

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
In the Court of Common Pleas
Sixteenth Judicial Circuit

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2015-000293

The Greens of Rock Hill, LLC and GRH 2011, LLC, Petitioners.

v.

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

of whom Rizon Commercial Contracting, Inc. is the Respondent.

RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

Daniel D. D'Agostino
D'Agostino Law Firm
25 W. Liberty St.
York, South Carolina 29745
(803) 628-6509
Attorney for Respondent

Herbert W. Hamilton
Hamilton, Marents, Ballou & Carroll
P.O. Box 10940
Rock Hill, SC 29731
(803) 329-7661
Attorney for Petitioner

RECEIVED
APR 6 2015
S.C. Supreme Court

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of the Case 1

Argument.....2

 I. The trial court did not judicially expand the scope of the Mechanics
 lien statute..... 3

 II. The Court of Appeals applied the law to the facts and properly found
 that Rizon is entitled to a mechanics lien as it is a laborer as defined in
 the statute..... 8

 III. Did the Court of Appeals properly reverse the trial court and its
 decision to reverse could be sustained on alternate grounds?.....10

Conclusion11

TABLE OF AUTHORITIES

Statutes and Rules

	<i>Page</i>
<u>Blacks Law Dictionary, 5th Edition</u> , p. 423	6
<u>Blacks Law Dictionary, 5th Edition</u> , p. 786	6
<u>Ferguson Fire Protection , LLC, et al v. Preferred Fire Protection, LLC and Immedion, LLC v. Rescon Construction, LLC</u> 409 S.C. 331, 343-344, 762 S.E.2d 561, 567-568 (2014)	5
<u>George A.Z. Johnson, Jr. Inc. v. Barnhill</u> 279 S.C. 242, 245, 306 S.E.2d 216, 218 (1983)	4
<u>Hodges v. Rainey</u> , 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).....	5
<u>Shelley Constr. Co. v. Sea Garden Homes, Inc.</u> 287 S.C. 24, 28, 336 S.E.2d 488, 491..	5
<u>Sparks v. Palmetto Hardwood, Inc.</u> 406 S.C. 124, 750 S.E. 2d 61 (2013)	5
<u>Sutherland Statutory Construction</u> § 46.03, at 94 (5th ed.1992)	5
S.C. Code Section 29-5-20.....	3, 4, 6, 8, 10
S.C. Code Section 29-5-20(A).....	3, 4
S.C. Code Section 29-5-26.....	4
S.C. Code Section 29-5-27.....	3, 4, 5, 6, 7, 8, 10
S.C. Code Section 44-96-40(6)	6, 8
S.C. Code Section 44-96-40(22)	7

Questions Presented

1. The trial court did not judicially expand the scope of the Mechanics Lien Statute.
2. The Court of Appeals applied to law to the facts and properly found that Rizon is entitled to a Mechanics Lien as it is a laborer as defined in the statute.
3. Did the court of appeals properly reverse the trial court and its decision to reverse could be sustained on alternate grounds?

Statement of the Case

The petitioners, Greens of Rock Hill, LLC and GRH 2011, LLC, owned and developed a mixed use real estate development in Rock Hill, South Carolina at the location of a former large chemical plant which required the demolition and disposal of the remnants of the chemical plant and buildings. (Appendix, p. 241)

The owner hired Celriver services, Inc., as a contractor and Celriver hired Rizon Contracting, Inc. to crush and demolish the concrete to certain specifications so it could be used as an additive to the road base in the development and other projects as Celriver would direct. (Appendix p. 242) The contract referenced in the lawsuit defined Rizon's scope of work to include providing mobilization of equipment, personnel and materials to separate, crush, screen concrete in accordance with the South Carolina Department of transportation standard specifications for highway construction, graded aggregate base as set forth in an attachment. (Appendix p. 81) The contract also required Rizon to be responsible for providing supervision, equipment, labor and materials and other items required to size, reduce, sort, control fugitive dust, crush, screen and stack concrete materials to meet Celriver's specifications which was for use on the development project.

(Appendix p. 81) The contract also provided for demobilization including the cleanup and removal of all contractor equipment and materials from the site.

The demolished chemical plant, which included all of the concrete from the demolished buildings, was stockpiled on-site by Celriver and Rizon crushed the material and concrete for the purpose of reuse by Celriver on the development. (Appendix p. 243) A dispute did arise regarding payment for services Rizon provided in the crushing of the debris. Rizon file a mechanics lien on the development which included the various areas where the demolition occurred as well as where the crushed aggregate was used, all such locations being the location of the land which included the demolished chemical plant site. (Appendix pp. 237-242)

The petitioners filed a motion to vacate and dismiss the mechanics lane. (Appendix pp. 66-88) Rizon filed an answer and counterclaim to foreclose on the mechanics lien. (Appendix pp 89-122) The motion originally came before the master iniquity on June 21, 2012. Rizon objected to the process and procedure of the court, asserting that it had begun foreclosure proceedings. Rizon also objected to the fact that the court would be considering the issue of vacating the mechanics lane without any evidence in the form of affidavits or testimony. The court determined the proper process was to treat the petition as a motion for summary judgment and continued the hearing, advising the parties to submit affidavits. The court denied Rizon's request to conduct discovery. (Appendix pp. 183-197) The court held a hearing on August 16, 2012 and issued an order on September 7, 2012, filed September 12, 2012, dismissing the mechanics lane and releasing the lis pendens.

The court, in doing so, released the bond as the plaintiffs had bonded the lien off the land. (Appendix pp. 50 – 52) Rizon filed a notice of motion and motion to alter or amend, requested the trial court to reverse the dismissal arguing that discovery had not occurred and referenced various statutory code provisions in support of the fact that Rizon was covered under the mechanics lien, South Carolina code section 29 – 5–20. (Appendix pp. 57-64) The court held a hearing on the motion and issued a decision denying the motion to alter or amend on November 2, 2012. (Appendix p. 55) The appeal followed and on December 3, 2014, the court of appeals reversed the trial court’s dismissal of Rizon’s mechanics lien in a 2 to 1 decision. (Appendix pp. 266-272)

Argument

1. **The trial court did not judicially expand the scope of the Mechanics Lien Statute.**

The Court of Appeals did not expand the coverage and scope of the mechanics lien statute. The court of appeals found as follows “We hold the circuit court erred by vacating the liens. Viewing the evidence in the light most favorable to Rizon, we find Rizon was a “laborer” that performed work “for the improvement of real estate,” which entitles it to a mechanics lien under subsection 29-5-20(A).” The court of Appeals specifically relied upon the statutory language in S.C. Code Section 29 – 5–20 as well as considered the language which defined laborer in the recently enacted S.C. Code Section 29 – 5–27. Interestingly, the petitioner refers to the fact that the mechanics lien statutes have been amended many times to expand the services for which a mechanics lien can be filed. The petitioner referred to the amendment for surveyors and for the rental value of equipment. The petitioner did

not refer to the 2003 addition to the statutory scheme which added 29 - 5-27 which defined laborer and person.

The petitioner mischaracterizes the court of appeals analysis in concluding that Rizon was entitled to a lien as a laborer. The trial court decided the issue pursuant to the summary judgment standard because the petitioner made a motion to dismiss this action and filed affidavits in support of the motion. All inferences had to be viewed in like most favorable to Rizon. The following is the full context of the Court of Appeals analysis as it relates to a determination that Rizon is entitled to a mechanics lien:

The legislature has expanded the scope of the mechanics lien statute to cover persons performing a component of the labor necessary to complete construction and development projects, even though "the labor performed [did not] go into something which has attached to and become a part of the real estate." **George A.Z. Johnson, Jr., Inc. v. Barnhill**, 279 S.C. 242, 245, 306 S.E.2d 216, 218 (1983). For example, a person "who provides a landscape service," which includes "land clearing, grading, weeding, plant removal, natural obstruction removal, or other preparation of land," is entitled to a mechanics lien under section 29 - 5-20. S.C Code Ann. Section 29-5-26 (Supp. 2013). Additionally, South Carolina code section 29 - 5-27 (2007) states, "Any person providing construction and demolition debris disposal services,... Including, but not limited to, final disposal services... is a laborer within the meaning of section 29 - 5-20"

We need not determine whether Rizon's work is covered by the specific statute because we find it is entitled to a lien under section 29 - 5-20. Nevertheless, we find the sections of the mechanics lien statute helpful in our analysis. They demonstrate the legislative intent that a person who performs a component of the work involved in the development and construction projects should be considered a "laborer" that performed work "for the improvement of the real estate." South Carolina Code Section 29 - 5-20(A).

The mechanics lien statute provides as follows:

Every laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he has actual or constructive notice, to the value of the labor or the materials so furnished, including the costs of action...

Each word in the statute has a meaning and the legislature included each word for a reason. As the court set forth in **Ferguson Fire Protection, LLC, et al v. Preferred Fire Protection, LLC and Immedion, LLC v. Rescon Construction, LLC** 409 S.C. 331, 343-344, 762 S.E.2d 561, 567-568 (2014):

If a statute is ambiguous, the courts must construe its terms. **Sparks v. Palmetto Hardwood, Inc.** 406 S.C. 124, 750 S.E. 2d 61 (2013) A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." **Id.** at 128, 750 S.E.2d at 63 (citation omitted). However, [w]here 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). "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.** (quoting Norman J. Singer, **Sutherland Statutory Construction** § 46.03, at 94 (5th ed.1992)). "We are not at liberty, under the guise of construction, to alter the plain language of [a] statute by adding words which the Legislature saw fit not to include." **Shelley Constr. Co. v. Sea Garden Homes, Inc.** 287 S.C. 24, 28, 336 S.E.2d 488, 491 "Our duty is to apply the statute according to its own terms." **Id.** at 29, 336 S.E.2d at 491

In this instance, the word "laborer" must be read and receive a practical, reasonable and fair interpretation with the entire statutory scheme. The legislature also provided a definition of "laborer" in context of the statutory scheme in S.C. Code Section 29-5-27 as set forth below. The common definition of "laborer" is "The

word ordinarily denotes one who subsists by physical labor. One who, as a means of livelihood, performs work and labor for another.” **Blacks Law Dictionary**, 5th Edition, page 786. Rizon clearly provided labor and material for the improvement of the real estate. The contract required Rizon to use equipment, labor and materials for performing the work. The removal of an old, abandoned chemical plant certainly improves property as does reusing the materials in the roads, sidewalks, etc.

The Court of Appeals, in explaining the analysis, also referred to the specific statute that expands the definition of laborer and person as those terms are used in 29-5-20. The legislature used the term “laborer” in South Carolina Code section 29 – 5–20 and recently enacted S.C. Code Section 29-5-27 which further defines laborer to include a person providing construction and demolition debris disposal services as defined in South Carolina code section 44–96-40(6), including but not limited to final disposal services provided by construction and demolition landfill. The statutory definition of “construction and demolition debris” is:

“discarded solid wastes resulting from construction, remodeling, repair and demolition of structures, road building and land clearing. The wastes include, but are not limited to, bricks, concrete and other masonry materials, soil, rock, lumbar, road spoils, paving material, and trees and brush stumps, but does not include solid waste from agricultural or silver cultural operations.” S.C. Code Section 44-96-40(6).

The term disposal is defined as “the sale, pledge, giving away, use, consumption or any other dispossession of a thing. To exercise control over, to direct or sign for a used, to pass over into the control of someone else, to alienate, bestow or part with.”

Blacks Law Dictionary, 5th Edition, p. 423.

Therefore, putting all this together, it is not the Court of Appeals expanding and/or legislating but it was the Court of Appeals acting in a judicial manner interpreting the statutory scheme. The statutory scheme is clear that a laborer includes individuals who provide services for the removal and/or disposal of buildings and other items on property which is to be developed as well as, in this case, to be used in the roads and development.

As further analysis, South Carolina Code section 29-5-27 provides for a laborer to also include the final disposal services provided by a construction and demolition landfill. A landfill that receives the construction and demolition debris is not providing an item on the property developed but providing a benefit for the property being developed. Landfill is defined in S.C. Code Section 44-96-40(22) as a disposal facility or part of a facility where solid waste is placed in or on land, and which is not a land treatment facility, a surface impoundment or an injection well. The legislature extended the coverage of the mechanics lien to protect the landfill. Therefore, if the landfill has a lien upon the project, the middleman grinding and crushing the material for either use on the property itself or for disposition elsewhere has a lien upon the project. The fact Celriver chose to crush the concrete block before removing it or reusing it does change the fact that Rizon was in the stream of those involved in the removal of the construction debris. Rizon was hired to perform a service involved in the process of construction and demolition debris disposal.

The Court of Appeals did not err in determining that a contractor who provides crushing services for a project is covered under the mechanics lien.

2. **The Court of Appeals applied to law to the facts and properly found that Rizon is entitled to a Mechanics Lien as it is a laborer as defined in the statute.**

The petitioner misconstrues the analysis set forth in the appellate court's decision. The Court of Appeals found that Rizon was hired to complete two tasks, mainly ridding the property of demolition debris so construction could continue and to convert concrete blocks into fragments that could be used in the paving of roadways on the property. The trial court decided the issue of whether Rizon was entitled to a lien under the statute using the summary judgment standard, taking all evidence and inferences therefrom most favorable to Rizon. The evidence in the record demonstrated that Rizon rented equipment and provided all the labor, fuel and supervision necessary to remove scrap concrete from the property - a component of the work necessary for the development project to continue, by crushing it into a material that went directly back into the project. Celriver made the decision to hire Rizon as part of the demolition process of the old chemical plant.

The court of appeals found as a fact that Rizon was a laborer under section 29-5-20 because the work it performed was necessary to the development of the project and generated a product that was used to improve the property. Contrary to the petitioner's assertion, it is not necessary for Rizon to prove that it neither delivered the scrap concrete to the crushing site nor removed the crushed concrete from the crushing site. The statutory scheme covers Rizon's contractual duties.

The definition of labor and person as set forth in 29-5-27 includes any person providing disposal services as defined and 44-96-40(6) which actually included the final disposal services provided by a construction demolition landfill.

As set forth above, clearly if a landfill which receives the construction and demolition has a lien upon the property, the entity which is hired for part of the process of the removal of the waste has a lien for its work.

The mechanics lien statute provides that the laborer has a lien for the value of the labor or material so furnished. To interpret the statute as petitioner requests, not granting a person who converts the demolished building into smaller pieces before transportation to the land fill a lien but yet give the land fill a lien is inconsistent and illogical as well as contrary to the plain language of the statute.

Petitioner also argues that Rizon did not provide material for the improvement of the owner's property. The petitioner argues that the concrete belonged to Celriver before it was crushed and it belonged to Celriver after it was crushed. Petitioner ignores the fact that the concrete and debris was the remnants of the chemical plant which was torn down so that the development the owner was creating could be constructed. It is undisputed that the crushed material from the chemical plant was then reused in the owner's project on its roads, parking lots, subgrade and in other areas, thus progressing the development of the property. Without Rizon's labor, the concrete remnants could not be used. The property was improved with the removal of an old chemical plant and the construction of roads, sidewalks, etc.; however, the value of the property is not the issue. The mechanics lien statute protects the value of the labor and material not the increased value of the land. The increased value of the land would be relevant to a quantum meruit cause of action not the mechanics lien cause of action.

Petitioner is incorrect in its assertion that if Celriver had elected to use the

crushed concrete elsewhere Rizon would not be making this claim. The transformation of the rock to a smaller aggregate ended up being in the process of the demolition and removal of the chemical plant. Celriver chose to hire Rizon in the process of the removal of the debris, the obligation Celriver had to get this material offsite so the project could proceed. Rizon became one of the intermediaries in the process of developing this land. If Celriver had hired a trucking company to just truck this material offsite before crushing it, the trucking company would be entitled to a lien as would the landfill. Celriver chose to change the form of this material and reuse it and as such, Rizon was involved in the process and entitled to a lien.

Although there is not a specific reference to the word “crushing services” in the mechanics lien statute, the statute itself covers the services Rizon provided and are included in the types of services expected in land development to be included under the protection of South Carolina Code Sections 29 – 5-20 and 29 – 5-27.

3. **Did the court of appeals properly reverse the trial court and its decision to reverse could be sustained on alternate grounds?**

Even if the court were to find that the court of appeals should not have concluded as a matter of law Rizon falls within the statutory scheme of the mechanics lien statute, the Court of Appeals was correct in reversing the trial court because no discovery has been completed and, viewing the evidence in light most favorable to Rizon, there are questions of fact. The work Rizon performed, how it performed that work and why it performed was not developed through discovery. The Court of Appeals referred several times to the fact that taking the evidence in the light most favorable to the appellant, Rizon, it had to find Rizon was a laborer.

Therefore, an alternate sustaining ground for the Court of Appeal's decision yet modifying the decision would be for this court to affirm as modified, sending the case back to the trial court for discovery and a trial.

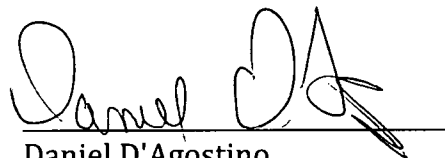
In addition, Rizon argued in its original brief other grounds for reversal and the court of appeals determined it was not necessary to reach those issues as it had reversed on other grounds. Therefore, if this court were to grant a petition for writ and it were to decide that the court of appeals improperly decided that Rizon was a laborer at this stage without a trial, then the court should consider the additional arguments set forth in Rizon's original brief and which the court of appeals determined it was not addressing since it had reversed on this ground. (See Appeals Court decision, Appendix page 270, foot note 2 and Appendix pp. 38-43.)

Conclusion

The only basis for this court to exercise its discretion to grant a writ of certiorari that exists is the fact that there was a dissent in the decision of the court of appeals. The decision of the court of appeals is not in conflict with prior decisions of this court. Also, the petitioner has never raised constitutional issues and none exist in this case. Rizon submits the Court of Appeals properly determined petitioner is a laborer and the petition for a Writ of Certiorari should be denied.

Respectfully submitted.

April 6, 2015



Daniel D'Agostino
Jacqueline Davis
25 West Liberty Street
York, S.C. 29745
(803) 628-6509
Attorneys for Rizon

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
In the Court of Common Pleas
Sixteenth Judicial Circuit

S. Jackson Kimball, Special Circuit Court Judge

Docket No. 2012-CP-46-1815
Appellate Case No. 2015-000293

RECEIVED

APR 6 2015

S.C. Supreme Court

The Greens of Rock Hill, LLC and GRH 2011, LLC, Petitioners.

v.

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

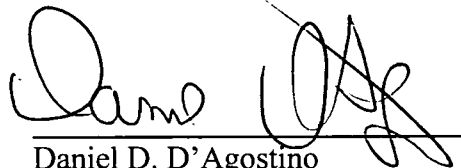
of whom Rizon Commercial Contracting, Inc. is the Respondent.

PROOF OF SERVICE

I certify that I served the Respondent's Return to Petition for Writ of Certiorari on the respondent by depositing a copy of it in the United States mail, correctly addressed, postage prepaid, on April 6, 2015, addressed to

Herbert W. Hamilton
Hamilton, Martens, Ballou & Carroll
PO Box 10940
Rock Hill, SC 29731

April 6, 2015



Daniel D. D'Agostino
D'Agostino Law Firm
25 W. Liberty St.
York, South Carolina 29745
(803) 628-6509
Attorney for Respondent



D'AGOSTINO
LAW FIRM

Daniel D. D'Agostino | Jacqueline N. Davis

25 West Liberty Street
York, South Carolina 29745

Phone 803.628.6509 | Fax 803.628.7990

www.dagostinolawyers.com

April 6, 2015

Daniel Shearouse, Clerk
The Supreme Court of S.C.
P.O. Box 11330
Columbia, SC 29211

RECEIVED

APR 6 2015

S.C. Supreme Court

RE: The Greens of Rock Hill, LLC; GRH 2011, LLC, Petitioners v. Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co., Defendants, of whom Rizon Commercial Contracting, Inc. is the Respondent.
C.A. No.: 2012-CP-46-1815
Appellate Case No.: 2015-000293

Dear Mr. Shearouse:

I have enclosed a Respondent's Return to Petition for Writ of Certiorari along with a Proof of Service in reference to the above case.

With kind regards, I am

Sincerely yours,

Daniel D. D'Agostino
25 W. Liberty St.
York, SC 29745
803-628-6509
Attorney for Appellant

cc: Herbert Hamilton
P.O Box 10940
Rock Hill, SC 29731