonded contractor; (3) notice must be given through a specified manner of delivery/service (personal service, fax, electronic mail, or by registered or certified mail); and (4) notice must be sent to any place the bonded contractor maintains a permanent office, or the address listed for the bonded contractor on records of Department of Labor, Licensing, and Regulation (“LLR”).

It is undisputed that the only attempted giving of any purported “notice of furnishing” was the three e-mail messages sent from Eric Schmidt of Hard Hat to J.T. East of Walker White at the job site. Upon examination, the e-mail messages are in the nature of a solicitation by Hard Hat for business from Walker White. They do not give notice of any actual, contemporaneous furnishing of labor or materials.

In construing the requirements of § 29-5-440, I am guided by the cardinal rule of statutory construction, namely, to ascertain and effectuate the intent of the legislature. *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). While § 29-5-440 has no specified requirements for the information a remote claimant must include in a “notice of furnishing”, I find and conclude that the legislature intended more than that contained in the Hard Hat e-mail messages. By analogy, a “notice of furnishing” under S.C. Code Ann. § 29-5-20 for a mechanic’s lien has specific requirements, which are not present in the Hard Hat e-mails. Moreover, the notices were sent only to an assistant project manager of Walker White at the jobsite, which is necessarily a temporary location, rather than an officer, managing agent, or other responsible person, at Walker White’s office in Columbia, S.C., which is its permanent address, and the one address listed with LLR. Such notice is not sufficient, and not calculated to give such a critical notice to a person responsible for payment of any claim.

I find and conclude that the legislative intent for a notice of furnishing labor under § 29-5-440 is that written notice be delivered to a responsible person employed with the bonded contractor at its permanent place of business, not a jobsite. None of the three e-mails sent by Hard Hat satisfy this requirement. Thus, I find and conclude that Hard Hat did not provide Walker White with sufficient notice of furnishing labor as required by § 29-5-440.

Hard Hat asserts that the payment bond on which it claims is a “private bond”, or contract, and that the private contract and its terms control the parties’ rights here, without regard to the provisions of § 29-5-440. However, such a conclusion would nullify the statutory scheme.

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The statutory law of South Carolina is a part of every contract whether stated therein or not. "It is a fundamental rule of contract construction that the law existing at the time and place of the making of a contract is a part of the contract." *Catawba Indian Tribe of South Carolina, supra*, 372 S.C. at 524, 642 S.E.2d at 753. Thus, I find and conclude that the terms and provisions of § 29-5-440 govern Hard Hat's claim on the payment bond at issue.

Hard Hat also asserts a constitutionality defense to § 29-5-440, namely, that the interpretation of the section urged by Great American will result in disparate treatment among remote claimants. This position is based on the requirement of S.C. Code Ann. § 29-5-23 (1976, as amended) that a general contractor must file a notice of project commencement in order to receive the "payment" protection against remote claimants provided in § 29-5-440, while a bonded subcontractor does not. Hard Hat urges that because Walker White was not required to file a notice of project commencement as a general contractor, § 29-5-440 treats Hard Hat differently than it would had Walker White been the general contractor. Hard Hat contends that there is no rational basis for such disparate treatment, and thus, there is a violation of the equal protection under the Constitution. I disagree.

First of all, this argument affects the application of § 29-5-23, not § 29-5-440, and affords such an argument to general contractors as a class, not remote claimants. Construction or interpretations of § 29-5-23 is not relevant to the circumstances of the parties here, or necessary to the Court's ruling in this matter. Secondly, all remote claimants as a class are treated equally under § 29-5-440. Thirdly, any constitutional deficiency in § 29-5-23 does not affect an equal application of § 29-5-440 in so far as it relates to the requirements imposed on all remote claimants. Therefore, I find and conclude that Hard Hat's constitutional argument lacks merit.

Finally, Hard Hat argues that the affidavits filed by Walker White show a balance due MHS; however, the same affidavits also show a basis for a set-off against any claim MHS might have. Hard Hat's affidavits do not contradict this fact. There is nothing in the record to contradict the assertion in Amy Miller's affidavit that there was no amount owed by Walker White to MHS. Thus, there is no genuine issue of material fact as to that issue. To defeat summary judgment, it is not sufficient that the nonmoving party seeks to create an inference which is not reasonable or an issue of fact that is not genuine. *Rothrock v Copeland*, 305 S.C. 402, 409 S.E.2d 366 (1991).

In summary, I find and conclude that Hard Hat failed to give notice of its furnishing of labor to Walker White, the bonded contractor, as required by S.C. Code Ann. § 29-5-440. In any

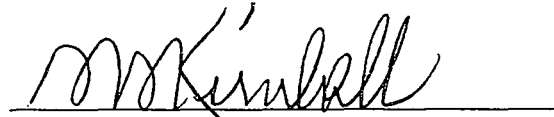
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event, Hard Hat's recovery on the bond is limited to any amount that Walker White owed MHS when Walker White received notice of Hard Hat's formal claim, which was nothing. Thus, pursuant to § 29-5-440, Hard Hat is not entitled to recover any amount against the payment bond, and Great American is entitled to summary judgment.

Therefore, it is ordered that Great American be granted summary judgment on Hard Hat's claim under the bond, and that Hard Hat's claim against Great American be dismissed with prejudice.

AND IT IS SO ORDERED.

September 30, 2011



S. Jackson Kimball
Special Circuit Judge
York County

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