

IN 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.

BRIEF OF RESPONDENT

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June 9, 2015

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TABLE OF CONTENTS

Table of Contents	i
Table of Cases	ii
South Carolina Statutes	ii
Unpublished Opinions	ii
South Carolina Acts	iii
Statement of Issues on Appeal	1
Statement of the Case	2
Facts	4
Arguments:	
I. THE MASTER IN EQUITY CORRECTLY RULED THAT THE CONTRACTOR STRICTLY COMPLIED WITH S.C. CODE ANN. § 29-5-10 TO ENABLE THE CONTRACTOR TO HAVE A MECHANIC'S LIEN AGAINST THE HOMEOWNER WHEN READ IN CONJUNCTION WITH S.C. CODE ANN. § 40-59-30(B)	6
II. THE MASTER IN EQUITY CORRECTLY RULED THAT THE FAILURE TO RECORD HIS CONTRACTOR'S LICENSE NUMBER ON THE MECHANIC'S LIEN DOCUMENT WHEN FILED DID NOT DISSOLVE THE MECHANIC'S LIEN	8
III. THE MASTER IN EQUITY CORRECTLY RULED THAT A FAILURE TO RECORD THE CONTRACTOR'S LICENSE NUMBER ON THE MECHANIC'S LIEN DOCUMENT WHEN FILED DOES NOT REQUIRE A DISMISSAL OF THE CONTRACTOR'S COMPLAINT FOR BREACH OF CONTRACT AND ENFORCEMENT OF THE MECHANIC'S LIEN.	11
Conclusion	13

TABLE OF CASES

South Carolina Cases

Shelly Contr. Co. v. C. Garden Homes, Inc., 287 S.C. 24, 26, 336 S.E.2d 488, 489
(Ct. App. 1985) 6

Ferguson Fire and Fabrication, Inc. v. Preferred Fire Prot., LLC., Op. No. 27410
(S.C. Sup. Ct. filed July 9, 2014, refiled August 13, 2014) 6, 9

Butler Contracting, Inc. v. Court Street, LLC., 369 S.C. 121, 129 (206)
632 S.E.2d 252 7

Sparks v. Palmetto Hardwood, Inc., 406 S.E. 124, 750 S.E.2d 61 (2013) 9

South Carolina Statutes

S.C. Code Ann § 29-5-10 1, 6

S.C. Code Ann § 29-5-10 to -440 (2007 & Supp. 2013) 9

S.C. Code Ann § 29-5-15 3, 4, 7, 9

S.C. Code Ann § 29-5-15(A) 7, 8, 10, 12

S.C. Code Ann § 29-5-15(B) 7

S.C. Code Ann § 29-5-20(A) 6

S.C. Code Ann § 29-5-90 8, 9

S.C. Code Ann § 40-11-30 7

S.C. Code Ann § 40-59-30 7, 9

S.C. Code Ann § 40-59-30(B) 1, 3, 6, 8

Unpublished Opinions

Responsible Economic Development, Carol JeBaily, Peggy Brown, Rachell Hyman, Walter Sallenger, It's Members and Directors, vs. The Florence Consolidated Municipal Planning Commission, City of Florence, South Carolina, Hewitt Land Company, Inc., Trinity Evangelical Presbyterian Church, Inc., Wal-Mart Stores East, LP, and R. Jerry Hewitt, No. 2005-UP-584 10

South Carolina Acts

Act 40, HB3187, eff. June 2, 2009 7

STATEMENT OF ISSUES ON APPEAL

- I. THE MASTER IN EQUITY CORRECTLY RULED THAT THE CONTRACTOR STRICTLY COMPLIED WITH S.C. CODE ANN. § 29-5-10 TO ENABLE THE CONTRACTOR TO HAVE A MECHANIC'S LIEN AGAINST THE HOMEOWNER WHEN READ IN CONJUNCTION WITH S.C. CODE ANN. § 40-59-30(B).

- II. THE MASTER IN EQUITY CORRECTLY RULED THAT THE FAILURE TO RECORD HIS CONTRACTOR'S LICENSE NUMBER ON THE MECHANIC'S LIEN DOCUMENT WHEN FILED DID NOT DISSOLVE THE MECHANIC'S LIEN.

- III. THE MASTER IN EQUITY CORRECTLY RULED THAT A FAILURE TO RECORD THE CONTRACTOR'S LICENSE NUMBER ON THE MECHANIC'S LIEN DOCUMENT WHEN FILED DOES NOT REQUIRE A DISMISSAL OF THE CONTRACTOR'S COMPLAINT FOR BREACH OF CONTRACT AND ENFORCEMENT OF THE MECHANIC'S LIEN.

STATEMENT OF THE CASE

This is an appeal from the Master-In-Equity's Order, dated November 17, 2014, which granted the Respondent/Contractor Judgment against the Appellant/Homeowner in the amount of \$35,496.10, and granted the Contractor a Mechanic's Lien against Homeowner's property to satisfy the Judgment. Contractor, Vision Contracting, LLC, entered into a contract with the Homeowner in April of 2012 to provide labor and materials on property located at 126 Idlewood Circle, Spartanburg, South Carolina. The Homeowner failed and refused to pay for the work done on the premises and, after demand was made for the same, Contractor filed a Notice of Mechanic's Lien on July 19, 2012 in the Office of the Register of Deeds for Spartanburg County, South Carolina, claiming the sum of \$26,496.10 for labor and materials performed on the aforesaid property, which included a Verified Statement of Accounts signed by Robert Lee Jennings, Member/Manager of Contractor. The Notice of Mechanic's Lien and Verified Statement of Account were duly served on the Homeowner. Thereafter, on August 7, 2012, and in compliance with the Mechanic's Lien statute, Contractor filed a Summons, Complaint and Lis Pendens alleging that Contractor and Homeowner had entered into a contract for the labor to be performed and materials to be furnished on the property of the Homeowner. Homeowner filed an Answer admitting that the parties had entered into a contract whereby Contractor was to provide labor and materials on Homeowner's property, but denied breaching the contract. Homeowner filed a Counterclaim for breach of contract admitting that Contractor and Homeowner entered into a contract for work to be performed on Homeowner's property, but alleged in her

Counterclaim that Contractor breached the contract by failing to provide proof of materials purchased and labor provided, which Contractor denied in his Response to Homeowner's Counterclaim.

On Motion of Homeowner, the case was referred to the Master-In-Equity, with Contractor's consent, on December 9, 2013, which was granted by the Spartanburg County Clerk of Court on December 10, 2013.

The first day of trial took place on May 22, 2014 and Contractor presented evidence, including copies of all bills for labor and materials expended on the job, proof of building permit, proof of insurance, a copy of Contractor's license indicating that it was first issued on December 4, 2008 and that it was current at the time the contract was entered into between Contractor and Homeowner, as required by § 40-59-30(B), South Carolina Code of Laws 1976, as amended. Contractor admitted during cross examination that his Contractor's license number was not recorded on the Mechanic's Lien documents that were submitted to the Register of Deeds Office for Spartanburg County. R. pp. 40-43. 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. R. p. 43, lines 14-18. Homeowner's counsel objected to such amendment. The Homeowner's counsel filed a Memorandum In Support Of Motion For Directed Verdict And Summary Judgment In Favor of Homeowner based upon the Contractor's license number not appearing on the Mechanic's Lien documents, as provided for by S.C. Code Annotated § 29-5-15. The hearing was recessed so that both parties would have an opportunity to submit a Brief on the issue. After receiving and reviewing the parties' Briefs, the Court filed an Order on June 19, 2014 which

denied the Homeowner's Motion For Direct Verdict and ruled that the Contractor's Mechanic's Lien documents substantially complied with the statutory requirements and the Court found no language in S.C. Code Annotated § 29-5-15 such that failure to comply with that section would result in a dissolution of the Mechanic's Lien. The Homeowner filed a Notice of Intent to Appeal on July 17, 2014 to appeal the June 19, 2014 Order. The Court of Appeals filed an Order on August 13, 2014 dismissing Homeowner's 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 reiterating its findings and rulings in the Order issued on June 19, 2014 relating to the case, granting the Contractor a Mechanic's Lien, attorney's fees and costs in the total amount of \$35,496.10. On November 25, 2014, Homeowner filed a Notice of Intention to Appeal both the Order dated June 19, 2014 and the Order dated November 17, 2014. Homeowner's counsel 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 Appellant's Initial Brief until February 6, 2015.

FACTS

During 2012, the Homeowner told the Contractor that she had a budget of \$50,000.00 to improve the Homeowner's house located in Spartanburg County, South Carolina. There was no written contract and the Contractor stated that the project was doable for \$50,000.00, but that the Homeowner would have to "keep things on a kind of low-end scale" and, if things cost more, the Homeowner would agree to pay for it. There was no written contract or spec sheet. The Contractor had the Homeowner meet with his sub-contractors before

starting the project. R. pp. 30-32. The Contractor began working on the house in mid-April of 2012. R. p. 33, line 23. The Contractor completed the framing, rough plumbing, rough HVAC, rough electrical, and the Spartanburg County inspector came to the home and inspected the property and found that everything passed his inspection. R. pp. 34-35, 54. The Contractor requested a \$20,000.00 draw. R. pp. 35-36. The Contractor expended \$26,418.93, which included the costs of the building permit, all labor performed for the demolition, the framing, all door framing, electrical and lighting, the electrician, millwork, floor coverings, painting, materials and subs, which the Homeowner did not pay because the Contractor refused to give her the original receipts, as opposed to copies of those receipts. R. p. 38, lines 3-16. The Contractor stopped work on or about July 12, 2012 and filed a Mechanic's Lien document in the Office of the Register of Deeds for Spartanburg County, South Carolina on July 19, 2012, which was recorded in Mechanic's Lien Book 34 at Page 336. R. pp. 39, 138-140. The Contractor was licensed for the work he performed for the Homeowner. R. pp. 29, lines 1-8, 48.

ARGUMENTS

- I. THE MASTER IN EQUITY CORRECTLY RULED THAT THE CONTRACTOR STRICTLY COMPLIED WITH S.C. CODE ANN. § 29-5-10 TO ENABLE THE CONTRACTOR TO HAVE A MECHANIC'S LIEN AGAINST THE HOMEOWNER WHEN READ IN CONJUNCTION WITH S.C. CODE ANN. § 40-59-30(B).

In order to file a Mechanic's Lien, S.C. Code Ann. § 29-5-20(A) provides, in relevant part, "Every laborer, mechanic, sub-contractor, 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 materials so furnished. The lien arises inchoate when the labor is performed or the materials are furnished." Shelly Contr. Co. v. C. Garden Homes, Inc., 287 S.C. 24, 26, 336 S.E.2d 488, 489 (Ct. App. 1985). In Ferguson Fire and Fabrication, Inc. v. Preferred Fire Prot., L.L.C., Op. No. 27410 (S.C. Sup. Ct. filed July 9, 2014; refiled August 13, 2014), the South Carolina Supreme Court stated:

"For an inchoate lien to become valid, the lien must be perfected and enforced in compliance with South Carolina's mechanic's lien statutes. Preferred Sav. & Loan Ass'n v. Royal Garden Resort, Inc., 301 S.C. 1, 389 S.E.2d 853 (1990). To perfect and enforce a lien, one must timely complete the following three steps found in §§ 29-5-90 and 29-5-190 of the South Carolina Code: (1) serve and file a notice or certificate of the lien, (2) commence a lawsuit to enforce the lien, and (3) file a Lis pendens. See S.C. Code Ann. §§ 29-5-90 & - 120 (2007); Butler Contracting, 369 S.C. at 129, 631 S.E.2d at 256; see also 22 S.C. Jur. *Mechanics' Liens* §§ 15 to 19 (1994) (discussing procedures). The trigger for determining when all three of these events must be performed is the date when the supplier ceases furnishing labor or materials.

The Contractor was licensed by the State of South Carolina, as required by S.C. Code

Ann. § 40-11-30, to perform the work on all property owned by the Homeowner at 126 Idlewood Circle, Spartanburg, South Carolina. It is, further, uncontroverted that the contractor is licensed, as provided for by S.C. Code Ann. § 40-59-30. The Homeowner argues that the Contractor's failure to place on the Mechanic's Lien document the Contractor's license number, as contemplated by S.C. Code Ann. § 29-5-15, would cause a dissolution of the Mechanic's Lien, citing the case of Butler Contracting, Inc. vs. Court Street, LLC, 369 S.C. 121, 129 (206), 632 S.E.2d 252. It should be noted that Act 40, HB3187, was enacted by the General Assembly of the State of South Carolina on June 2, 2009 amending SECTION 2. Chapter 5, Title 29 of the 1976 Code by adding 29-5-15(A) and (B), and SECTION 4. Section 40-59-30 of the 1976 Code was amended on the same day. S.C. Code Ann. § 29-5-15 was amended to provide:

“(A) 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.

(B) A contractor who files a frivolous lien is subject to a fine up to five thousand dollars, the loss of his registration or contractor license, or both.”

There is no language in this statute that requires the dissolution of a Mechanic's Lien in the event that the contractor's license number is inadvertently omitted from the Mechanic's Lien. The Homeowner has not cited a reported South Carolina decision that directly interprets S.C. Code Ann. § 29-5-15(A), nor a statute from another state with similar requirements that would require the dissolution of lien. It should be noted that S.C. Code Ann. § 29-5-15(B) states that “A contractor who files a frivolous lien is subject to a fine up

to five thousand dollars, the loss of his registration or contractor license, or both.” This indicates that the legislature is attempting to protect the homeowner from a contractor who, in derogation of the statutes of the State of South Carolina, has failed to obtain a license and then attempted to file a Mechanic’s Lien which would be construed as a frivolous lien. It is uncontroverted that the Homeowner, by and through her attorney, stated that there is no claim that the Contractor filed a frivolous lien. R. p. 44, line 23. Therefore, the Contractor submits that the true intent of S.C. Code Ann. § 29-5-15(A), when read in conjunction with S.C. Code Ann. § 40-59-30(B), is to prevent unlicensed contractors from being allowed to file a Mechanic’s Lien and to provide a remedy in the event that an unlicensed contractor files a frivolous lien. This section was not intended to dissolve a valid lien of a licensed contractor which inadvertently does not contain the contractor’s license number.

II. THE MASTER IN EQUITY CORRECTLY RULED THAT THE FAILURE TO RECORD HIS CONTRACTOR’S LICENSE NUMBER ON THE MECHANIC’S LIEN DOCUMENT WHEN FILED DID NOT DISSOLVE THE MECHANIC’S LIEN.

The lien in question arises by operation of the law and may be dissolved under the circumstances outline in S.C. Code Ann. § 29-5-90, which is entitled Dissolution of Lien for Failure to Serve and File Statement; Contents of Statement. It provides, in pertinent part:

“Such a lien shall be dissolved unless the person desiring to avail himself thereof, within 90 days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner or, in the event the owner cannot be found, upon the person in possession and files in the Office of the Register of Deeds or Clerk of Court of the County in which the building or structure is situated, a statement of a just and true account of the amount due him, with all just credits given, together with a description of

the property intended to be covered by the lien sufficiently accurate for identification, with the name of the owner of the property, if known, which certificate shall be subscribed and sworn to by the person claiming the lien or by someone in his behalf and shall be recorded in the book kept for the purpose by the Register or Clerk who shall be entitled to the same fees, therefore, as for recording Mortgages of equal length.”

This section has not been amended by the legislature to require the dissolution of a lien in the event that the contractor’s license number is not recorded on the lien. The insertion of the contractor’s license number is an administrative filing requirement for the Clerk of Court or Register of Deeds. It refers to the formal documentation for the publicly recorded document for notice to the public and it does not affect the validity of the substantive rights of the parties with regard to the Mechanic’s Lien claimed by the contractor. The Contractor in this case was a licensed contractor and the Master In Equity correctly ruled that the inadvertent omission of the Contractor’s license number is not an event which would cause the lien to be dissolved, which would only occur if the provisions of S.C. Code Annotated § 29-5-90 were not substantially complied with. The dispute in this case centers on the Master-In-Equity’s determination that the Contractor substantially complied with the statutory requirements to file and enforce a Mechanic’s Lien. In doing so, it became necessary for him to interpret any ambiguities in S.C. Code Annotated § 29-5-15 when read in conjunction with the entire Mechanic’s Lien statutes contained in S.C. Code Annotated § 29-5-10 to -440, as well as the Licensing statute at S.C. Code Annotated § 40-59-30. “If a statute is ambiguous, the Courts must construe its terms.” Ferguson Fire and Fabrication, Inc. v. Preferred Fire Prot., L.L.C., Op. No. 27410, heard July 12, 2014 (refiled August 13, 2014), citing *Sparks v. Palmetto Hardwood, Inc.*, 406 S.E. 124, 750 S.E.2d 61 (2013). “A

statute as a whole must receive practical, reasonable, and fair interpretation consistent with the purpose, design, and policy of lawmakers.” *Id.* at 128, 750 S.E.2d at 63 (citation omitted).

South Carolina case law does not define “Substantial Compliance” in the context of S.C. Code Annotated § 29-5-15(A). The case of Responsible Economic Development, Carol JeBaily, Peggy Brown, Rachell Hyman, Walter Sallenger, It’s Members and Directors, vs. The Florence Consolidated Municipal Planning Commission, City of Florence, South Carolina, Hewitt Land Company, Inc., Trinity Evangelical Presbyterian Church, Inc., Wal-Mart Stores East, LP, and R. Jerry Hewitt, No. 2005-UP-584, states:

“South Carolina case law does not specifically define substantial compliance in the context of S.C. Code Ann. Section 6-29-760(D) (2004). However, American jurisprudence generally holds substantial compliance is met if the purpose of the state is achieved. See James v. County of Kitsap, 115 P.3d 286, 293 (Wash.2005) (substantial compliance means a court should determine whether a statute has been followed sufficiently so as to carry out the intent for which the statute was adopted); Iowa State Bank & Trust Co. v. Michel, 683 N.W.2d 95, 105 (Iowa 2004) (in deciding whether a party has substantially complied with a statutory requirement, the court evaluates whether the asserted compliance assures that the reasonable objectives of the statute will be met); Rosenblatt v. City of Houston, 31 S.W.3d 399, 404 (Tex.Ct.App.2000) (“Substantial compliance has been defined to mean performance of the essential requirements of a statute.”); Morrow v. Bobbit, 943 S.W.2d 384, 389 (Tenn.Ct.App.1996) (substantial compliance is met when it is reasonable to conclude that the objective sought by the statute has been fully attained); Thrash v. City of Asheville, 393 S.E.2d 842, 845 (N.C.1990) (“Substantial compliance means compliance with the essential requirements of the statute.”); Sabatini v. Jayhawk Const. Co., Inc., 520 P.2d 1230, 1234 (Kan.1974) (“Substantial compliance requires compliance in respect to the essential matters necessary to assure every reasonable objective of the statute.”); Brow v. Sherwin-Williams Co., 109 N.E.2d 864, 866-67 (Ohio 1952) (the requirements of a procedural statute are met when the municipality substantially complies with the statute’s procedural mandates, which requires the municipality to act in a way to achieve the purpose of the statute).

The decisions in South Carolina are in full accord with the above cited cases. See e.g., Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 164-65, 547 S.E.2d 862, 866 (2001) (looking to the clear language and express purpose of a federal act to determine whether substantial compliance occurred); Davis v. NationsCredit Fin. Servs. Corp., 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997) (looking to the purpose of a statute in determining whether substantial compliance occurred).

The Homeowner in this case was totally aware of the work that was completed and that the Plaintiff was a licensed contractor doing the work. It is uncontroverted that the Contractor is owed the sum of \$26,496.10. The Homeowner is requesting that the lien be dissolved. If the Court granted the relief requested by the Homeowner, this would not prevent the Contractor from obtaining Judgment against the Homeowner in the amount of \$26,496.10 for labor and materials furnished and not paid by the Homeowner as a result of the Homeowner's breach of contract. This is not an issue being appealed by the Homeowner.


III. THE MASTER IN EQUITY CORRECTLY RULED THAT A FAILURE TO RECORD THE CONTRACTOR'S LICENSE NUMBER ON THE MECHANIC'S LIEN DOCUMENT WHEN FILED DOES NOT REQUIRE A DISMISSAL OF THE CONTRACTOR'S COMPLAINT FOR BREACH OF CONTRACT AND ENFORCEMENT OF THE MECHANIC'S LIEN.

The Homeowner's Initial Brief requested in its Conclusion that this Court should dismiss the Contractor's case against the Homeowner and dissolve the Contractor's Lien. The Respondent would submit that the Master In Equity properly and correctly determined that the Complaint and record are sufficient to allow the Contractor to successfully pursue a cause of action by the Contractor against the Homeowner in the amount of \$26,496.10 for unpaid labor and materials as a result of the breach of contract by the Homeowner.

In the present case, the obvious legislative purpose of S.C. Code Annotated § 29-5-15(A) is to ensure that a contractor is licensed and to protect the public from unscrupulous, unqualified and financially irresponsible contractors. It is a regulatory statute designed to protect the public from a contractor who is financial irresponsible. Clearly, the statutory scheme provides strong incentives for contractors to be licensed, thereby protecting the public from unlicensed, unscrupulous and unqualified builders. There is no doubt that the Contractor in this case substantially complied with the law due to the fact that the Contractor had a valid license at the time of contracting with the Respondent and at the time of bringing suit in this action. Inasmuch as there is no dispute or appeal from the amount owed by the Homeowner in the amount of \$26,496.10, the mere failure of the administrative placement of the Contractor's license number on the actual Mechanic's Lien by the Contractor would result in a penalty that the Mechanic's Lien statute did not foresee and reward the Homeowner for her improper refusal to pay the Contractor for work and materials supplied by the Contractor to the Homeowner by denying the Contractor the right to receive attorney fees as provided by the Mechanic's Lien statutes.

CONCLUSION

For the foregoing reasons, the Respondent respectfully submits that this Court should affirm the Orders of the lower Court and dismiss the Homeowner's Appeal, thereby affirming the validity of the Contractor's Mechanic's Lien and granting judgment to the Contractor against the Homeowner in the amount of \$26,496.10, and attorney fees in the amount of \$9,195.00, and costs in the amount of \$255.00, for a total Judgment against the Homeowner in the amount of \$35,946.10.



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ATTORNEY CERTIFICATION

The undersigned, attorney for Respondent, hereby certifies that this Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.



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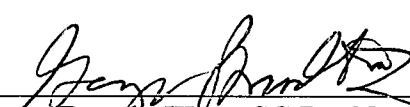
PROOF OF SERVICE

I, the undersigned attorney for the Respondent, Vision Contracting, LLC, do hereby certify that I have served the South Carolina Court of Appeals with 1 unbound original and 14 bound copies of the Brief of Respondent by UPS overnight service, to address A. shown below, and have served all counsel in this action with a copy of the Respondent's Final Brief by hand delivering the same to the offices of Thomas A. Belenchia, Esquire and T. Camden Shealy, Esquire, attorneys for Appellant, Rosiland Geter, to address B. shown below:

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