ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	CIVIL ACTION NO.: 2011-CP-32-1929
	)	
	)	
Rose Electric, Inc.,	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC, Certified Development Corporation of South Carolina, Senn Bros., Inc., Custom Concrete of Lexington, Inc., and James Dunlap d/b/a Dunlap Services,	)	
	)	
Defendants.	)	

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BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

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ORDER ON RECONSIDERATION

In response to an order issued on January 30, 2014, the plaintiff, Rose Electric, Inc., filed a motion for reconsideration and to alter or amend the judgment. Southern Produce, Inc. objected to the court's consideration of the motion, asserting it was not timely. In the alternative, Southern Produce argues that the court should deny the motion. The court rules that the motion is timely, but declines to alter or amend, with two exceptions: 1) the court agrees that the award of interest on the attorney's fees and costs under Rule 68, SCRCP, and §15-35-400 was not appropriate; and, 2) the court will correct some typographical errors on its own motion.

On the issue of timeliness, the court agrees with Rose Electric that the time for filing the Rule 59 motion did not begin to run until counsel received the clocked-in copy from the Clerk of Court's office. This motion is timely and will be considered.

In its motion, Rose Electric stated eight grounds for altering or amending the judgment. However, when the memorandum in support of the motion was submitted, it contained an additional ground and changed the numbering. The court has considered all the grounds raised.

The primary difficulty that the court has with many of the plaintiff's arguments is not with the logic of them, but the procedural posture that the case evolved into once the plaintiff abandoned its claims that were based on contract and elected to proceed only on quantum meruit. The position that the court understood at trial was that the primary contractor, Cooler, was insolvent, and that the plaintiff made certain realistic assessments based on that fact. In response, the defendants who were present did not abandon their claims, and the election of remedies here creates a very difficult procedural framework that was not of the court's making.

With regard to the initial assertions in the plaintiff's argument that the court somehow misled the plaintiff into thinking that certain rulings were going to be incorporated into the final order, the case was very unusual in that it called for multiple assessments. The court went back to the attorneys seeking their input on several occasions. The order of January 30 was what the court ultimately decided was required in this case. However, the plaintiff, on its own, decided to abandon the contract claims at the beginning of the trial. The distribution of preliminary findings was to focus the argument and to try to be of assistance, and the court is unaware of anything that was done that may have caused detrimental reliance by the plaintiff. Plaintiff's counsel has been diligent and vigorous in representing his client.

1) With Respect to the Finding that Rose Electric Is Not Able to Obtain a Judgment That Southern Produce Pay Rose Electric $10,755.39 for the Change Orders.

This argument asks the court to find that Southern Produce contracted for and owed Rose Electric the sum of $10,755.39 for extra

work. The court does not agree with the position that the order prohibited Rose Electric from obtaining payment for extra work. It is just problematic to enter the requested judgment in this action when the plaintiff indicated that its claims based on contract were not being pursued.

In the January 30, 2014 order, the court stated: "Rose also had an expressed contract with Southern Produce for the changes and extras it requested, for which Rose seeks $10,755.39." Later, it recited: " Mr. Rose testified, and Dan Stocker of Southern Produce confirmed, that Southern Produce requested the extras from Rose and agreed to pay for the same. Because there are contracts under which recovery is available, quantum meruit is not proper."

WRR #3

At the outset of the bench trial, the plaintiff stated that it only wanted the court to consider the quantum meruit cause of action and was abandoning its claims for breach of contract. The court took the extraordinary step of reconvening the parties for a hearing, after the matter was taken under advisement, to discuss the impact of limiting the case to quantum meruit.

In its memorandum, the plaintiff recites portions of the post-trial memorandum of Southern Produce and a communication regarding a proposed order that deals with findings to be reflected in the final order. Then, the plaintiff notes that the court stated in the January 30 order:

"Southern Produce has offered to pay Rose $10,755.39 for the change orders per its verbal contract and pursuant to S.C. Code Ann. §29-5-10. Again, Rose refused."

This language that the plaintiff is quoting from the January 30 order comes from the section where the court is analyzing whether one of the elements of quantum meruit exists – specifically, whether it is unjust under the circumstances for Southern Produce to retain the benefits of Rose Electric's work. The court determined that it is not unjust because Southern Produce "paid for the benefits and tendered all the funds that the law requires." In other words, Southern Produce offered to pay Rose Electric pursuant to contract. Had the matter been pursued, the court could have entered a judgment or made an offset.

WPA #4

If the court understands this argument correctly, the plaintiff is now asking the court to issue a judgment on a breach of contract claim. The court feels that it recited that the extra work was the subject of a contract and that it was undisputed that the amount was owed. The court discussed all of these issues in its evaluation of the evidence, but it does not feel that it can alter or amend the judgment at this stage based on this ground. It is the court's interpretation that it was not asked to enter a judgment against Southern Produce for the contract claim. The court ruled that where a contract exists, quantum meruit does not apply. There has been no assertion that some form of modified quantum meruit should

be imposed.

It does not seem consistent to enter a judgment on a contract claim when the court was told at the beginning of the trial to consider only quantum meruit. The memorandum in support of the Rule 59 motion argues that Rose Electric had a right not to settle its claims and that the offer to pay could only be construed as settlement negotiations. The court does not view the evidence in that way.

The court has no dispute with the position that Southern Produce was obligated to pay for the extra work done, as was discussed in the January 30 order. The problem is in entering a judgment in the present procedural posture of the case.

WPC #5

2) **With Respect to the Finding that There Were Any Other Lienors for Purposes of Proration of the Retainage Amount.**

The plaintiff asserts that no evidence was presented about the existence of any lienholders, other than Rose Electric. The plaintiff wants the court to amend its order to reflect that Rose Electric is entitled to the entire amount of the retainage. If the court does not agree, the plaintiff challenges the fact that a hearing should have been held under §29-5-220 to determine the proper allocation due.

In the January 30 order, the court found that "Custom Concrete of Lexington, Inc., James Dunlap d/b/a Dunlap services, and Rose Electric each filed mechanic's liens on February 8, 2011, February 18, 2011, and March 4, 2011 respectively, seeking to encumber the entire 4-acre tract owned by S2P." It noted that Southern Produce had

an obligation under its lease with S2P to remove these mechanic's liens. It then stated that the entire contract price, except for $10,108 in retainage, had already been paid by Southern Produce to Cooler before Southern Produce learned that these subcontractors had not been paid. Southern Produce offered to pay Rose Electric $6,953.29, which Southern Produce determined to be the prorated share of the retainage due to Rose Electric under §29-5-60.

At the trial, evidence was presented about the three liens that were filed. The plaintiff now maintains that the other two liens were not "just" liens under the statute because they did not actually exist at the time of the trial. The memorandum in support of the Rule 59 motion recites that Dunlap's lien expired when its action was dismissed on December 7, 2011. It states that Custom Concrete's lien (filed on February 8, 2011) was not perfected because an action to enforce it was not filed.

WRA #6

Section 29-5-60 reads:

Proration of payments among lienors.

(A) In the event the amount due the contractor by the owner is insufficient to pay all the lienors acquiring liens as herein provided it is the duty of the owner to prorate among all just claims the amount due the contractor.

(B) In the event the amount due a subcontractor by the contractor is insufficient to pay all the lienors acquiring liens under Section 29-5-20 as a result of supplying labor, materials, or services to that subcontractor, all just liens must be prorated by the contractor among sub-subcontractors and suppliers to that subcontractor.

SECTION 29-5-220 reads:

Hearing on claims of lienors.

At the time assigned for the hearing, or within such further time as the court allows for that purpose, every creditor having a lien of the kind before mentioned upon the same property may appear and prove his claim and the owner and each of the creditors may contest

> the several claims of every other creditor and the court shall hear and determine them in a summary manner, either with or without a jury, as the case may require.

Having reconsidered the matter, the court finds that the January 30 order accurately reflects the situation that was presented to the court for determination. Southern Produce was faced with three mechanic's liens that had been filed. Settlements were reached with two of the lienholders. Southern Produce had an obligation to prorate the retainage. The court used the information supplied to it in making its ruling.

To the best of the court's recollection, there was never a specific request for a separate hearing under §29-5-220. The parties were given an opportunity to appear and to contest any claims.

Again, the plaintiff's cause of action presented for determination was under quantum meruit. The court had to evaluate the mechanic's lien issues in assessing that claim, as well as the remaining defendant's claims for attorney's fees and costs. The motion to alter or amend on this ground is denied.

3) **With Respect to the Finding that Rose Electric is Not Entitled to Any Payment From the Retainage and That the Correct Retainage was $10,108.**

> The plaintiff argues, as it did prior to the January 30 order, that the total cost of the project should have been determined to be $224,385. Though not discussed at length in the order, the court had previously notified the attorneys about how the cost of the project was calculated. The plaintiff again challenges the calculations made to determine the total project cost and the amount of retainage. The court has reconsidered

these issues and feels that they were already addressed. To the extent that there is an assertion here that the court prohibited Rose Electric from obtaining any portion of the retainage, the court does not agree that the court made such a ruling. Once again, it is the procedural posture of this case that is the problem, in the court's view. The ruling was made based on the issues presented to the court.

The court has reconsidered these issues and determines that the factual basis for the determinations of the amounts and the reasoning for allocating among different lienholders were explained in the order.

WHC #8

ITEMS 4 AND 5 ARE COMBINED BECAUSE THEY ARE STATED DIFFERENTLY IN THE MOTION AND IN THE MEMORANDUM

4) **With Respect to the Finding that S2P, LLC [and Southern Produce] Is Entitled to Attorney's Fees and Costs From Rose Electric.**

5) **With Respect to the Finding that Southern Produce and S2P, LLC are Entitled to Interest.**

This is a challenge based on a contest about the interpretation of §29-5-10 and §29-5-20 (the mechanic's lien provisions), as well as Rule 68, SCRCP and §15-35-400, which deal with not accepting an offer of judgment. The court ruled that Southern Produce and S2P are entitled to attorneys' fees and costs under the mechanic's lien statutes. The court reaffirms that ruling. However, the court went on to discuss the consequences of Rose Electric's failure to accept offers of judgment under Rule 68 and §15-35-400. Having reconsidered the matter, the court agrees with the plaintiff that

the award of interest to Southern Produce was not proper.

After discussing the provisions of the mechanic's lien law and Rule 68 related to attorney's fees and costs, the court stated:

> Similarly, S.C. Code §15-35-400(A) provides that in any contract action or action seeking the recovery of money damages, a party may file and serve a written offer of judgment on the opposing party. If the offering party receives a determination at least as favorable as the offer, that party is the prevailing one and is entitled to recover costs and interest at 8%. S.C. Code Ann. §15-35-400(B). Rule 68, SCRCP provides for the same recovery as §15-35-400, but applies to **all** civil actions.

The court should not have made the determination that interest applies against Rose Electric in this case. Subsection (A) mentions interest, but subsection (B) contains the provisions for awarding it. It states:

WPL #9

> (B) Consequences of NonAcceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer; or (3) if the offeror is a defendant, a reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer.

Rule 68, as its notes reflect, incorporates the language of §15-35-400 in large measure and reconciles the situation for all civil actions. Here, the defendants did not file a counterclaim against Rose Electric. The "offerors" under Rule 68 and §15-35-400 would be Southern Produce and S2P, who were defendants. There were cross-claims, but the situation seems to be one where these two defendants would be subject to subsection (B)(3) as it relates to their

relationship with Rose Electric. There was no judgment rendered against Rose Electric in this case, except for the award of attorney's fees and costs. The rule and the statute do not seem to authorize allocation of 8% interest in this situation to attorney's fees or costs assessed against Rose Electric.

Further, to the extent that the court's ruling seems to base the award of attorney's fees and costs against Rose Electric on anything other than the mechanic's lien statute, the court reconsiders and bases the award on the provisions of the mechanic's lien statutes.

6) **A Contract With an Unlicensed General Contractor is Void as Against Public Policy.**

WPL #10

The court believes that any arguments in this vein were raised and ruled upon. However, the plaintiff abandoned its contract claims at the beginning of the trial. If the argument is considered, it is the position of the court that the public policy exception would not allow a subcontractor, Rose Electric, to assert the prohibition against unlicensed contractors to bar a landowner or leaseholder from the protections afforded in the mechanic's lien statutes. As for the quantum meruit analysis discussed in the January 30 order, the leaseholder paid an unlicensed general contractor in full, except for the retainage. Absent some evidence of collusion or other dirty hands (none of which was presented here), the court does not believe that the prohibitions related to licensing could be used by a subcontractor of the unlicensed contractor to discount the money the leaseholder paid to the general contractor. Having reconsidered these arguments, the motion to alter or amend is denied as to this ground.

7) **Southern Produce Did Not Pay the General Contractor Named on the Building**

Permit and the Certificate of Occupancy.

The memorandum in support of the motion notes that the building permit and certificate of occupancy were issued to a licensed contractor, Mike Hutchins. It is argued that there is no evidence that Hutchins performed any work on the project or received any payments. It is argued that the Contractor Agreement did not provide that Cooler was licensed, nor was there a requirement that the contractor's license number be furnished to Southern Produce. For those reasons, it is asserted that no payments were made to the general contractor. For the reasons previously stated in this order and the order of January 20, this argument is rejected, and the motion to alter or amend on this ground is denied.

8) **Rose is Entitled to a Judgment Against Cooler Erectors of Atlanta, Inc.**

WM #11

The court does not believe that it was requested to enter judgment against Cooler in favor of Rose Electric. If it is undisputed that it was properly before the court and was not abandoned, then an order may be submitted to enter judgment by default or any other appropriate manner. However, the court's interpretation is that it ruled on what was presented, and the motion to alter or amend the order of January 30 on this ground is denied.

AS AMENDED, THE ORDER OF JANUARY 30, 2014 SHOULD READ AS FOLLOWS:
(changes are denoted with strike-throughs and underlining)

ORDER

This case arises out of the failure to pay for work provided by an electrical subcontractor on construction of a refrigerated produce processing building (the project) at the new South

Carolina State Farmers Market (Farmers Market). The court finds for the Defendants Southern Produce and S2P as is set out below.

Background

Southern Produce, Inc. (Southern Produce) leased a parcel of land from the landowner, S2P, LLC (S2P), and hired Cooler Erectors of Atlanta, Inc. (Cooler) as general contractor for the project. Cooler hired Rose Electric, Inc. (Rose) as a subcontractor to perform the electrical work on the project. Rose completed its work, but Cooler failed to pay. Southern had paid the general contractor, Cooler, for all but the retainage due under the agreement between Southern and Cooler.

Rose filed a mechanic's lien on the property to secure payment of the debt. Rose then filed this case seeking payment from Cooler, Southern Produce and S2P in the amount of $65,094.52, plus prejudgment interest, costs, and attorney fees. The mechanic's lien was filed on March 4, 2011, encumbering 4 acres of land owned by S2P at the Farmers Market,[1] in the amount of $65,094.52. It includes land leased by Southern Produce on which the project was constructed, plus additional land. The lien named Cooler as the general contractor, and Southern Produce and S2P are named as the owners of the property. After the lien did not result in payment, Rose filed this action on May 20, 2011, in an attempt to perfect the lien and seek recovery. Rose alleges four causes of action: a breach of ~~contact~~contract claim against Cooler, and claims for foreclosure of mechanics lien, unjust enrichment, and quantum meruit against Southern Produce, S2P and Senn Bros., Inc. Other defendants were named, as they had prior liens on the property.

[1] The lien is recorded in Mechanic Lien Book 14754 at Page 57, Lexington County.

Cooler did not answer the complaint and is in default. Defendant Southern Produce filed a general denial. Defendants S2P and Senn filed denials, asserted various defenses, and filed cross-claims against Southern Produce. S2P seeks damages, including costs and attorney fees from Southern Produce based on breach of lease or, alternatively, equitable indemnity. Southern Produce and S2P seek costs and attorney fees from Plaintiff Rose pursuant to the mechanic's lien statutes and other statutory and rule provisions, as prevailing parties.

Prior to trial, Southern Produce filed and served on Rose three separate Offers of Judgment or Settlement pursuant to Rule 68(a), SCRCP, S.C. Code Ann. § 15-35-400, and S.C. Code Ann. § 29-5-10 and § 29-5-20. Rose did not respond to any of these offers or make a counter proposal.

WRL #13

On the morning of trial, Plaintiff's counsel informed the Court and Defendants that it was dismissing Defendant Senn Bros., Inc. from the case and that Defendants Certified Development Corporation of South Carolina, Custom Concrete of Lexington, Inc., and James Dunlap were no longer involved in the case. Importantly, Plaintiff Rose also advised it was proceeding only on its quantum meruit claim and was abandoning its claims based on ~~contact~~contract, including the foreclosure of the mechanic's lien against Southern and S2P, and the breach of contract action against Cooler.

Rose called three witnesses and introduced a number of exhibits. Southern Produce and S2P called two witnesses and introduced exhibits. At the conclusion of the day-long trial, the Court invited the parties to submit post-trial briefs. Rose, Southern, and S2P each submitted briefs. Due to the unusual posture of the case and after reviewing the matter, the Court held a

post-trial hearing on October 23, 2013, to hear arguments of counsel on various issues, including the effect of Plaintiff's abandonment of all claims except quantum meruit at trial.

Findings of Fact

The Farmers Market was moving from Richland County to its new location in Lexington County in 2010. Southern Produce operated a produce processing business at the old market. In the fall of 2010, Southern Produce began the process of moving its business to the new Farmers Market. It leased undeveloped land and hired a contractor to construct a new building on a portion of a 4-acre tract owned by S2P, which S2P leased to Southern Produce for an initial term of 10 years. There are other tenants on other portions of the tract, including Senn Bros., Inc. The construction of the building was to be expedited because of the relocation to Lexington County.

WPK #14

Cooler was a general contractor already performing work at the new Farmers Market for various entities when it was hired by Southern Produce. There was a written ~~contact~~contract between Southern Produce and Cooler whereby Cooler agreed to construct the project for Southern Produce according to plans that were part of the contract. The cost of the project as stated in the contract was $213,385.00. The plans were included in the contract price and were dated October 5, 2010. A building permit was issued by Lexington County on November 2, 2010, and a Certificate of Occupancy was issued on November 30, 2010.

Rose is an electrical contractor that was working at the new Farmers Market. It had performed various jobs for Cooler and was paid for those jobs. Cooler contracted with Rose to perform the electrical work on the Southern Produce project pursuant to electrical plans prepared by an electrical engineer and provided to Rose by Cooler's representative.

There was no written contract between Rose and Cooler, nor was there a written contract between Rose and Southern Produce. Rose had performed as electrical subcontractor for Cooler on previous jobs at the Market with no written contract and without any issues from Cooler related to payment.

Homer S. Rose is the sole owner of Rose Electric, Inc. Russell D. Frazee is an electrician who worked for Rose and served as foreman on site for this project. Nate Crocker is the owner of Southern Produce, Inc. Dan Stocker is the general manager of Southern Produce and was on site almost daily during construction of the project. Morris C. Teasley was the representative of Cooler for the project, and his son, Ben, served as site superintendent on the project.

During the course of construction, there were modifications made to the plans for the electrical installation. Some changes were made by Rose of its own volition and some were made at the direction of Southern Produce. The changes relate to the following:

WPL #15

a. adding disconnects and plugs to allow for proper cleaning;
b. modifying the material of disconnects to stainless steel to avoid corrosion;
c. adding a hand-washer heater system;
d. relocating an onion peeler from inside to outside the building, rewiring, and placing a disconnect for that device;
e. adding receptacles and the circuits needed to accomplish that addition;
f. adding dedicated circuits, a time clock, and breakers;
g. wiring the evaporator coils; and,
h. adding lights in the office.

Rose properly performed the electrical work for this project. Southern Produce admits that it owes Rose separately for changes and additions it requested during the course of construction, and has offered to pay $10,755.39 for them. Nate Crocker orally contracted with Rose to install an additional electrical line at the project. On January 6, 2011, Rose invoiced

Southern Produce directly for that work in the amount of $1,844.00, which Southern Produce paid by check on February 4, 2011.

Southern Produce paid the general contractor, Cooler, $203,277 of the $213,385 ~~contact~~contract price. Cooler did not complete the project. Because the project was not finished, Southern Produce withheld $10,108 as retainage. Cooler did not pay Rose or several other subcontractors on the project, including the concrete and plumbing subcontractors.

Rose began sending invoices and seeking payment from Cooler in November and December, 2010. When Cooler did not pay, Rose changed its position about the responsible party, adding Southern Produce. Invoices were sent by Rose to Cooler and Southern Produce in January and February, 2011. The gist of the situation is that Rose first invoiced Cooler, and, when payment was not forthcoming, began seeking payment from Southern Produce as well.

WPL #16 Custom Concrete of Lexington, Inc., James Dunlap d/b/a Dunlap Services, and Rose Electric each filed mechanic's liens on February 8, 2011, February 18, 2011, and March 4, 2011 respectively, seeking to encumber the entire 4-acre tract owned by S2P. The ownership interest of Southern Produce is a leasehold estate on only a portion of that tract where the produce processing building was constructed. Southern Produce has an obligation under the lease with S2P to remove any mechanic's lien placed on the property and to indemnify the landlord for damages incurred as a result of having to defend such claims.

When Southern Produce was notified by Custom Concrete, Dunlap, and Rose that they had not been paid by the general contractor, Cooler had already been paid the entire contract price, except the $10,108 retainage held by Southern Produce. Pursuant to S.C. Code Ann. § 29-5-60, Rose is entitled to a prorated share of the $10,108 retainage held by Southern Produce, as

between it and the other two subcontractors. After Rose filed this action on May 20,2011, Southern Produce filed and served three Offers of Judgment, pursuant to Rule 68(a),SCRCP., S.C. Code Ann. §15-35-400, S.C. Code Ann. §29-5-10 and S.C. Code Ann. § 29-5-20, in the amounts of $7,549.22 on July 26, 2011, $15,532.52 on January 23, 2012, and $18,000.00 on July 13, 2012. Rose did not respond to any of the offers.

ANALYSIS & CONCLUSIONS OF LAW

1. Contract & Mechanic's Lien Claims

When Rose filed this action, it sought to foreclose on its mechanic's lien, which is an action based on contract. On the day of trial, Rose chose to abandon its breach of contract claim against Cooler and its mechanic's lien foreclosure claims against Southern Produce and S2P. Rose takes the position it did not have a contract with Cooler or Southern Produce, and thus seeks to recover $65,094.54 based on the equitable remedy of quantum meruit. Rose argues that because it did not have a written contract with a set price for its work, there were no agreements and thus only equitable relief is available.

WM #17

Southern Produce and S2P take the position that there is an express contract. It is asserted to be based on the oral agreement between Rose and Cooler, coupled with their course of conduct on other jobs at the Farmers Market, their conduct on this project, and the October plans, November proposal, and invoices. Southern Produce maintains that a set price is not a requirement for establishment of a contract. Southern Produce points out that the November Rose proposal for its scope of work for Cooler was $56,488.07 and the amount sought by Rose in its lien and complaint is $54,399.13, $2,148.94 less than the proposal. The November proposal was signed by Rose, but not by Cooler. Southern Produce admits it had an agreement

to pay Rose directly for the changes it requested on the project. Rose provided the cost for that work in a letter dated February 16, 2011, and February 10, 2011 Change Orders 2-12, which amount to $ 10,755.39. This is the same amount sought in the lien and pleaded by Rose in the Complaint as constituting its contract with Southern Produce.

Defendants also point out that the mechanic's lien filed by Rose is still on record in the Lexington County Office of Register of Deeds at Mechanic Lien Book 1474 at Page 57. It encumbers not only the leased property where the Southern Produce building is located, but also the remaining portion of the 4-acre tract. Defendants Southern Produce and S2P have had to defend against the lien since March 4, 2011.

Defendants maintain that because there are contracts between Rose and Cooler, and Rose and Southern Produce, Rose is precluded from recovering under the equitable theory of quantum meruit. The Court agrees in this instance.

WMC #18

Actions in quantum meruit are generally based on the absence of a contract. Quantum meruit and contract claims are typically mutually exclusive, so that one cannot recover under this equitable theory when there is a contract. Swanson v Stratos, 350 S.C. 116, 564 S.E.2d 117 (Ct. App. 2002). In this case, Rose alleges in the lien, which is still on record, and the Complaint, that it had contracts with Cooler and Southern Produce. Southern Produce admits these allegations.[2]

The Court has reviewed case law and utilized other sources. It found that Hornbook law discusses the distinction between contracts that are "express" and those "implied in fact." If the

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[2] Rose's Complaint avers in paragraphs 3, 10,11,12,19, and 20 that it had contracts with Cooler and Southern Produce. In the Notice of Mechanic's Lien and Statement of Account sworn to by Homer Rose, as president of Rose Electric, Inc., he affirmed that Rose had agreements with the Defendants and sought the "contract price" of $65,094.52.

agreement or intent of the parties is manifested in spoken or written words, the contract is said to be "express." If the mutual undertaking of the parties is inferred from their conduct alone, without oral or written words, then the contract is said to be "implied in fact." It does not matter whether the mutual promises of the parties are expressed in word, written or oral, or implied from the conduct of the parties. Both are ~~contacts~~contracts entitling the parties to contractual remedies, not equitable remedies. Key Corporation Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675(2007). To have a contract for materials, labor or services does not require a predetermined set price. The price is typically implied to be the fair and reasonable price in any number of contractual arrangements. For example, consulting a doctor without a predetermined charge implies a promise to pay the reasonable cost of the doctor's services and constitutes a ~~contact~~contract between the parties. Likewise, the hiring of a contractor to provide materials and labor, even in the absence of a predetermined charge, implies a contract to pay for those materials and services. The parties may have a dispute as to the value or charge under the contract, but that does not obviate the obligations under the contract.

WJK #19

The court finds, in this case, that the evidence establishes the existence of expressed contracts between Rose and Cooler for the scope of work under the plans, and between Rose and Southern Produce for the requested changes and additions to the project. Moreover, the evidence establishes that contracts are implied in fact by the conduct of Rose, Cooler, and Southern Produce.

The court finds that the greater weight of the evidence establishes that Rose has a ~~contact~~contract with Cooler to pay for the electrical work included in the plans and has a contract with Southern Produce to pay for the requested changes and additions to the project. Rose's abandonment of the contract claims at trial does not change the facts and resulting

conclusions of law. The Court finds for the Defendants as to the contract claims.

2. Quantum Meruit Claim

Plaintiff is not entitled to relief on its claims of quantum meruit. Quantum meruit, unjust enrichment and restitution are equivalent terms for equitable remedies for a contract implied by law or quasi-contract. Recognizing that these principles are difficult and confusion easily results, the court has made an extensive evaluation into how quantum meruit is different from an expressed contract or contract implied in fact. Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, at 8, 532 S.B.2d 868, at 872 (2000); Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259,261,440 S.E.2d 129,130 (1994). Conceding that the court may be in error in its evaluation, its best effort to assess this situation is that the remedy of quantum meruit is not available here. Quantum meruit is not available if the services and materials for which the Plaintiff is seeking to recover are encompassed in an express contract or one implied in fact. Swanson v. Stratos, 350 S.C. 116,122,564 S.E.2d 117,120 (S.C. App. 2002); Columbia Wholesale Co., 440 S.E.2d at 130-131 (1994).

WM #20

As discussed previously, Rose had an expressed contract with the general contractor for the scope of work it performed. That contract covered the $54,399.13 Rose seeks in this action. Rose also had an expressed contract with Southern Produce for the changes and extras it requested, for which Rose seeks $10,755.39. These amounts make up the total mechanic's lien of $65,094.52. The Plaintiff pleaded in Paragraphs 3, 10, 11, and 12 of the Complaint that it entered into a contract with the general contractor, with the knowledge of Southern Produce, to perform work for payment. Defendants admitted the contract of Rose with Cooler in their Answers. Further, Mr. Homer Rose testified that he had done two previous jobs as electrical

subcontractor for Cooler at the new Farmers Market prior to the Southern Produce job based on a handshake. He testified that he expected to be paid by Cooler, just as Rose had been in the other two jobs. It is unfortunate that Cooler effectively is insolvent, according to the evidence, and that the loss must fall on anyone else. Cooler does not deserve to escape responsibility, but that does not mean that the obligation to pay falls on any of these other parties.

The oral agreement was further evidenced by a written proposal and a series of written invoices to Cooler and Southern Produce. Mr. Rose testified, and Dan Stocker of Southern Produce confirmed, that Southern Produce requested the extras from Rose and agreed to pay for the same. Because there are contracts under which recovery is available, quantum meruit is not proper.

WM #21

Even if there were no contracts encompassing Plaintiff's claims for recovery, the court finds that Rose, under the facts of this case, would still not be entitled to an award under quantum meruit. The elements of quantum meruit are: 1) a benefit conferred on the defendant by the plaintiff; 2) realization of that benefit by the defendant; and, 3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. (Emphasis added). Earthscapes Unlimited, Inc. v Ulbrich, 390 S.C. 609, 703 S.E.2d 221 (2010); Columbia Wholesale,312 S.C. 259, 440 S.E2d 129 (1994); Shirley's Iron Works, Inc. v City of Union , 387 S.C. 389, 693 S.E.2d 1 (S.C. App. 2009). The main focus of this inquiry is whether the enrichment to the owner is unjust. In claims of unjust enrichment by subcontractors, the Courts typically deny recovery where the owner has paid on its ~~contact~~contract with the general contractor. Columbia Wholesale, supra.; Shirley's Iron Works, Inc., supra; Myrtle Beach Hospital, Inc., supra. Southern Produce has paid all but $10,108.00 of the contract price for the

services and materials provided, and Southern Produces has consistently stood ready to pay the prorated shares of the retainage.

So, Southern Produce has offered to pay $6,953.29 to Rose per S.C. Code Ann. §29-5-60 (Rose's prorated share of the retainage), but Plaintiff refused the same. Southern Produce has offered to pay Rose $10,755.39 for the change orders per its verbal contract and pursuant to S.C. Code Ann. §29-5-10. Again, Rose refused. The determination of the Court is that it is not unjust, under the facts of this case, for Southern Produce to retain the benefits because it has paid for the benefits and tendered all the funds that the law requires. The Court finds for the Defendants on Plaintiff's quantum meruit claim.

3. Prevailing Parties & Attorney Fees/Costs

WMC #22

Even though Plaintiff abandoned its claims for recovery based on foreclosure of the mechanic's lien, the Court must still determine Defendants Southern Produce's and S2P's rights to recover attorney fees and costs in this case. Trico Surveying, Inc. v Godley Auction Co., Inc., 314 S.C. 542, 431 S.E.2d 565 (1993)(owner entitled to award of attorney fees and cost in defending mechanic's lien action where surveyor had no evidence of an expressed or implied in fact contract with owner). Southern Produce and S2P each seek recovery of attorney fees and costs from Rose pursuant to the mechanic's lien statutes, S.C. Code Ann. § 29-5-10 and § 29-5-20. Southern Produce also seeks recovery of costs and interest pursuant to Rule 68, SCRCP and S.C. Code Ann. § 15-35-400.

S.C. Code Ann. § 29-5-10(a) provides that a contractor shall have a lien on an owner's property to secure payment for a debt due for improvements to the property. The statute also states, "[t]he cost which may arise in enforcing or **defending** against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the **prevailing party**." (Emphasis

added). S.C. Code Ann. § 29-5-20(A) provides that a subcontractor has a lien against the owner to secure payment, and provides that the Court must award costs and attorney fees if the party defending against the lien prevails. Both statutes provide the procedure for making offers of settlement, responses, and how to accept an offer. If a plaintiff fails to respond to an offer, the amount prayed for in the Complaint is considered its final offer of settlement for purposes of determining the "prevailing party." The party whose offer is closest to the verdict is the prevailing party for purposes of the award of costs and attorney fees. S.C. Code Ann. §§ 29-5-10(b) and 29-5-20(C). Both S.C. Ann. § 29-5-10 and §29-5-20 require the mandatory award of attorney fees and costs to the prevailing party, here Southern Produce and S2P. T.W. Morton Builders, Inc. v von Buedingen, 316 S.C. 388, 450 S.E.2d 87, 94-95 (Ct. App. 1994).

WMC #23 The lien was filed on March 3, 2011. It was still of record in the Lexington County Register of Deeds public records at the last hearing. The mechanic's lien encumbers not only the property leased to Southern Produce, but also additional property included in the 4-acre tract described in the lien that is not subject to the lease. Rose provided no improvements on the other sections of the tract. Other entities have rights related to the property, and the Defendants have been forced to defend against the lien foreclosure since March, 2011.

Southern Produce Attorney Fees and Costs

The Court must consider the offers of settlement made by Defendant Southern Produce to Rose during the case. Southern Produce on three occasions (July 26, 2011, January 23, 2012, and July 13, 2012) filed Offers of Settlement pursuant to Rule 68, SCRCP and S.C. Code Ann. §15-35-400, §29-5-10 and §29-5-20. Rose did not accept or respond to any of the offers. The last offer filed by Southern Produce was for $18,000. Rose did not respond, so plaintiff's offer for

purposes of an award of attorney fees and costs under S.C. Code Ann. §29-5-10 and §29-5-20 is considered to be its prayer in the Complaint of $65,094.52. Defendant Southern Produce is the prevailing party under S.C .Code Ann. §29-5-10 and §29-5-20, as Southern Produce's offer of $18,000.00 is closer to the Court's award of $0 than is Rose's offer of $65,094.52.

Similarly, S.C. Code §15-35-400(A) provides that in any contract action or action seeking the recovery of money damages, a party may file and serve a written offer of judgment on the opposing party. An offer ~~is~~ not accepted within a certain time is deemed rejected. If the offering party receives a determination at least as favorable as the offer, that party is the prevailing one and is entitled to recover costs and interest at 8%. S.C. Code Ann. §15-35-400(B). Rule 68, SCRCP provides for the same recovery as §15-35-400, but applies to **all** civil actions.

WML #24

The Court finds that Southern Produce is entitled to an award of attorney fees, costs, and interest pursuant to the mechanic's lien statutes cited above. Southern Produce is the prevailing party under S.C. Code Ann. §§29-5-10 and 29-5-20 as it's $18,000 offer of settlement was closer to Rose's verdict of $0 than was Rose's offer of $65,094.52 contained in the Complaint. ~~Likewise, Southern Produce is the prevailing party entitled to costs and interest at 8% as requested in the Offers of Judgment per Rule 68, SCRCP and S.C. Code § 15-35-400.~~

The Affidavit of Kathryn M. Cook, counsel for Southern Produce, summarizing the attorney fees incurred for her services and costs in defending this action, shows that Southern Produce incurred attorney fees of $18,714.00 through February 28, 2013, and costs of $156.10, totaling $18,870.10. Southern Produce's counsel's Supplemental Affidavit shows that additional attorney fees of $5,542.50 have been incurred from March 1, 2013 through January 17, 2014. Southern Produce's

attorney fees for defending this claim are $24,256.50, plus costs of $156.10, for a total of $24,412.60. Interest at 8% from the date of Southern Produce's last offer of judgment on July 13, 2012 through January 24, 2014 totals $2,983.00 and continues at a rate of $5.35 per day until judgment is entered. The Court finds Southern Produce is entitled to judgment against Rose in the amount of $27,396.60.

S2P Attorney Fees and Costs

Defendant S2P is also entitled to an award of the attorney fees and costs incurred for the services of J. Robin Turner in the defense of the mechanic's lien filed against its property. S2P and Rose did not file settlement offers prior to trial. The claim for attorney fees and costs falls under S.C. Code Ann. §29-5-10 and §29-5-20. It is imputed that Plaintiff's offer is its prayer for $65,094.52 and Defendant S2P's offer is $0. Thus, S2P is the prevailing party based on Rose's entitlement to $0 on its lien claim. S2P incurred costs and attorney fees of $9,667.56 from November 9, 2011 to February 26, 2013, and $1,435.54 from March 3, 2013 to November 12, 2013, for a total of $11,103.10. S2P is entitled to judgment against Rose in the amount of $11,103.10.

Reasonableness of Attorney Fees

Based on the affidavits and supporting exhibits of counsel for Southern Produce and S2P, the amounts sought for attorney fees and costs by each are reasonable. The Defendants have submitted detailed affidavits itemizing counsels' time and expenses defending the lien claim and the qualifications of counsel. The Court has considered the factors as set forth in Strickland v. Strickland, 376 S.C. 2d 268 (1989) and finds the fees and costs to be reasonable. Trico Surveying, 431 S.E.2d 565,566-567 (1993).

4. **S2P Cross-Claims**

Lastly, S2P brought cross-claims against Southern Produce for recovery of damages incurred in the amount of fees and costs incurred in defending liens placed on the leased property. S2P bases its damage claims on breach of lease or, alternatively, equitable indemnity. Pursuant to its lease with Defendant S2P, Southern Produce is required to remove any mechanic's lien placed on the leased property and/or to pay for any damages incurred by S2P as a result of any lien. Southern Produce admits it has breached this provision of the lease and admits that it must pay the damages to S2P.

The damages sustained by S2P are the attorney fees and costs of J. Robin Turner totaling $11,103.10 in the Rose case and $1,142.95 dealing with the Custom Concrete and Dunlap Plumbing mechanic's liens. Thus, total damages of $12,246.05 have been sustained by S2P as a result of Southern Produce's breach of lease. However, Southern Produce, in acknowledging its lease obligations to S2P, has already paid S2P or Robin Turner, on behalf of S2P, a total of $10,916.35. Of the total paid by Southern Produce, $1,142.95 was to pay the damages related to Custom Concrete and Dunlap and $9,773.40 was towards the damages related to Rose. Southern Produce admits it still owes S2P $1,329.70 in damages based on S2P's total damages relating to the Rose matter. S2P is entitled to judgment against Southern Produce in the amount of $1,329.70 based on the admitted breach of contract.

To the extent S2P recovers any or all of the $1,329.70 from Rose as a result of its judgment of $11,103.10, Southern Produce is entitled to a reduction or offset from what it owes under the judgment in favor of S2P. Likewise, to the extent S2P recovers from Rose any amount in excess of $1,329.70, Southern Produce is entitled to reimbursement from S2P up to the

$9,773.40 already paid for the Rose damages.

Conclusion

THEREFORE, IT IS ORDERED that the Lexington County Register of Deeds is to discharge and release the mechanic's lien filed at Lien Book 14754 at Page 57 immediately. Rose Electric, Inc. is not entitled to judgment on the lien foreclosure against Southern Produce and S2P, or the breach of contract claim against Cooler Erectors of Atlanta, Inc.

IT IS FURTHER ORDERED that Rose Electric, Inc. is not entitled to recovery under the theory of quantum meruit as there is a ~~contact~~contract between Rose and Cooler encompassing $54,399.13 of Rose's claim, and a contract exists between Rose and Southern Produce encompassing the $10,755.39 remainder of the claim. Rose cannot recover under an equitable claim of quantum meruit because there are contracts covering the debt. Even if this Court found there were no contracts, the third element of quantum meruit is missing in this matter precluding recovery by Rose (unjust retention of benefit without payment).

WMC #27

IT IS FURTHER ORDERED that the Defendants Southern Produce and S2P are the prevailing parties under S.C. Code Ann. §29-5-10 and §29-5-20.

(A) Southern Produce, Inc. is entitled to a judgment against Rose Electric, Inc. of $24,412.60 for costs and attorney fees~~, plus interest in the amount of $2,983.00 through January 24, 2014 pursuant to Rule 68, SCRCP and S.C. Code Ann. §15-35-400. The total judgment for Southern Produce, Inc. against Rose is $27,395.60. Interest will continue to accrue from January 25, 2014, at the rate of $5.35 per day, until entry of judgment~~.

(B) Defendant S2P, LLC is entitled to judgment against Rose Electric, Inc. in the amount

of $11,103.10 covering the costs and attorney fees incurred in the defense of this lien claim.

IT IS FURTHER ORDERED that the Defendant S2P, LLC is entitled to a judgment against Southern Produce, Inc. based on breach of lease in the amount of $1,329.70. Southern Produce, Inc. is entitled to offset, credit, or reimbursement from S2P of all amounts S2P collects from Rose Electric, Inc., up to $11,103.10, such that S2P does not recover its damages twice.

AND IT IS SO ORDERED.

~~January 30~~June 11, 2014

William P. Keesley, Judge, 11th Judicial Circuit

#28

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3201929

PLAINTIFF(S)	DEFENDANT(S)
Rose Electric Inc	Cooler Erectors of Atlanta Inc S2P LLC Senn Bros Inc James Dunlap
	Southern Produce Inc Certified Development Corporation of South Carolina Custom Concrete of Lexington Inc Dunlap Services

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

6/20/2014

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **20th of June 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

William E. Booth III
3231 Sunset Blvd., Ste. A
West Columbia, SC 29169

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Turner Padget Graham & Laney Pa
Post Office Box 1473 Columbia, SC 29202
Jon Robin Turner PO
Box 11646 Columbia, SC 29211
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PO Box 4086 North Myrtle Beach, SC 29597

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	CIVIL ACTION NO.: 2011-CP-32-1929
	)	
Rose Electric, Inc.,	)	
Plaintiff	)	
vs.	)	
Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC, Certified Development Corporation of South Carolina, Senn Bros., Inc., Custom Concrete of Lexington, Inc., and James Dunlap d/b/a Dunlap Services,	)	
Defendants.	)	

ORDER

This case arises out of the failure to pay for work provided by an electrical subcontractor on construction of a refrigerated produce processing building (the project) at the new South Carolina State Farmers Market (Farmers Market). The court finds for the Defendants Southern Produce and S2P as is set out below.

Background

Southern Produce, Inc. (Southern Produce) leased a parcel of land from the landowner, S2P, LLC (S2P), and hired Cooler Erectors of Atlanta, Inc. (Cooler) as general contractor for the project. Cooler hired Rose Electric, Inc. (Rose) as a subcontractor to perform the electrical work on the project. Rose completed its work, but Cooler failed to pay. Southern had paid the general

contractor, Cooler, for all but the retainage due under the agreement between Southern and Cooler.

Rose filed a mechanic's lien on the property to secure payment of the debt. Rose then filed this case seeking payment from Cooler, Southern Produce and S2P in the amount of $65,094.52, plus prejudgment interest, costs, and attorney fees. The mechanic's lien was filed on March 4, 2011, encumbering 4 acres of land owned by S2P at the Farmers Market,[1] in the amount of $65,094.52. It includes land leased by Southern Produce on which the project was constructed, plus additional land. The lien named Cooler as the general contractor, and Southern Produce and S2P are named as the owners of the property. After the lien did not result in payment, Rose filed this action on May 20, 2011, in an attempt to perfect the lien and seek recovery. Rose alleges four causes of action: a breach of contact claim against Cooler, and claims for foreclosure of mechanics lien, unjust enrichment, and quantum meruit against Southern Produce, S2P and Senn Bros., Inc. Other defendants were named, as they had prior liens on the property.

WPC #2

Cooler did not answer the complaint and is in default. Defendant Southern Produce filed a general denial. Defendants S2P and Senn filed denials, asserted various defenses, and filed cross-claims against Southern Produce. S2P seeks damages, including costs and attorney fees from Southern Produce based on breach of lease or, alternatively, equitable indemnity. Southern Produce and S2P seek costs and attorney fees from Plaintiff Rose pursuant to the mechanic's lien statutes and other statutory and rule provisions, as prevailing parties.

---

[1] The lien is recorded in Mechanic Lien Book 14754 at Page 57, Lexington County.

Prior to trial, Southern Produce filed and served on Rose three separate Offers of Judgment or Settlement pursuant to Rule 68(a), SCRCP, S.C. Code Ann. § 15-35-400, and S.C. Code Ann. § 29-5-10 and § 29-5-20. Rose did not respond to any of these offers or make a counter proposal.

On the morning of trial, Plaintiff's counsel informed the Court and Defendants that it was dismissing Defendant Senn Bros., Inc. from the case and that Defendants Certified Development Corporation of South Carolina, Custom Concrete of Lexington, Inc., and James Dunlap were no longer involved in the case. Importantly, Plaintiff Rose also advised it was proceeding only on its quantum meruit claim and was abandoning its claims based on contact, including the foreclosure of the mechanic's lien against Southern and S2P, and the breach of contract action against Cooler.

WPL #3

Rose called three witnesses and introduced a number of exhibits. Southern Produce and S2P called two witnesses and introduced exhibits. At the conclusion of the day-long trial, the Court invited the parties to submit post-trial briefs. Rose, Southern, and S2P each submitted briefs. Due to the unusual posture of the case and after reviewing the matter, the Court held a post-trial hearing on October 23, 2013, to hear arguments of counsel on various issues, including the effect of Plaintiff's abandonment of all claims except quantum meruit at trial.

Findings of Fact

The Farmers Market was moving from Richland County to its new location in Lexington County in 2010. Southern Produce operated a produce processing business at the old market. In the fall of 2010, Southern Produce began the process of moving its business to the new Farmers Market. It leased undeveloped land and hired a contractor to construct a new building on a

portion of a 4-acre tract owned by S2P, which S2P leased to Southern Produce for an initial term of 10 years. There are other tenants on other portions of the tract, including Senn Bros., Inc. The construction of the building was to be expedited because of the relocation to Lexington County.

Cooler was a general contractor already performing work at the new Farmers Market for various entities when it was hired by Southern Produce. There was a written contact between Southern Produce and Cooler whereby Cooler agreed to construct the project for Southern Produce according to plans that were part of the contract. The cost of the project as stated in the contract was $213,385.00. The plans were included in the contract price and were dated October 5, 2010. A building permit was issued by Lexington County on November 2, 2010, and a Certificate of Occupancy was issued on November 30, 2010.

WRC #4

Rose is an electrical contractor that was working at the new Farmers Market. It had performed various jobs for Cooler and was paid for those jobs. Cooler contracted with Rose to perform the electrical work on the Southern Produce project pursuant to electrical plans prepared by an electrical engineer and provided to Rose by Cooler's representative.

There was no written contract between Rose and Cooler, nor was there a written contract between Rose and Southern Produce. Rose had performed as electrical subcontractor for Cooler on previous jobs at the Market with no written contract and without any issues from Cooler related to payment.

Homer S. Rose is the sole owner of Rose Electric, Inc. Russell D. Frazee is an electrician who worked for Rose and served as foreman on site for this project. Nate Crocker is the owner of Southern Produce, Inc. Dan Stocker is the general manager of Southern Produce and was on

site almost daily during construction of the project. Morris C. Teasley was the representative of Cooler for the project, and his son, Ben, served as site superintendent on the project.

During the course of construction, there were modifications made to the plans for the electrical installation. Some changes were made by Rose of its own volition and some were made at the direction of Southern Produce. The changes relate to the following:

a. adding disconnects and plugs to allow for proper cleaning;
b. modifying the material of disconnects to stainless steel to avoid corrosion;
c. adding a hand-washer heater system;
d. relocating an onion peeler from inside to outside the building, rewiring, and placing a disconnect for that device;
e. adding receptacles and the circuits needed to accomplish that addition;
f. adding dedicated circuits, a time clock, and breakers;
g. wiring the evaporator coils; and,
h. adding lights in the office.

WPL #5

Rose properly performed the electrical work for this project. Southern Produce admits that it owes Rose separately for changes and additions it requested during the course of construction, and has offered to pay $10,755.39 for them. Nate Crocker orally contracted with Rose to install an additional electrical line at the project. On January 6, 2011, Rose invoiced Southern Produce directly for that work in the amount of $1,844.00, which Southern Produce paid by check on February 4, 2011.

Southern Produce paid the general contractor, Cooler, $203,277 of the $213,385 contact price. Cooler did not complete the project. Because the project was not finished, Southern Produce withheld $10,108 as retainage. Cooler did not pay Rose or several other subcontractors on the project, including the concrete and plumbing subcontractors.

Rose began sending invoices and seeking payment from Cooler in November and December, 2010. When Cooler did not pay, Rose changed its position about the responsible party, adding Southern Produce. Invoices were sent by Rose to Cooler and Southern Produce in January and February, 2011. The gist of the situation is that Rose first invoiced Cooler, and, when payment was not forthcoming, began seeking payment from Southern Produce as well.

Custom Concrete of Lexington, Inc., James Dunlap d/b/a Dunlap Services, and Rose Electric each filed mechanic's liens on February 8, 2011, February 18, 2011, and March 4, 2011 respectively, seeking to encumber the entire 4-acre tract owned by S2P. The ownership interest of Southern Produce is a leasehold estate on only a portion of that tract where the produce processing building was constructed. Southern Produce has an obligation under the lease with S2P to remove any mechanic's lien placed on the property and to indemnify the landlord for damages incurred as a result of having to defend such claims.

WPH #6

When Southern Produce was notified by Custom Concrete, Dunlap, and Rose that they had not been paid by the general contractor, Cooler had already been paid the entire contract price, except the $10,108 retainage held by Southern Produce. Pursuant to S.C. Code Ann. § 29-5-60, Rose is entitled to a prorated share of the $10,108 retainage held by Southern Produce, as between it and the other two subcontractors. After Rose filed this action on May 20,2011, Southern Produce filed and served three Offers of Judgment, pursuant to Rule 68(a),SCRCP., S.C. Code Ann. §15-35-400, S.C. Code Ann. §29-5-10 and S.C. Code Ann. § 29-5-20, in the amounts of $7,549.22 on July 26, 2011, $15,532.52 on January 23, 2012, and $18,000.00 on July 13, 2012. Rose did not respond to any of the offers.

ANALYSIS & CONCLUSIONS OF LAW

1. Contract & Mechanic's Lien Claims

When Rose filed this action, it sought to foreclose on its mechanic's lien, which is an action based on contract. On the day of trial, Rose chose to abandon its breach of contract claim against Cooler and its mechanic's lien foreclosure claims against Southern Produce and S2P. Rose takes the position it did not have a contract with Cooler or Southern Produce, and thus seeks to recover $65,094.54 based on the equitable remedy of quantum meruit. Rose argues that because it did not have a written contract with a set price for its work, there were no agreements and thus only equitable relief is available.

Southern Produce and S2P take the position that there is an express contract. It is asserted to be based on the oral agreement between Rose and Cooler, coupled with their course of conduct on other jobs at the Farmers Market, their conduct on this project, and the October plans, November proposal, and invoices. Southern Produce maintains that a set price is not a requirement for establishment of a contract. Southern Produce points out that the November Rose proposal for its scope of work for Cooler was $56,488.07 and the amount sought by Rose in its lien and complaint is $54,399.13, $2,148.94 less than the proposal. The November proposal was signed by Rose, but not by Cooler. Southern Produce admits it had an agreement to pay Rose directly for the changes it requested on the project. Rose provided the cost for that work in a letter dated February 16, 2011, and February 10, 2011 Change Orders 2-12, which amount to $ 10,755.39. This is the same amount sought in the lien and pleaded by Rose in the Complaint as constituting its contract with Southern Produce.

Defendants also point out that the mechanic's lien filed by Rose is still on record in the Lexington County Office of Register of Deeds at Mechanic Lien Book 1474 at Page 57. It encumbers not only the leased property where the Southern Produce building is located, but also

the remaining portion of the 4-acre tract. Defendants Southern Produce and S2P have had to defend against the lien since March 4, 2011.

Defendants maintain that because there are contracts between Rose and Cooler, and Rose and Southern Produce, Rose is precluded from recovering under the equitable theory of quantum meruit. The Court agrees in this instance.

Actions in quantum meruit are generally based on the absence of a contract. Quantum meruit and contract claims are typically mutually exclusive, so that one cannot recover under this equitable theory when there is a contract. Swanson v Stratos, 350 S.C. 116, 564 S.E.2d 117 (Ct. App. 2002). In this case, Rose alleges in the lien, which is still on record, and the Complaint, that it had contracts with Cooler and Southern Produce. Southern Produce admits these allegations.[2]

WPH #8

The Court has reviewed case law and utilized other sources. It found that Hornbook law discusses the distinction between contracts that are "express" and those "implied in fact." If the agreement or intent of the parties is manifested in spoken or written words, the contract is said to be "express." If the mutual undertaking of the parties is inferred from their conduct alone, without oral or written words, then the contract is said to be "implied in fact." It does not matter whether the mutual promises of the parties are expressed in word, written or oral, or implied from the conduct of the parties. Both are contacts entitling the parties to contractual remedies, not equitable remedies. Key Corporation Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675(2007). To have a contract for materials, labor or services does not require a

[2] Rose's Complaint avers in paragraphs 3, 10,11,12,19, and 20 that it had contracts with Cooler and Southern Produce. In the Notice of Mechanic's Lien and Statement of Account sworn to by Homer Rose, as president of Rose Electric, Inc., he affirmed that Rose had agreements with the Defendants and sought the "contract price" of $65,094.52.

predetermined set price. The price is typically implied to be the fair and reasonable price in any number of contractual arrangements. For example, consulting a doctor without a predetermined charge implies a promise to pay the reasonable cost of the doctor's services and constitutes a contact between the parties. Likewise, the hiring of a contractor to provide materials and labor, even in the absence of a predetermined charge, implies a contract to pay for those materials and services. The parties may have a dispute as to the value or charge under the contract, but that does not obviate the obligations under the contract.

The court finds, in this case, that the evidence establishes the existence of expressed contracts between Rose and Cooler for the scope of work under the plans, and between Rose and Southern Produce for the requested changes and additions to the project. Moreover, the evidence establishes that contracts are implied in fact by the conduct of Rose, Cooler, and Southern Produce.

WPC #9

The court finds that the greater weight of the evidence establishes that Rose has a contact with Cooler to pay for the electrical work included in the plans and has a contract with Southern Produce to pay for the requested changes and additions to the project. Rose's abandonment of the contract claims at trial does not change the facts and resulting conclusions of law. The Court finds for the Defendants as to the contract claims.

2. Quantum Meruit Claim

Plaintiff is not entitled to relief on its claims of quantum meruit. Quantum meruit, unjust enrichment and restitution are equivalent terms for equitable remedies for a contract implied by law or quasi-contract. Recognizing that these principles are difficult and confusion easily results, the court has made an extensive evaluation into how quantum meruit is different from an expressed contract or contract implied in fact. Myrtle Beach Hospital, Inc. v. City of Myrtle

Beach, 341 S.C. 1, at 8, 532 S.B.2d 868, at 872 (2000); Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259,261,440 S.E.2d 129,130 (1994). Conceding that the court may be in error in its evaluation, its best effort to assess this situation is that the remedy of quantum meruit is not available here. Quantum meruit is not available if the services and materials for which the Plaintiff is seeking to recover are encompassed in an express contract or one implied in fact. Swanson v. Stratos, 350 S.C. 116,122,564 S.E.2d 117,120 (S.C. App. 2002); Columbia Wholesale Co., 440 S.E.2d at 130-131 (1994).

As discussed previously, Rose had an expressed contract with the general contractor for the scope of work it performed. That contract covered the $54,399.13 Rose seeks in this action. Rose also had an expressed contract with Southern Produce for the changes and extras it requested, for which Rose seeks $10,755.39. These amounts make up the total mechanic's lien of $65,094.52. The Plaintiff pleaded in Paragraphs 3, 10, 11, and 12 of the Complaint that it entered into a contract with the general contractor, with the knowledge of Southern Produce, to perform work for payment. Defendants admitted the contract of Rose with Cooler in their Answers. Further, Mr. Homer Rose testified that he had done two previous jobs as electrical subcontractor for Cooler at the new Farmers Market prior to the Southern Produce job based on a handshake. He testified that he expected to be paid by Cooler, just as Rose had been in the other two jobs. It is unfortunate that Cooler effectively is insolvent, according to the evidence, and that the loss must fall on anyone else. Cooler does not deserve to escape responsibility, but that does not mean that the obligation to pay falls on any of these other parties.

The oral agreement was further evidenced by a written proposal and a series of written invoices to Cooler and Southern Produce. Mr. Rose testified, and Dan Stocker of Southern

Produce confirmed, that Southern Produce requested the extras from Rose and agreed to pay for the same. Because there are contracts under which recovery is available, quantum meruit is not proper.

Even if there were no contracts encompassing Plaintiff's claims for recovery, the court finds that Rose, under the facts of this case, would still not be entitled to an award under quantum meruit. The elements of quantum meruit are: l) a benefit conferred on the defendant by the plaintiff; 2) realization of that benefit by the defendant; and, 3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. (Emphasis added). Earthscapes Unlimited, Inc. v Ulbrich, 390 S.C. 609, 703 S.E.2d 221 (2010); Columbia Wholesale,312 S.C. 259, 440 S.E2d 129 (1994); Shirley's Iron Works, Inc. v City of Union , 387 S.C. 389, 693 S.E.2d 1 (S.C. App. 2009). The main focus of this inquiry is whether the enrichment to the owner is unjust. In claims of unjust enrichment by subcontractors, the Courts typically deny recovery where the owner has paid on its contact with the general contractor. Columbia Wholesale, supra.; Shirley's Iron Works, Inc., supra; Myrtle Beach Hospital, Inc., supra. Southern Produce has paid all but $10,108.00 of the contract price for the services and materials provided, and Southern Produces has consistently stood ready to pay the prorated shares of the retainage.

So, Southern Produce has offered to pay $6,953.29 to Rose per S.C. Code Ann. §29-5-60 (Rose's prorated share of the retainage), but Plaintiff refused the same. Southern Produce has offered to pay Rose $10,755.39 for the change orders per its verbal contract and pursuant to S.C. Code Ann. §29-5-10. Again, Rose refused. The determination of the Court is that it is not unjust, under the facts of this case, for Southern Produce to retain the benefits because it has paid

for the benefits and tendered all the funds that the law requires. The Court finds for the Defendants on Plaintiff's quantum meruit claim.

3. Prevailing Parties & Attorney Fees/Costs

Even though Plaintiff abandoned its claims for recovery based on foreclosure of the mechanic's lien, the Court must still determine Defendants Southern Produce's and S2P's rights to recover attorney fees and costs in this case. Trico Surveying, Inc. v Godley Auction Co., Inc., 314 S.C. 542, 431 S.E.2d 565 (1993)(owner entitled to award of attorney fees and cost in defending mechanic's lien action where surveyor had no evidence of an expressed or implied in fact contract with owner). Southern Produce and S2P each seek recovery of attorney fees and costs from Rose pursuant to the mechanic's lien statutes, S.C. Code Ann. § 29-5-10 and § 29-5-20. Southern Produce also seeks recovery of costs and interest pursuant to Rule 68, SCRCP and S.C. Code Ann. § 15-35-400.

WPL #12

S.C. Code Ann. § 29-5-10(a) provides that a contractor shall have a lien on an owner's property to secure payment for a debt due for improvements to the property. The statute also states, "[t]he cost which may arise in enforcing or **defending** against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the **prevailing party**." (Emphasis added). S.C. Code Ann. § 29-5-20(A) provides that a subcontractor has a lien against the owner to secure payment, and provides that the Court must award costs and attorney fees if the party defending against the lien prevails. Both statutes provide the procedure for making offers of settlement, responses, and how to accept an offer. If a plaintiff fails to respond to an offer, the amount prayed for in the Complaint is considered its final offer of settlement for purposes of determining the "prevailing party." The party whose offer is closest to the verdict is the prevailing party for purposes of the award of costs and attorney fees. S.C. Code Ann. §§ 29-5-

10(b) and 29-5-20(C). Both S.C. Ann. § 29-5-10 and §29-5-20 require the mandatory award of attorney fees and costs to the prevailing party, here Southern Produce and S2P. T.W. Morton Builders, Inc. v von Buedingen, 316 S.C. 388, 450 S.E.2d 87, 94-95 (Ct. App. 1994).

The lien was filed on March 3, 2011. It was still of record in the Lexington County Register of Deeds public records at the last hearing. The mechanic's lien encumbers not only the property leased to Southern Produce, but also additional property included in the 4-acre tract described in the lien that is not subject to the lease. Rose provided no improvements on the other sections of the tract. Other entities have rights related to the property, and the Defendants have been forced to defend against the lien foreclosure since March, 2011.

WPC #13

Southern Produce Attorney Fees and Costs

The Court must consider the offers of settlement made by Defendant Southern Produce to Rose during the case. Southern Produce on three occasions (July 26, 2011, January 23, 2012, and July 13, 2012) filed Offers of Settlement pursuant to Rule 68, SCRCP and S.C. Code Ann. §15-35-400, §29-5-10 and §29-5-20. Rose did not accept or respond to any of the offers. The last offer filed by Southern Produce was for $18,000. Rose did not respond, so plaintiff's offer for purposes of an award of attorney fees and costs under S.C. Code Ann. §29-5-10 and §29-5-20 is considered to be its prayer in the Complaint of $65,094.52. Defendant Southern Produce is the prevailing party under S.C .Code Ann. §29-5-10 and §29-5-20, as Southern Produce's offer of $18,000.00 is closer to the Court's award of $0 than is Rose's offer of $65,094.52.

Similarly, S.C. Code §15-35-400(A) provides that in any contract action or action seeking the recovery of money damages, a party may file and serve a written offer of judgment on the opposing party. An offer is not accepted within a certain time is deemed rejected. If the

offering party receives a determination at least as favorable as the offer, that party is the prevailing one and is entitled to recover costs and interest at 8%. S.C. Code Ann. §15-35-400(B). Rule 68, SCRCP provides for the same recovery as §15-35-400, but applies to **all** civil actions.

The Court finds that Southern Produce is entitled to an award of attorney fees, costs, and interest pursuant to the mechanic's lien statutes cited above. Southern Produce is the prevailing party under S.C. Code Ann. §§29-5-10 and 29-5-20 as it's $18,000 offer of settlement was closer to Rose's verdict of $0 than was Rose's offer of $65,094.52 contained in the Complaint. Likewise, Southern Produce is the prevailing party entitled to costs and interest at 8% as requested in the Offers of Judgment per Rule 68, SCRCP and S.C. Code § 15-35-400.

WPL #14

The Affidavit of Kathryn M. Cook, counsel for Southern Produce, summarizing the attorney fees incurred for her services and costs in defending this action, shows that Southern Produce incurred attorney fees of $18,714.00 through February 28, 2013, and costs of $156.10, totaling $18,870.10. Southern Produce's counsel's Supplemental Affidavit shows that additional attorney fees of $5,542.50 have been incurred from March 1, 2013 through January 17, 2014. Southern Produce's attorney fees for defending this claim are $24,256.50, plus costs of $156.10, for a total of $24,412.60. Interest at 8% from the date of Southern Produce's last offer of judgment on July 13, 2012 through January 24, 2014 totals $2,983.00 and continues at a rate of $5.35 per day until judgment is entered. The Court finds Southern Produce is entitled to judgment against Rose in the amount of $27,396.60.

S2P Attorney Fees and Costs

Defendant S2P is also entitled to an award of the attorney fees and costs incurred for the

services of J. Robin Turner in the defense of the mechanic's lien filed against its property. S2P and Rose did not file settlement offers prior to trial. The claim for attorney fees and costs falls under S.C. Code Ann. §29-5-10 and §29-5-20. It is imputed that Plaintiff's offer is its prayer for $65,094.52 and Defendant S2P's offer is $0. Thus, S2P is the prevailing party based on Rose's entitlement to $0 on its lien claim. S2P incurred costs and attorney fees of $9,667.56 from November 9, 2011 to February 26, 2013, and $1,435.54 from March 3, 2013 to November 12, 2013, for a total of $11,103.10. S2P is entitled to judgment against Rose in the amount of $11,103.10.

WPL #15

Reasonableness of Attorney Fees

Based on the affidavits and supporting exhibits of counsel for Southern Produce and S2P, the amounts sought for attorney fees and costs by each are reasonable. The Defendants have submitted detailed affidavits itemizing counsels' time and expenses defending the lien claim and the qualifications of counsel. The Court has considered the factors as set forth in Strickland v. Strickland, 376 S.C. 2d 268 (1989) and finds the fees and costs to be reasonable. Trico Surveying, 431 S.E.2d 565,566-567 (1993).

4. **S2P Cross-Claims**

Lastly, S2P brought cross-claims against Southern Produce for recovery of damages incurred in the amount of fees and costs incurred in defending liens placed on the leased property. S2P bases its damage claims on breach of lease or, alternatively, equitable indemnity. Pursuant to its lease with Defendant S2P, Southern Produce is required to remove any mechanic's lien placed on the leased property and/or to pay for any damages incurred by S2P as a result of any lien. Southern Produce admits it has breached this provision of the lease and

admits that it must pay the damages to S2P.

The damages sustained by S2P are the attorney fees and costs of J. Robin Turner totaling $11,103.10 in the Rose case and $1,142.95 dealing with the Custom Concrete and Dunlap Plumbing mechanic's liens. Thus, total damages of $12,246.05 have been sustained by S2P as a result of Southern Produce's breach of lease. However, Southern Produce, in acknowledging its lease obligations to S2P, has already paid S2P or Robin Turner, on behalf of S2P, a total of $10,916.35. Of the total paid by Southern Produce, $1,142.95 was to pay the damages related to Custom Concrete and Dunlap and $9,773.40 was towards the damages related to Rose. Southern Produce admits it still owes S2P $1,329.70 in damages based on S2P's total damages relating to the Rose matter. S2P is entitled to judgment against Southern Produce in the amount of $1,329.70 based on the admitted breach of contract.

WPA #16

To the extent S2P recovers any or all of the $1,329.70 from Rose as a result of its judgment of $11,103.10, Southern Produce is entitled to a reduction or offset from what it owes under the judgment in favor of S2P. Likewise, to the extent S2P recovers from Rose any amount in excess of $1,329.70, Southern Produce is entitled to reimbursement from S2P up to the $9,773.40 already paid for the Rose damages.

Conclusion

THEREFORE, IT IS ORDERED that the Lexington County Register of Deeds is to discharge and release the mechanic's lien filed at Lien Book 14754 at Page 57 immediately. Rose Electric, Inc. is not entitled to judgment on the lien foreclosure against Southern Produce and S2P, or the breach of contract claim against Cooler Erectors of Atlanta, Inc.

IT IS FURTHER ORDERED that Rose Electric, Inc. is not entitled to recovery under the

theory of quantum meruit as there is a contact between Rose and Cooler encompassing $54,399.13 of Rose's claim, and a contract exists between Rose and Southern Produce encompassing the $10,755.39 remainder of the claim. Rose cannot recover under an equitable claim of quantum meruit because there are contracts covering the debt. Even if this Court found there were no contracts, the third element of quantum meruit is missing in this matter precluding recovery by Rose (unjust retention of benefit without payment).

IT IS FURTHER ORDERED that the Defendants Southern Produce and S2P are the prevailing parties under S.C. Code Ann. §29-5-10 and §29-5-20.

(A) Southern Produce, Inc. is entitled to a judgment against Rose Electric, Inc. of $24,412.60 for costs and attorney fees, plus interest in the amount of $2,983.00 through January 24, 2014 pursuant to Rule 68, SCRCP and S.C. Code Ann. §15-35-400. The total judgment for Southern Produce, Inc. against Rose is $27,395.60. Interest will continue to accrue from January 25, 2014, at the rate of $5.35, until entry of judgment.

#17

(B) Defendant S2P, LLC is entitled to judgment against Rose Electric, Inc. in the amount of $11,103.10 covering the costs and attorney fees incurred in the defense of this lien claim.

IT IS FURTHER ORDERED that the Defendant S2P, LLC is entitled to a judgment against Southern Produce, Inc. based on breach of lease in the amount of $1,329.70. Southern Produce, Inc. is entitled to offset, credit, or reimbursement from S2P of all amounts S2P collects from Rose Electric, Inc., up to $11,103.10, such that S2P does not recover its damages twice.

AND IT IS SO ORDERED.

William P. Keesley

January 30, 2014 William P. Keesley, Judge, 11th Judicial Circuit

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3201929

PLAINTIFF(S)	DEFENDANT(S)
Rose Electric Inc	Cooler Erectors of Atlanta Inc S2P LLC Senn Bros Inc James Dunlap Southern Produce Inc Certified Development Corporation of South Carolina Custom Concrete of Lexington Inc Dunlap Services
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

1/31/2014

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **3rd of February 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **3rd of February 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.