

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-In-Equity

Appellate Case No. 2014-002584

Vision Contracting, LLC,

Respondent,

v.

Rosiland Geter,

Appellant.

INITIAL BRIEF OF APPELLANTS

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. S.C. CODE ANN. § 29-5-15(A) REQUIRES STRICT COMPLIANCE BECAUSE IT IS PART OF THE MECHANIC'S LIEN STATUTES.
- II. THE CONTRACTOR FAILED TO COMPLY WITH S.C. CODE ANN. § 29-5-15(A) BECAUSE HE DID NOT RECORD HIS CONTRACTOR LICENSE NUMBER ON THE LIEN DOCUMENT WHEN THE LIEN DOCUMENT WAS FILED.
- III. THE CONTRACTOR'S FAILURE TO COMPLY WITH S.C. CODE ANN. § 29-5-15(A) MEANS THAT THE CONTRACTOR'S MECHANIC'S LIEN IS INVALID, MUST BE DISSOLVED, OR MAY BE RELEASED.

STATEMENT OF THE CASE

This is an appeal from the Master-In-Equity's Order dated November 17, 2014, which granted the Respondent judgment against the Appellant in the amount of \$35,496.10 and granted the Respondent a Mechanic's Lien against the Appellant's property to satisfy the judgment amount. The Appellant also appeals the Order dated June 19, 2014, which denied the Appellant's Motion for Summary Judgment.

On August 7, 2012, the Respondent, Vision Contracting, LLC (the "Contractor") filed a Lis Pendens and Complaint for foreclosure of a mechanic's lien against the Appellant, Rosiland Geter (the "Homeowner"). The Homeowner answered the Contractor's Complaint on September 6, 2012 and counterclaimed for breach of contract, which counterclaim was denied by the Contractor on December 28, 2012 in its Reply.

The Homeowner filed a Motion to refer the case to the Master-In-Equity with the Contractor's consent on December 9, 2013, which the Spartanburg County Clerk of Court granted on December 10, 2013.

The first day of trial took place on May 22, 2014. While being cross-examined by the Homeowner's counsel, the Contractor admitted that he was licensed to do both commercial and residential work in South Carolina, that he was required to be licensed, and that his contractor's license number was not recorded on the mechanic's lien documents that were submitted to the Office of Register of Deeds in Spartanburg County. (May 22, 2014 Trial Transcript, p. 32, 37, 38, and 39). During redirect examination, the Contractor's counsel moved to amend the mechanic's lien documents by adding the Contractor's license number to the documents. (May 22, 2014 Trial Transcript p. 39).

The Homeowner's counsel objected. After further discussion between the court and the parties' counsel related to the Contractor's Motion to amend the mechanic's lien documents, the Homeowner's counsel presented the court with a memorandum supporting a Motion for Directed Verdict and Summary Judgment in favor of the Homeowner based upon the Contractor's license number not appearing on the mechanic's lien documents in violation of S.C. Code Ann. § 29-5-15. The court recessed so that both parties would have opportunities to brief the court on the issue. After receiving and reviewing the parties' briefs, the court filed an Order on June 19, 2014 denying the Homeowner's Motion for Directed Verdict because it believed the Contractor's mechanic's lien documents substantially complied with the statutory requirements and the court found no language in S.C. Code Ann. § 29-5-15 such that failure to comply with that section would result in dissolution of a mechanic's lien. The court sought to continue the trial of the case. However, the Homeowner filed a Notice of Appeal on July 17, 2014 to appeal the June 19, 2014 Order. The Homeowner's counsel received a letter dated July 24, 2014 from the South Carolina Court of Appeals that stated a "preliminary review of the order(s) challenged on appeal indicates it might not be appealable" and requested each party to "serve and file a memorandum addressing the issue of appealability within ten (10) days" of the letter's date. The Homeowner's counsel sent the Court of Appeals a letter on July 30, 2014 in which both parties' counsel agreed that the Order dated June 19, 2014 was not immediately appealable and to dismiss the appeal without prejudice. The Court of Appeals filed an Order on August 13, 2014 dismissing the appeal because the Order was not immediately appealable.

The trial of the case continued on August 14, 2014 and October 7, 2014. The court issued an order on November 17, 2014 that reiterated its findings in the Order dated June 19, 2014 related to the Contractor's violation of S.C. Code Ann. § 29-5-15, granted the Contractor a Mechanic's Lien, attorney's fees and costs. On November 25, 2014, the Appellant filed and served a Notice of Appeal to appeal both the Order dated November 17, 2014 and the Order dated June 19, 2014. The Appellant received the trial transcripts on December 8, 2014. On January 13, 2015, the Court of Appeals granted the Appellant an extension to file and serve the Appellant's Initial Brief until February 6, 2015.

FACTS

During 2012, the Homeowner agreed that the Contractor would have a budget of fifty thousand dollars (\$50,000.00) to improve the Homeowner's house in Spartanburg County, South Carolina. (May 22, 2014 Trial Transcript p. 14 and 15). The Contractor began working on the house on or about mid-April of 2012. (May 22, 2014 Trial Transcript p. 17). The Homeowner and the Contractor had a dispute during June and July 2012 because the Contractor was demanding payment from the Homeowner, but the Homeowner was unwilling to pay for costs that were not supported by itemized receipts. (Complaint, Plaintiff's Exhibit 9, May 22, 2014 Trial Transcript p. 24). The Contractor stopped work on or about July 12, 2012 and attempted to file mechanic's lien documents in the Office of Register of Deeds for Spartanburg County on July 19, 2012, which documents were recorded in Mechanic's Lien Book 34 at page 336 (the "Documents"). (Plaintiff's Exhibit 9). The Contractor was required to be licensed for the work he

performed for the Homeowner, but did not record his license number on the Documents. (May 22, 2014 Trial Transcript p. 32; Plaintiff's Exhibit 9). After conducting discovery, the Homeowner determined that she owed the Contractor \$9,032.02 for work performed and sent a cashier's check for that amount to the Contractor. (Cashier's Check Letter).

ARGUMENTS

I. S.C. CODE ANN. § 29-5-15(A) REQUIRES STRICT COMPLIANCE BECAUSE IT IS PART OF THE MECHANIC’S LIEN STATUTES.

In *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.*, Op. No. 27410 at 6 (S.C. Sup. Ct. filed July 9, 2014), the South Carolina Supreme Court explained that a contractor must strictly comply with the mechanic’s lien statutes to acquire and enforce a mechanic’s lien:

In South Carolina, mechanics' liens are purely statutory and may be acquired and enforced only in accordance with the terms and conditions set forth in the statutes creating them. *Multiplex Bldg. Corp. v. Lyles*, 268 S.C. 577, 235 S.E.2d 133 (1977); accord *Skiba v. Gessner*, 374 S.C. 208, 212, 648 S.E.2d 605, 606 (2007) (stating "one's right to a mechanic's lien is wholly dependent upon the language of the statute creating it"); *Butler Contracting, Inc. v. Court St., L.L.C.*, 369 S.C. 121, 130, 631 S.E. 252, 257 (2006) (observing mechanics' lien statutes "must be strictly followed").

S.C. Code Ann. § 29-5-15(A) is a statute that is included among the other mechanic’s lien statutes and therefore requires equally strict compliance with its instructions. “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). § 29-5-15 is titled “Filing requirements; penalty for frivolous lien,” and part (A) unambiguously sets forth that:

To file a mechanics' lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is

required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed.

The Homeowner has not found a reported South Carolina case that directly interprets § 29-5-15(A), nor a statute from another state with requirements that are identical to those set forth in the statute. The statute was originally enacted as Section 2 of Act No. 40 of 2009. The Homeowner has not found commentary that would elucidate the legislature's intent in enacting the statute. However, the title of Act No. 40 states that it is "an act to amend the code of laws of South Carolina, 1976...by adding section 29-5-15 so as to provide the manner by which a contractor must file a mechanics' lien and a penalty for filing a frivolous mechanics' lien." 2009 Act No. 40, Section 2, eff. June 2, 2009. The penalty for filing a frivolous mechanic's lien is set forth in part (B) of § 29-5-15. The language "to provide the manner by which a contractor must file a mechanics' lien" refers to the language in Part (A), which is at issue here. If the legislative intent was to provide the manner by which a contractor must file a mechanic's lien and the mechanics' lien statutes must be strictly followed, then the Contractor was disallowed from avoiding the statute's requirements and filing a mechanic's lien in any other way than the way set forth in the mechanic's lien statutes, specifically § 29-5-15(A). No exceptions to the statute are given.

The mechanic's lien statutes allow a contractor to file on the public record a lien against someone for whom the contractor has furnished labor and materials, but denies that contracting person an opportunity to refute the lien until the lien has already been recorded. The statutory relief is extreme. The Homeowner believes the word "must," when used in the mechanic's lien statutes, denotes an imperative as it does in certain

other S.C. statutes. (See *The Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 713 S.E.2d 278 (S.C., 2011) affirming circuit court’s decision to reverse DUI conviction when the Town of Mt. Pleasant failed to establish any statutory exception to excuse its noncompliance with S.C. Code Ann. § 56–5–2953, “(A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 *must* have his conduct at the incident site and the breath test site video recorded.” *emphasis added*.) The Supreme Court of South Carolina has held that a failure to comply with statutory requirements precludes recovery in other contexts as well. (See *Collins v. Doe*, 352 S.C. 462 (2002), 574 S.E.2d 739, requiring strict compliance with the John Doe statute). S.C. Code Ann. § 29-5-15(A), like certain other South Carolina statutes, including the mechanic’s lien statutes in general, requires strict compliance.

II. THE CONTRACTOR FAILED TO COMPLY WITH
S.C. CODE ANN. § 29-5-15(A) BECAUSE HE DID NOT RECORD HIS
CONTRACTOR LICENSE NUMBER ON THE LIEN DOCUMENT
WHEN THE LIEN DOCUMENT WAS FILED.

The statute applies to Contractors who wish to file mechanic's liens and are required to be licensed or registered by law. (S.C. Code Ann. § 29-5-15(A), "a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered *if he is required by law to be licensed or registered*") (*emphasis added*). State law required the Contractor to be licensed while performing work on the Homeowner's property because the budget for the work was \$50,000 and the Contractor claimed to have performed \$26,496.10 of work when he filed the Documents. (S.C. Code Ann. § 40-11-30 (requiring contractors performing over \$5,000.00 of construction work to be licensed per S.C. Code Ann. § 40) (Plaintiff's Exhibit 9; May 22, 2014 Trial Transcript p.32). As proof of his licensure, part (A) of the statute required the Contractor to record his contractor license number on the "lien document" when the "lien document" was filed. The Contractor did not record his contractor license number on the Documents or any other documents that he filed pursuant to the mechanic's lien statutes. Therefore, the Contractor failed to comply with S.C. Code Ann. § 29-5-15(A).

III. THE CONTRACTOR'S FAILURE TO COMPLY WITH S.C. CODE ANN. § 29-5-15(A) MEANS THAT THE CONTRACTOR'S MECHANIC'S LIEN IS INVALID, MUST BE DISSOLVED, OR MAY BE RELEASED.

The final question before this Court is what happens to a contractor's mechanic's lien when the contractor fails to comply with S.C. Code Ann. § 29-5-15(A). The statute sets forth a mechanic's lien filing requirement, but does not explain what happens if a contractor fails to comply with the filing requirement.

The first possible answer to the question of what happens to a mechanic's lien that fails to comply with S.C. Code Ann. § 29-5-15(A) is straightforward. It is not necessary for the statute itself to explicitly identify the fate of a mechanic's lien that fails to comply with § 29-5-15(A), but rather a mechanic's lien that fails to strictly comply with any one statutory requirement is impliedly invalid. "[T]he requirements of the statute must be strictly followed." *Butler Contracting v. Court Street*, 631 S.E.2d 252, 257 369 S.C. 121 (S.C., 2006) citing *Lyles*, 268 S.C. at 578, 235 S.E.2d at 134. "[T]o be valid, the lien must be perfected and enforced in compliance with the Mechanic's Lien Statutes..." *Preferred Sav. and Loan Ass'n, Inc. v. Royal Garden Resort, Inc.*, 389 S.E.2d 853, 301 S.C. 1 (S.C., 1989). A valid lien can only be perfected and enforced by complying with the mechanic's lien statutes. Strict compliance is a condition precedent to enforcement of a mechanic's lien. "The failure to perfect a mechanic's lien does not preclude an action on the debt." *Butler* at 256. The implication of that language in *Butler* is that a failure to

perfect a mechanic's lien does somehow preclude a contractor from an action on the debt via the mechanic's lien statutes. Therefore, a contractor's failure to comply with § 29-5-15(A) precludes the contractor from an action based upon a mechanic's lien and renders the lien invalid, but does not preclude relief under alternative causes of action.

A second possible approach to the question makes it necessary to understand what step in the statutory process of enforcing a mechanic's lien is addressed by § 29-5-15(A). "The statutory process encompasses several steps, including the (1) creation, (2) perfection, and (3) enforcement of the lien. See generally S.C. Code Ann. §§ 29-5-10 to - 440 (2007 & Supp. 2013) (governing mechanics' liens)." *Ferguson* No. 27410 at 6.

The language of the statute itself states that "To file a mechanics' lien, a contractor must..." and the relevant part of the statute's title is called "Filing requirements." Both the title of the statute and the language itself confirm that § 29-5-15(A) sets forth a mandatory filing requirement.

The statute does not address the first step of the statutory process, which is the creation of the mechanic's lien. "The right to a lien arises inchoate; i.e., when the labor is performed or material is furnished, the right exists but the lien has not been perfected." *Preferred Sav. and Loan Assn., Inc. v. Royal Garden Resort, Inc.*, 301 S.C. 1, 3, 389 S.E.2d 853, 854 (1990). The Contractor created his mechanic's lien and accomplished the first of three steps when he furnished labor and materials for the Homeowner's property. See S.C. Code Ann. § 29-5-10. The first step of the statutory process, which is creation of a mechanic's lien, does not require the filing any lien document. Therefore, § 29-5-15(A) does not relate to the first step of the statutory process, creation of the mechanic's lien.

S.C. Code Ann. §§ 29-5-90 and 29-5-120 are the mechanic's lien statutes that directly address the second step of the statutory process, perfection of a mechanic's lien. "In order to perfect and enforce a mechanic's lien, the person asserting the lien (1) must serve upon the owner or person in possession and file with the register of deeds or clerk of court [...] required information 'within ninety days after he ceases to labor on or furnish labor or materials for such building or structure'; (2) must commence a lawsuit seeking to enforce [...] If these steps are taken, the person claiming the lien may foreclose against the property to satisfy the debt. On the other hand, if he fails to take any one of these steps, the lien against the property is dissolved pursuant to Sections 29-5-90 and 25-9-120." *Butler Contracting v. Court Street*, 631 S.E.2d 252, 256 369 S.C. 121 (S.C., 2006).

Section 29-5-90 is titled, "Dissolution of lien for failure to serve and file statement; contents of statement." This statute requires a contractor to file and serve a statement of a just and true account within ninety (90) days of last furnishing labor and materials on the subject property. If a contractor does not comply with § 29-5-90, the mechanic's lien "shall be dissolved." S.C. Code Ann. § 29-5-90.

S.C. Code Ann. § 29-5-15(A), the statute at issue in this appeal, refers to a "lien document." The "lien document" is the thing on which the Contractor's license number should have appeared. The Contractor did not comply with the statute because he did not record his license number on the "lien document" per § 29-5-15(A). The Homeowner has not found any case law or a South Carolina Code definition of "lien document." However, the Homeowner believes the "lien document" is actually the statement of a just and true account referred to in § 29-5-90 because the "lien document" is a document that

is both filed and entered into the registry by the “county clerk of court or register of deeds” as is the statement of a just a true account. Also, when discharging a mechanic’s lien, the discharge is recorded where the statement is recorded. S.C. Code Ann. § 29-5-430.

The only other document that a contractor must file to perfect and enforce a mechanic’s lien, besides the lawsuit to enforce the lien, is a lis pendens. *Butler* at 256. The Contractor did not record his license number on any documents that he filed with the lawsuit. So it is not completely necessary for the Homeowner to distinguish between the statement and the lis pendens for the purposes of the Homeowner’s second argument in this appellate brief. However, “lien document” is singular. The Homeowner does not believe that it was the legislature’s intention to describe the lis pendens as *the* “lien document.” “[T]he lis pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record” and is not specific to mechanic’s liens. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 17 567 S.E.2d 881 (S.C. App., 2002) *citing* 51 Am.Jur.2d Lis Pendens § 2 (2000).

The Homeowner argues that the statement of a just and true account set forth in S.C. Code Ann. § 29-5-90 is the “lien document” referenced in § 29-5-15(A). The Homeowner further argues that because the “lien document” and the statement of a just and true account are the same document and both require strict compliance, § 29-5-15(A) sets forth a required piece of information, namely the contractor’s license number, that should be considered equally among the statutory requirements set forth in § 29-5-90. This is important because whereas the result of a failure to comply with § 29-5-15(A) is not explicitly set forth in § 29-5-15(A), § 29-5-90 states that “a lien shall be dissolved”

unless it meets the requirements set forth in § 29-5-90. The legislature clearly intended a contractor's failure to file a statutorily compliant statement of a just and true account as unambiguous grounds for dissolving the contractor's mechanic's lien. "[I]t is well-settled that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result." *Sloan v. Sc Bd. of Physical Therapy ex' Mnrs*, 636 S.E.2d 598, 370 S.C. 452 (S.C., 2006) citing *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 536 S.E.2d 372 (2000). "[W]hen it has clearly expressed its intention in one or more parts of an act, it will be presumed that it had the same intention in another part unless a different intention clearly appears." *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (S.C., 1964). Therefore, the Homeowner's second possible answer to the question of what happens to a contractor's mechanic's lien when the contractor fails to comply with S.C. Code Ann. § 29-5-15(A) is that the lien should be dissolved as if the mechanic's lien failed to comply with § 29-5-90.

A third possible answer to the question is the "mechanics' lien and associated bonds may be released by a court order, a written affidavit of the bond holder's attorney, or by a written affidavit from the defendant's attorney" per S.C. Code Ann. § 29-5-120. § 29-5-120 contains the broadest statutory language with which this Court could answer the question.

S.C. Code Ann. § 29-5-120(B), with *emphasis* added, states:

A mechanics' lien and associated bonds may be released by a court order, a written affidavit of the bond holder's attorney, or by a written affidavit from the defendant's attorney stating:

(1) six months has passed since the lien was attached and no suit or notice of pendency has been filed; or

(2) *the failure of the filing party to take some other timely action* required by this chapter. This affidavit must be in the form approved by the appropriate local office where the mechanics' lien was filed and must reference the lien's recording information.

S.C. Code Ann. § 29-5-15(A) clearly involves a timely action. “[T]he contractor must record his contractor license number or registration number on the lien document *when the lien document is filed.*” S.C. Code Ann. § 29-5-15(A) (*emphasis added*). The statute refers to a specific requirement that *must* be performed at a specific moment in time, that is, at the time of filing the “lien document.” Regardless of the document to which “lien document” refers, the Contractor did not record his license number on any documents that he filed. Therefore, the Contractor did not record his license number on the “lien document” when he was required by § 29-5-15(A) to do so, which means the Contractor failed to take a timely action required by the mechanic’s lien chapter of the South Carolina Code of Laws. The third possible answer to what happens to a contractor’s mechanic’s lien when the contractor fails to comply with S.C. Code Ann. § 29-5-15(A) is that the mechanic’s lien may be released in accordance with S.C. Code Ann. § 29-5-120.

The Homeowner believes that the best answer to the question of what happens to a contractor’s mechanic’s lien when the contractor fails to comply with S.C. Code Ann. § 29-5-15(A) is that the lien should be dissolved as if the mechanic’s lien failed to comply with § 29-5-90, due to the reasons stated above.

CONCLUSION

For the foregoing reasons, the Appellant respectfully submits that this Court should reverse the Orders of the lower court, dismiss the Contractor's case against the Homeowner, and dissolve the Contractor's mechanic's lien.

Respectfully Submitted,



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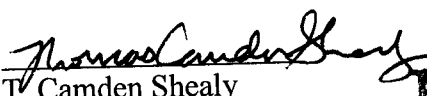
Appellant.

CERTIFICATE OF SERVICE

I, the undersigned attorney for the Appellants, Rosiland Geter, do hereby certify that I have served the Clerk of Court for the South Carolina Court of Appeals and all counsel in this action with a copy of the Initial Brief of the Appellants, the Designation of Matter to be included in the Record on Appeal, and a Certificate of Service by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

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14.Plaintiff's Exhibit 9

15.Defendant's Exhibit

16.Cashier's Check Letter

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

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