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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC; GRH 2011, LLC,

Respondents,

v.

Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co.,

Appellants.

PETITION FOR REHEARING

Herbert W. Hamilton
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& CARROLL, LLC
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ATTORNEYS FOR RESPONDENT

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Respondent files this Petition for Rehearing as provided in Rule 221(a) of the Appellate Court Rules. The opinion of the Court of Appeals reversing the Trial Court and remanding this case was filed on December 3, 2014. Respondent respectively submits that the following points were overlooked or misapprehended by the Court:

1. **Rizon was only hired to crush concrete.**

The only contract in the record states that Rizon's scope of work was:

The Work to be performed by the Subcontractor includes mobilization of all labor, equipment, materials and other items required to crush and screen 30,000 tons of concrete stockpiled at the former Celanese Acetate Plant in Rock Hill. The concrete material is to be crushed and screened, as required, to meet the South Carolina Department of Transportation specifications for Graded Aggregate Base as shown on the table in Attachment A. Conformance testing of crushed material to ensure that the crushed material meets SCDOT specifications will be performed by the Contractor. All scrap metal generated as a result of crushing may be authorized via contract Modification at Contractor's discretion.

While Rizon argues that the contract in the record is not the contract which covers the work for which the mechanic's lien was filed, it was conceded that the applicable contract was essentially the same. Rizon's only task was to "separate, crush, screen concrete" in accordance with South Carolina Department of Transportation standard specifications. (R p.31).

There is no requirement that Rizon deliver any material to the Project. There is no requirement that Rizon remove material from the crushing site after the concrete was crushed. Specifically, there is nothing in the contract that obligates Rizon to "rid the property of demolition debris so construction could continue". To the contrary, the contract specifically states that if any concrete is to be removed from the project, the

concrete is to be removed by the contractor (Celriver), not Rizon. There is nothing in the record to support the conclusion that Rizon removed any concrete from the Project.

It is undisputed that Rizon did not own the concrete it crushed. (R. 192). It is undisputed that Rizon did not deliver the scrap concrete to the crushing site. (R. 192). It is undisputed that Rizon did not deliver the crushed concrete to be used in the Project.

2. **The Mechanic's Lien statute has been expanded from the crushing site to other parts of the Project by the General Assembly, not the Courts.**

The Court's opinion cites A.V.A. Construction Corp. v. Santee Wando Construction, 303 S.C. 333, 400 SE2d 498 (ct. app., 1990) and George A. F. Johnson, Jr., Inc. v. Barnhill, 279 S.C. 242, 306 SE2d 216 (1983) as support for its holding. While Respondent concedes that the scope of the mechanic's lien has been expanded over the years, the expansion has been accomplished by the General Assembly. The Courts are still subject to the "settled principle that statutory liens may not be extended by Courts to claims not specified in the statute; and a claimant must bring himself within the expressed intention of the lawmakers." Guignard Brick Works v. Gannt, 251 S.C. 29, 159 SE2d 850 (1968).

Respondent submits that neither case supports the Court's conclusion that expansion of the mechanic's lien by the Court is appropriate. In A.V.A. the Court found that the existing language of the statute covered the work for which the mechanic's lien was filed. George A.F. Johnson Jr., Inc., supports the proposition that expansion of the mechanic's lien statute should be accomplished by the General Assembly.

The Johnson case involved a claim for surveyor's service. The Court noted that the mechanic's lien statute had been amended by the General Assembly to give surveyors the right to a mechanic's lien. However, the amendment occurred after the work had been

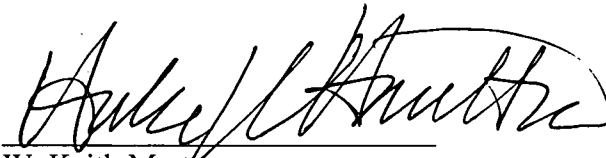
done for which the mechanic's lien was filed. Consequently, the Court noted that the amendment could have no effect on the decision. Citing Guignard, the Court found that there was no language in the statute which expressly or by implication indicated a legislative intent that surveyor services were covered by mechanic's lien statutes.

Respondent respectfully submits that there is no language in the mechanic's lien statute which indicates a legislative intent to provide the right to a mechanic's lien to a party that only provides concrete crushing services. As the court indicated in Johnson, if the Legislature wishes to provide mechanic's lien rights for the type of service provided by Rizon, the statute should be amended. Until that happens, however, the Courts should not expand the coverage of the statute by court order.

Conclusion

For the forgoing reasons, the Respondent respectfully requests that the Court withdraw its opinion and affirm the Trial Court.

December 18, 2014



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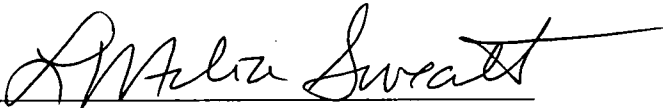
SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens Ballou & Carroll, LLC certifies that the Respondent's Petition for Rehearing was served upon other counsel of record by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

Daniel D. D'Agostino
25 West Liberty Street
York, SC 29745
ATTORNEYS FOR APPELLANT

December 18, 2014


L. Melia Sweatt

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December 18, 2014

Via Hand Delivery

V. Claire Allen
Deputy Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: The Greens of Rock Hill v. Rizon Commercial
Lower Court Case No. 2012CP4601815
Appellate Case No.: 2012-213563

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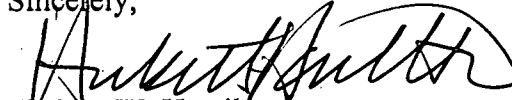
Dear Ms. Allen:

I have enclosed the original and seven copies of Respondent's Petition for Rehearing in connection with the above-referenced matter. I have also enclosed my firm's check in the amount of \$25.00 to cover the filing fee. Please file the Petition and return one of the copies to me in the envelope I have enclosed.

By copy of this letter to opposing counsel, I have enclosed a service copy of the Petition for Rehearing.

Please feel free to call me if you have any questions.

Sincerely,



Herbert W. Hamilton
For the Firm

WKM/lms
Enclosure

cc: Daniel D. D'Agostino
25 West Liberty Street
York, SC 29745