

FILED 29 April 2015
Liz Godard
C.C.P. & G.S.
April Bracco
9:45am

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL
CIRCUIT

Prescott and Sons Construction, LLC,

Case No. 2012-CP-02-2382

Plaintiff,

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES
AND COSTS

v.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

Larry Rogers and Michelle Rogers

29 day of April 2015

Defendants.

Liz Godard
C.C.P. & G.S., Aiken County, S.C.
April Bracco

WHEREAS Plaintiff's motion for attorney's fees and costs was made after a judgment for Plaintiff was entered on January 21, 2015, for the case captioned above, and came before this Court on March 16, 2015, arguments were made on behalf of the Defendants by James Ervin, Esq., and on behalf of the Plaintiff by Lir Patrick Derieg, Esq. Upon an examination of the evidence and an application of South Carolina jurisprudence, and for the reasons set forth below, the court awards Plaintiff an award of attorney's fees in the amount of \$10,469.13.

ISSUE

Defendants contend that because Plaintiff failed to introduce evidence to the jury of attorney's fees and costs, Plaintiff has waived the right to receive such fees and costs, and therefore that this court should deny Plaintiff's motion. This court disagrees.

DISCUSSION

The general rule in the State of South Carolina is that attorney's fees are not recoverable unless authorized by contract or by statute. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989); *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978); *Collins v. Collins*, 239 S.C. 170, 122 S.E.2d 1 (1961). When there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown. *Baron, supra*.

There is no dispute of fact that the contract (herein after "Contract") which

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governed this Breach of Contract case provided, in Paragraph 17, that attorney's fees be awarded to the prevailing Party in the event that either Party is held to have breached the Contract. Nor is there a dispute that Defendants were held to have breached the Contract. This dispute, rather, centers on whether Plaintiff waived the recovery of attorney's fees by making a post-trial motion for such fees, rather than present evidence of attorney's fees to the jury during the trial phase of this case.

An examination of South Carolina case law reveals a South Carolina Supreme Court decision directly on point with the issue presented, specifically, *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 492 (1993). In *Blumberg*, Blumberg and Nealco executed a lease, in September 1987, which provided for attorney's fees if Nealco failed to comply with its terms. In August 1988, Blumberg filed a complaint seeking monetary damages for past and future rent and an award attorney's fees. The trial court awarded Blumberg past due rent and reasonable attorney's fees. Nealco appealed, among other things, the award of the attorney's fee. *Id* at 660.

"The Court of Appeals reversed and remanded for reconsideration both the award of damages and attorneys' fees. Nealco moved for a rehearing on the issue of remanding the award of attorney's fees claiming that Blumberg had failed to establish any attorney's fees and should not be permitted to "reopen" the record and introduce evidence on remand. The Court of Appeals modified its holding and reversed the award of attorney's fees and remanded for reconsideration only the award of damages. Blumberg then appealed the Court of Appeals' failure to remand the issue of attorney's fees." *Id*.

The Court went on to discuss that when an award of attorney's fees is requested and such request is supported by contract or by statute, the trial court should make specific findings of fact on the record for each of the six of the *Collins* factors. *Id*. Ultimately, the Court modified the holding of the Court of Appeals and remanded the issue of attorney's fees to the trial court to make specific findings of fact in regards to the *Collins* factors. *Id* at 661.

In its discussion, the Blumberg Court specifically addressed the question of whether an award of attorney's fees was waived by Blumberg offering no proof of

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attorney's fees at trial. The Court specifically disagreed with Nealco, and held that a waiver of attorney's fees did not occur when evidence as to attorney's fees was presented to the trial judge, at the conclusion of the trial, rather than to the jury during trial. *Id* at 660.

Turning to the case at Bar, Plaintiff, like in *Blumberg*, waited until after the jury awarded a judgment in its favor to move for an award of attorney's fees. At the hearing on March 16, 2015, Plaintiff offered evidence to this court to document the fees requested. Given the precedent set forth in *Blumberg*, this court finds that Plaintiff did not waive its right for an award of attorney's fees by offering evidence at a post-trial motion instead of at trial, and that this court must make specific findings as to each *Collins* factor.

There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. *Collins, supra*.

In applying the *Collins* factors to this case and the evidence presented to the court by Plaintiff, this court finds that:

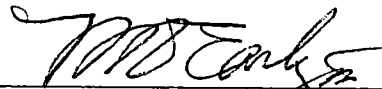
1. The nature, extent, and difficulty of the legal services rendered in this case are reasonably related to the amount of the attorney's fee requested;
2. The time and labor devoted to this case are reasonably related to the amount of the attorney's fee requested;
3. Plaintiff's counsel of record and Defendants' counsel of record are both in good professional standing, and this case was ably handled on both sides;
4. The attorney's fee requested was not contingent upon the outcome of this case. Plaintiff incurred its attorney's fee regardless of the outcome at mediation or at trial;

5. The fees charged, and now requested, are in accordance with fees customarily charged in this locality for similar services. In fact, Defendants' attorney's fee, as presented to the court by Defendants' counsel, was actually greater than the Plaintiff's attorney's fee; and
6. Beneficial results were clearly obtained on Plaintiff's behalf in the form of a jury verdict in favor of Plaintiff.

CONCLUSION

NOWHEREFORE, after hearing arguments and receiving evidence by both Parties, and after applying the six factors set forth in *Collins*, it is the Order of this court that Plaintiff's motion for attorney fees and costs is hereby **GRANTED in the amount of \$10,469.13**.

AND IT IS SO ORDERED.



The Honorable Doyet A. Early, III
Chief Administrative Judge, 2nd Judicial Circuit

April 7, 2015
Aiken, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP0202382

Prescott And Sons Construction Llc	Larry Rogers Michelle Rogers
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); 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:

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.**

Circuit Court Judge	Judge Code	4/29/2015 Date
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For Clerk of Court Office Use Only

This judgment was entered on **29 April, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **29 April, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Lir Patrick Derieg 1924 Barnwell St Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

James McLeod Ervin PO Box 6276 Columbia, SC 29260-6276

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Api Bracco/PC
Liz Godard - Clerk of Court

Court Reporter

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.
