

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENWOOD )

THE COURT OF COMMON PLEAS  
EIGHTH (8<sup>TH</sup>) JUDICIAL CIRCUIT

Miller Construction Company, LLC, )  
 )  
Plaintiff, )

vs. )

PC Construction of Greenwood, Inc. )  
and Safeco Insurance Company of )  
America, )  
 )  
Defendants. )

ORDER

Ca No :: 2012-CP-24-574

FILED COMMON PLEAS  
8TH JUDICIAL CIRCUIT  
GREENWOOD, S.C.  
2014 NOV 26 PM 11:32

THIS MATTER is before the Court upon the respective post-trial motions filed by both the Plaintiff and the Defendants. This is a non-jury matter. Following a 3 day trial, a Final Order & Judgment was issued by this Court on July 8, 2014.

Plaintiff timely filed a Motion to Alter or Amend pursuant to Rule 59(e) of the SCRCP. In its Motion, Plaintiff alleges, *inter alia*, that this Court erred in not awarding pre-judgment interest on the amount awarded to Plaintiff by this Court.

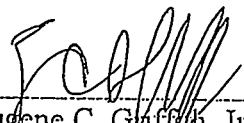
Defendants timely filed a Motion to Alter or Amend pursuant to Rule 59(e) of the SCRCP. The Defendants raised a number of issues in the Motion. They are as follows:

1. The Court erred as a matter of law in granting involuntary non-suit finding that pursuant to the Subcontract, PC could not recover any type of liquidated damages against Miller because PC was never assessed liquidated damages from the owner.
2. The Court failed to consider significant relevant evidence in finding that the evidence was clear that Miller did not cause any delays on this Project.
3. The Court's determination that Miller was properly licensed to perform the work was erroneous as a matter of law and failed to consider pertinent and relevant facts in the record.
4. The Final Order erroneously finds that PC holds a license of "general contractors-highway."

5. The Final Order erroneously orders immediate payment from the payment bond to Miller Construction Company, LLC.
6. The Final Order erroneously references that the action on the payment bond was brought pursuant to S.C. Code Ann. § 29-5-440.

This Court has reviewed the respective Rule 59 motions. This was a three (3) day trial, and the Court carefully reviewed the testimony and evidence presented when arriving at its decision outlined in the Final Order & Judgment. The Court finds no reason to alter, amend or reconsider the Final Order & Judgment. Accordingly, the respective motions filed by the parties pursuant to Rule 59 are denied. To the extent that the issues raised in the parties' respective Rule 59(e) motions were raised at trial and not ruled upon in the Final Order, they are preserved for appellate review.

IT IS SO ORDERED this 13 day of November, 2014.

  
\_\_\_\_\_  
Eugene C. Griffith, Jr.  
Presiding Circuit Court Judge

Newberry, South Carolina.

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

Miller Construction  
Company LLC

PC Construction of  
Greenwood Inc

Safeco Insurance  
Company of America

PLAINTIFF(S)

DEFENDANT(S)

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 43(k), SCRPC (Settled);
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Non-suited);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

FILED COMMON PLEAS  
8TH JUDICIAL CIRCUIT  
GREENWOOD, S.C.  
NOV 26 6 PM 11:52

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)

DEC - 8 2014

COINED

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.

2154

11/26/2014

Judge Code

Date

Circuit Court Judge

For Clerk of Court Office Use Only

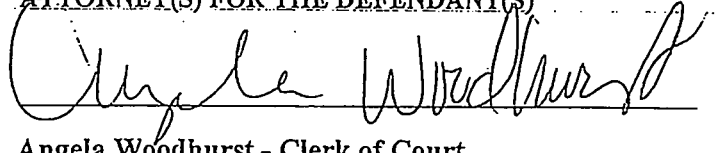
This judgment was entered on November 26, 2014, and a copy mailed first class or placed in the appropriate attorney's box on November 26, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

David James Brousseau PO Box 197 Anderson, SC 29622

Edward Wade Mullins III PO Box 61110 Columbia, SC  
29260-1110

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Angela Woodhurst - 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.

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENWOOD )

IN THE COURT OF COMMON PLEAS  
EIGHTH (8<sup>TH</sup>) JUDICIAL CIRCUIT

Miller Construction Company, LLC, )  
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Plaintiff, )  
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vs. )  
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PC Construction of Greenwood, Inc. )  
and Safeco Insurance Company of )  
America, )  
 )  
Defendants. )  
 )

FINAL ORDER & JUDGMENT

Ca No: 2012-CP-24-574

2014 JUL -9 PM 2:52  
FILED COMMON PLEAS  
8TH JUDICIAL CIRCUIT  
GREENWOOD, S.C.

THIS MATTER was before the Court for a final hearing on the merits of the claims presented by the parties in this action. Plaintiff [hereinafter Miller or Miller Construction] is represented by David J. Brousseau of the law firm McIntosh, Sherard, Sullivan & Brousseau. Defendants<sup>1</sup> [hereinafter collectively referred to as PC or PC Construction] are represented by E. Wade Mullins, III, of the law firm Bruner, Powell, Wall & Mullins.

Miller initiated this action by filing its Summons and Complaint on May 25, 2012, seeking damages for breach of contract and suit on the payment bond pursuant to SC Code Ann. § 29-5-440. PC timely filed its Answer generally denying the allegations and offering affirmative defenses. Subsequently, PC was permitted to file an Amended Answer and Counterclaim alleging, *inter alia*, breach of contract on the part of Miller. Additionally, PC was permitted to amend its Answer before trial to assert an affirmative defense that Miller was not properly licensed to perform its work. Trial in this matter occurred on November 4, 5, and 6, 2013. All parties and their respective attorneys were present and ready to proceed. Reference is invited to the court file for further particulars thereof.

The Court allowed for the submission of post-trial briefs, and then took this matter under advisement. Based upon the testimony and evidence introduced at trial, the Court issues the following findings of fact and conclusions of law in support of this Order.

<sup>1</sup> Defendant Safeco Insurance Company of America was named by virtue of holding the payment bond in this matter.

ATTEST A TRUE COPY  
*Angela Woodhurst*  
ANGELA WOODHURST  
CCCP AND GS  
GREENWOOD COUNTY  
S. C.

## Findings of Facts & Conclusions of Law

### *Background*

PC Construction was the general prime contractor for the Lander University Jeff May Sports Complex. PC hired Miller Construction as a subcontractor on the project to perform, *inter alia*, grading and site prep work. The subcontract called for Miller to perform these services for a price of \$492,424.

Early on into the project asbestos laden materials were discovered on site. Miller successfully bid on the removal of the asbestos laden materials. All witnesses agree that this issue was much more widespread than anticipated. It caused significant delays to the project as well as significantly increased the overall costs by way of change order.

Throughout the project, Miller was paid by PC upon making pay applications. Further, witnesses for PC Construction admit that at no time during the project did it withhold payment from Miller due to delays or allegations that the work was not performed in a workmanlike manner.

Upon Miller making its final pay application, PC withheld payment to Miller. At that time, PC had not yet been paid its final payment from the owner, Lander University. A dispute arose between Lander and PC regarding how much was owed to PC. In the spring of 2013, an agreement was reached between PC and Lander regarding final payment. PC then received final payment from Lander. However, PC still withheld final payment to Miller.

Miller alleges that PC breached the subcontract by failing to pay the amount due to Miller upon Miller making final pay application. PC alleges that:

- a) Miller is not properly licensed; and, therefore, cannot bring this lawsuit;
- b) Miller owes PC for damages due to delay;
- c) Miller owes PC \$3,921.82 for correction of a sinkhole; and
- d) The amount Miller claims is owed is not correct.

#### A) *Licensing Issue*

PC asserts that Miller is not entitled to recovery because it is not properly licensed pursuant to S.C. Code Ann. § 40-11-370(C). It is undisputed that Miller holds a license with the classification of "grading." PC holds a license of "general contractors – highway."

PC contends that Miller acted outside the scope of its license by performing work on the storm sewer system. Prior to construction, there was an existing old storm sewer system under

the site. The work performed by Miller was to fix the existing system into a workable system given the use for the site.

S.C. Code Ann. § 40-11-370(C) states that, "[a]n entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract." S.C. Code Ann. § 40-11-410(2)(d) provides as follows:

"General Contractors-Highway" which *includes* work under these subclassifications:

(d) Grading- which includes the soil preparation and rehabilitation of streets, roads, highways, railroad beds, building sites, parking lots, and storm sewers. This subclassification also includes work under the subclassification of Highway Incidental.

(e) Highway Incidental- which includes highway work for grooving, milling, rehabilitating, and installing guardrails, gutters, highway signs, pavement mark, and painting.

S.C. Code Ann. § 40-11-410(2)(d)(Emphasis added).

PC contends that by performing work on the storm sewer system, Miller was required to hold a license in "Water and Sewer Lines" as defined by S.C. Code Ann. § 40-11-410(3)(c). PC does not hold a license of "general contractors – public utility."<sup>1</sup>

At the outset of this analysis, the Court notes that "It is unlawful for an owner, a construction manager, a prime contractor, or another entity with contracting or hiring authority on a construction project to divide work into portions so as to avoid the financial or other requirement of this chapter as it relates to license classifications or subclassifications or license groups, or both." S.C. Code Ann. § 40-11-300 (1998) (see also S.C. Code Ann. § 40-11-270 (1998) which states, "[t]he licensee is fully responsible for any violations of this chapter resulting from the actions of unlicensed subcontractors performing work for the licensee.") In other words, if PC hired unlicensed subcontractors to perform work on this project it would be in violation of the law.

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<sup>1</sup> S.C. Code Ann. § 40-11-270 states, "[l]icensees may utilize the services of unlicensed subcontractors to perform work within the limitations of the licensee's license group and license classification or subclassification; provided, the licensee provides supervision. The licensee is fully responsible for any violations of this chapter resulting from the actions of unlicensed subcontractors performing work for the licensee."

"[S]tatutes in derogation of the common law are to be strictly construed. Under this rule, a statute restricting the common law will not be extended beyond the clear intent of the legislature. Statutes subject to this rule include those which limit a claimant's right to bring suit." *Grier v. AMISUB of SC*, 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* "There is a marked distinction between liberal construction of statutes, by which courts, from the language used, the subject-matter, and the purposes of those framing them, find out their true meaning, and the act of the a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced." *Hatchett v. Nationwide Mut. Ins. Co.*, 244 S.C. 425, 432, 137 S.E.2d 608, 611 (1964).

"If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and the court had no right to impose another meaning." *Bostic v. Am. Home Mortg. Servicing, Inc.*, 375 S.C. 143, 149, 650 S.E.2d 479, 482 (Ct. App. 2007). "The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Id.*

"The tenor of modern law is to avoid dismissal of cases on technical grounds and to allow adjudication on the merits." *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 65, 744 S.E.2d 547, 551 (2013).

*Webster's Dictionary* defines the word "rehabilitat[ion]" as follows: "to restore or bring to a condition of health or useful and constructive activity." *Merriam-Webster's Collegiate Dictionary* 985-86 (10th ed. 1998).

Rehabilitation of an old storm system into a working system would include, in certain instances, demolition and installation of storm sewer lines. In this case, old lines were torn out, some old lines stayed, and the newly installed lines tied into existing catch basins. Additionally, this was a state funded job, and no one ever claimed that Miller was not licensed to perform this work. Further, there was no evidence that any permitting agency ever attempted to stop work on the project due to 'licensing' issues.

PC contends that, because a section of S.C. Code Ann. § 40-11-410(3)(c) states that water and sewer lines licensing references the installation and repair of storm drains and sewer lines,

this excludes Miller from doing rehabilitative work on the storm sewer system that would include the installation and demolition of storm sewer lines.

Inclusion of a definition in a different licensing sub-section of the statute does not mean it excludes such work in regards to defining the word rehabilitation. Had the legislature intended to exclude installation and demolition of storm sewer lines from the 'grading' licensing sub-section, it would have specifically excluded it. However, such work was not excluded. Instead the legislature included the very broad term of 'rehabilitation' without any exclusionary language. As the statute inhibits a fundamental right (filing a lawsuit for breach of contract), one must assume that the legislature intended to keep such a broad term like rehabilitation within the context of the statute.

PC agreed with the above analysis and interpretation of the statute at the time of signing the subcontract agreement. Otherwise, PC would be in violation of Sections 40-11-300 and 40-11-270 by knowingly hiring Miller to perform work on the storm sewer system. PC was aware of Miller's licensing status at the outset of the project as well as the scope of work Miller would be performing under the subcontract.

As such, I find that Miller was properly licensed to perform the work it was contracted to perform on this project. The Defendant's motion for involuntary non-suit / direct verdict on this issue is denied.

**B) *PC Construction's claim for damages from Miller for delay***

PC contends it is entitled to damages for delays it states Miller caused. Regarding this issue the subcontract provides, in relevant part, as follows:

If the Contract Documents provide for liquidated or other damages for delay and such damages are so assessed against PC Construction of Greenwood, Inc., then PC Construction of Greenwood, Inc. may assess same against Subcontractor in proportion to Subcontractor's share of the responsibility for such delay as determined by PC Construction of Greenwood, Inc. Subcontractor shall also be liable for all additional damages PC Construction of Greenwood, Inc. may incur as a result of Subcontractor's failure to complete Subcontractor's Work or any portion thereof in accordance with the Job Schedule, including direct costs, liquidated damages and/or PC Construction of Greenwood, Inc. extended overhead.

After completion of the project, Lander and PC became involved in a dispute regarding final payment. PC agreed to accept from Lander additional payment of approximately \$120,000

for "extended general conditions" or "overhead" due to delays not caused by PC<sup>2</sup>. According to testimony, this amount was roughly equal to 120 days of delay. Further, no liquidated damages for delays were assessed against PC by Lander.

Gary Piontek and Randy Piontek of PC testified that they were essentially assessed what they considered to be liquidated damages by not receiving the full amount they were seeking from Lander for delays not caused by PC. They testified that PC was entitled to approximately \$120,000 from Miller due to delays it asserts were caused by Miller.

Article 6, paragraph 7 of the subcontract allowed PC to join Miller as a party to the action against Lander. PC chose not to join Miller as a party to that case. PC accepted and agreed to a final payment amount from Lander without any input from Miller. If PC felt it was entitled to more damages from Lander for "extended general conditions" it had every right to have a contested hearing to decide that issue in that case. However, it voluntarily chose to accept the agreement with Lander as the amount it was due.

Pursuant to the subcontract, PC cannot recover any type of liquidated damages against Miller as PC was never assessed with any liquidated damages or damages for delay from the owner. As such, taking the evidence in a light most favorable to PC, it is unable to sustain its cause of action for breach of contract against Miller for delay damages. Miller's motion for involuntary non-suit / directed verdict as to this cause of action is hereby granted.<sup>3</sup>

*C) PC Construction's Claim for reimbursement for fixing a sinkhole*

PC contends that it is entitled to reimbursement from Miller in the amount of \$3,921.82 for fixing a sinkhole that PC contends was caused by Miller. No evidence was presented to show that Miller in fact caused the sinkhole. Additionally, testimony reflects that PC fixed this issue on its own, at minimal cost, and without giving Miller an opportunity to cure any alleged defect. Lastly, representatives for PC agreed on cross-examination that PC owed Miller \$51,270.08 subject to its counterclaim for delay damages.

*D) Amount Owed to Miller*

The subcontract, in relevant part, provides that "Final payment of the balance of the Subcontract Price shall be made to Subcontractor: . . . after receipt by PC Construction of

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<sup>2</sup> This would mean that Miller, as a subcontractor for PC, did not cause any delays.

<sup>3</sup> This court would additionally have found that PC did not meet its burden of proof on this issue. The evidence was clear that Miller did not cause any delays on this project.

Greenwood, Inc. of final payment from Owner, such receipt being an express condition precedent to PC Construction of Greenwood, Inc.'s obligation to make final payment to Subcontractor."

The evidence presented reflects that PC received final payment from Lander in the spring of 2013. Miller made its application for final payment in accordance with the subcontract, and prior to the filing of this lawsuit in May of 2012. Based upon the above rulings on the issue of licensing and damages for delay, I find that Miller is entitled to and hereby granted a directed verdict on the issue of PC's breach of contract.

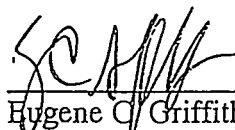
Miller filed this action alleging it is owed a principal balance of \$53,695.08. The difference of the above amounts is two change orders totaling \$2,425.00. PC rejected these change orders because a) they were not submitted and approved before the work occurred and b) it was warranty work covered by the subcontract. During testimony, PC agreed that it owed Miller \$51,270.08, subject to its counterclaim for damages for delay. This Court has granted Plaintiff's motion for involuntary non-suit / directed verdict on Defendant's counterclaim for delay damages. Accordingly, taking the evidence in a light most favorable to Defendant, Plaintiff is entitled to and hereby granted \$51,270.08 for Defendant's breach of contract and suit on the payment bond.

**ACCORDINGLY, based upon the above findings as applied to the law of this State, it is hereby ORDERED, ADJUDGED and DECREED as follows:**

1. Judgment is hereby entered against PC Construction of Greenwood, Inc., in favor of Miller Construction Company, LLC, in the principal amount of \$51,270.08 for breach of contract.

2. Defendant Safeco Insurance Company of America is hereby ordered to immediately pay this amount to Miller Construction Company, LLC from the payment bond it holds on behalf of PC Construction of Greenwood, Inc., on this project.

IT IS SO ORDERED this 1 day of July, 2014.

  
\_\_\_\_\_  
Eugene C. Griffith, Jr.  
Presiding Circuit Court Judge

This 1<sup>st</sup> day of July 2014  
Newberry, South Carolina.