

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-08-2037

ECK SUPPLY CO.,)
)
)
Plaintiff,)
)
v.)
)
SUPERIOR ELECTRIC COMPANY and)
DEAN M. HENSLEY,)
)
Defendants.)

Order of Judgment

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SC Court Appeals

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2014 OCT 27 AM 10:29

FILED

On June 16, 2014, this matter came before me for trial. Present at the hearing on Plaintiff's behalf was: Steven L. Smith (attorney), Charlie Smith (Plaintiff's North Charleston branch manager) and Kevin Cooper (sales employee for Plaintiff's North Charleston branch). Present for the Defendants was: Robert Varnado (attorney) Defendant Dean Hensley, Cember Hensley (officer of Superior Electric Company (Superior)), and Walter Goodwin (Superior employee/project manager).

After listening to the testimony of the witnesses, reviewing the evidence, considering the arguments of counsel and reviewing the law, I make the following findings of fact and conclusions of law:

Plaintiff Eck Supply, Co. (Eck) is in the business of selling to and supplying companies like Superior with materials and supplies (hereinafter "goods") for electrical work within the construction and building industry. Superior is an electrical contractor with the construction and building industry. Eck and Superior have had a long business relationship, whereby, over the years, Eck sold Superior goods for its construction projects.

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The parties' relationship was commenced by Superior completing and submitting a credit application to Eck on or about September 25, 2000. Defendant Dean Hensley executed the credit application on behalf of Superior and further executed a personal guarantee for Superior's debt to Eck in his individual capacity. Cember Hensley confirmed these facts by offering testimony that the credit application was transmitted by Superior to Eck as shown by the Superior's facsimile stamp thereon. The credit application provides for Eck's recovery of Superior's outstanding balance with Eck, plus interest at 1.5% per month or 18% annually, plus Eck's attorney's fees in the amount of 25% of principal debt amount, plus all costs incurred by Eck pursuing the collection of Superior's outstanding balance with Eck (hereinafter Total Debt). The personal guarantee executed by Dean Hensley, personally and individually obligates Dean Hensley for Superior's Total Debt.

The Total Debt is principally arises from the Summerville Townhall Project (hereinafter Project). Superior purchased goods from Eck for the Project. Eck maintained records of all the goods it supplied to Superior. Eck maintains that Superior owes it the principal amount of Thirteen Thousand Nine Hundred and 93/100 (\$13,900.93) Dollars for goods supplied to Superior. The goods which comprise the \$13,900.93 principal debt were supplied by Eck to Superior beginning in November 2006 and concluded September 3, 2008. The testimony of Charlie Smith and Kevin Cooper, as well as the testimony of the Defendants' witnesses, and the invoices introduced into evidence by Eck evidence the \$13,900.93 debt owed to Eck by Superior and the aforementioned dates the goods were supplied.

Superior asserts that it does not owe Eck anything. In fact, Superior claims that Eck owes Superior money. Defendants' defense and counterclaim to Eck's claim for the Total Debt, essentially, is comprised of three arguments. First, Defendants contend that they had already

paid the Total Debt sought by Eck. Defendants and their witnesses also testified that Superior had to purchase goods from other suppliers because Eck allegedly failed to supply the agreed upon goods for the Project. Finally, Superior contends that some of the goods supplied by Eck were allegedly defective, and that Superior had to replace and reinstall the same for which it alleges Eck is responsible for. Superior's claims are without merit.

Defendant's payment defense to Eck's claim for the Total Debt fails because Defendants failed to produce sufficient evidence to show that Defendants paid Eck for the Total Debt. Defendants attempted to show payment, but were only able to produce a portion of the alleged checks evidencing Superior's payment of a few purchases from Eck over the time period at issue. The checks produced by Superior, when compared to the total purchases produced by Eck, fall well short of the payments Eck has already given Superior credit for in seeking collection of the Total Debt in this action. In fact, Cember Hensley admitted that Defendants did not have checks evidencing payment for the Total Debt and did not know where they were. Therefore, Defendants were unable to meet their burden of proof regarding their payment defense, by a preponderance of the evidence.

The testimony of all witnesses and the evidence shows that the goods purchased by Superior due to an alleged failure by Eck to supply the same were never promised to be supplied by Eck. Superior provided Eck with specifications for the Project. Eck prepared a quote for the specified material for the Project. Per industry standard, as testified to by the witnesses, Eck's quote did not include all of the secondary and tertiary materials and supplies necessary for Superior to complete the Project; Superior knew this. It is these secondary and tertiary goods that comprise the first element of Superior's counterclaim. Superior cannot claim the costs for these secondary and tertiary goods as setoff against its Total Debt with Eck because the "setoff"

materials and supplies claimed by Superior were never contemplated by the parties as part of the quoted materials.

Secondly, Superior claims that Eck supplied it with allegedly defective product. The transactions between the parties were ones between a seller of goods (Eck) and a buyer of goods (Superior). Therefore, all of the transactions between Eck and Superior are governed by Article 2 of the UCC. Upon purchase of the material and supplies from Eck, Superior stored the same in its warehouse. Defendants and their witnesses testified that Superior stored the goods it now complains of as defective for more than eighteen (18) months before inspecting the same. S.C. Code of Laws § 36-2-602(1) states, "Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller." In construing § 36-2-602(1), our Supreme Court has held that "for a rejection of goods to be effective, buyer must notify the seller in writing." *Plantation Shutter Company, Inc. v. Exell*, 328 S.C. 475, 492 S.E.2d 404 (S.C.App. 1997) (citing *Southeastern Steel Co. v. Burton Block & Concrete Co.*, 273 S.C. 634, 258 S.E.2d 888 (1979)). Defendants first notified Eck in April 13, 2009 of their claims only after Eck sought to collect the \$13,900.93 principal balance from Superior, more than . Defendants' first written notice of the alleged defects to Eck occurred, in some instances two and a half years after the materials were supplied. This is an unreasonable amount of time and an ineffective notice pursuant to § 36-2-602(1) S.C. Code of Laws. Pursuant to § 36-2-606(1) of the S.C. Code of Laws, Superior accepted these goods. Superior had a reasonable time to inspect the materials and supplies purchased from Eck and failed to reject the same in writing within a reasonable amount of time. Therefore, pursuant to § 36-2-607(1) of the S.C. Code of Laws, Superior must pay Eck the contract rate (Total Debt) for any goods accepted.

THEREFORE, IT IS HEREBY ORDERED that Eck Supply Co. be granted judgment against Superior Electric Company and Dean M. Hensley, jointly and severally, in it the principal amount of Thirteen Thousand Nine Hundred and 93/100 (\$13,900.93) Dollars, plus prejudgment interest at the rate of 18% per annum from September 3, 2008 to October 13, 2014, which amounts to Fifteen Thousand Two Hundred Ninety-four and 07/100 (\$15,294.07) Dollars, plus its attorney's fees in the amount of Three Thousand Four Hundred Seventy-five and 24/100 (\$3,475.24) Dollars, which this court finds to be reasonable pursuant to the factors set forth in Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (S.C. 1991), plus its costs in the amount of Four Hundred Thirty and No/100 (\$430.00) Dollars, yielding a total judgment amount of Thirty-three Thousand One Hundred and 24/100 (\$33,100.24) Dollars for Eck Supply Co. against Superior Electric Company and Dean M. Hensley. Postjudgment interest shall continue to accrue at the rate of 18% per annum.

Robert E. Watson
The Honorable Robert E. Watson

10/24, 2014
Moncks Corner, SC
09-334