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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Appellate case No. 2014-001633

Civil Action No. 2011-CP-32-1929

Rose Electric, Inc.,

Appellant

v.

Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC, Certified
Development Corporation of South Carolina, Senn Bros., Inc., Custom Concrete of
Lexington, Inc., and James Dunlap d/b/a Dunlap Services, Defendants

Of Whom

Southern Produce, Inc. and S2P, LLC are

Respondents

FINAL BRIEF OF RESPONDENT SOUTHERN PRODUCE, INC.

Kathryn M. Cook
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STATEMENT OF ISSUES ON APPEAL

I. The trial court did not err in denying Appellant Rose relief based on quantum meruit where the court found there was an expressed contract between Appellant and the general contractor and between the Appellant and Respondent Southern Produce for the money sought in this matter.

II. The trial court did not err in determining the amount to which Appellant Rose would have been entitled from the unpaid contract balance owed to the general contractor based on the proration among other unpaid subcontractors with mechanic's liens.

III. The trial court did not err in denying an award of prejudgment interest to Appellant Rose where no amount was found owed to Appellant and where Appellant had rejected three Offers of Judgment from Respondent Southern Produce prior to trial.

STATEMENT OF THE CASE

On March 4, 2011, Appellant Rose Electric, Inc. filed a mechanic's lien for \$65,094.52 arising out of electrical work performed in a new fruit and vegetable processing facility located on land owned by Respondent S2P, LLC and leased to Respondent Southern Produce, Inc. at the new S.C. Farmer's Market in Lexington County. (R. pp. 381-385; R. pp. 52-58; R. p. 97, line 13-p. 98, line 24; R. p. 106, line 8-p. 107, line 107). Southern Produce, Inc. contracted with Defendant Cooler Erectors of Atlanta, Inc. ("Cooler") which served as the general contractor on the construction. (R. pp. 402-407; R. pp. 221, line 11-p. 222, line 14). Cooler hired Appellant Rose Electric, Inc. ("Rose") as the electrical subcontractor. (R. pp. 52-58; R. pp. 381-385; R. p. 125, line 19-p. 127, line 22; R. pp. 391-400; R. pp. 1-4). On March 20, 2011, Rose filed an action to foreclose on the mechanic's lien against Defendant Cooler and Respondents Southern Produce, Inc. ("Southern") and S2P, LLC ("S2P") and included cause of action for breach of contract against the general contractor, Cooler, and causes of action of unjust enrichment and quantum meruit against Respondents Southern and S2P. (R. pp. 52-58). Defendant Cooler did not answer, Respondent Southern answered as did Respondent S2P. (R. p. 105, lines 5-20; R. pp. 60-61; R. pp. 65-70). S2P also included a crossclaim against Southern Produce based on contractual indemnity pursuant to the lease between the parties for the cost of defense in the action or, alternatively, equitable indemnity and Southern replied. (R. pp. 65-70).

Thereafter discovery went forward and, prior to trial, Southern made three different Offers of Judgment/Settlement to Appellant Rose Electric pursuant to Rule 68(a) SCRPC,

S.C. Code Ann. § 29-5-10 and § 29-5-20 and S.C. Code Ann. §15-35-400. ¹ (R. pp. 79-80; R. pp. 81-84; Supplemental R. pp. 491-493). None of the offers were responded to by Appellant Rose, thus constituting rejection of the same. (R. pp. 6-14; R. p. 51; R. pp. 85-87).

On February 13, 2013, a one day bench trial was held before the Honorable William P. Keesley. Defendant Cooler Erector was given notice of hearing, but did not appear. (R. p. 105, lines 5-20). At the beginning of the case, Appellant Rose announced to the Court that it was abandoning its mechanic's lien foreclosure claim against Respondents Southern and S2P and would proceed solely on the quantum meruit claims. (R. p.102, line 22-p. 104, line 15; R. p. 3; R. pp. 50-51). Appellant also dismissed all claims against Defendant Senn Bros., Inc. at the start of trial. (R. p. 104, line 21-p.105, line 3). Thereafter, Appellant Rose and Respondents Southern and S2P presented their witnesses and documentary evidence. At the close of trial, due to the unusual posture of the case with Appellant Rose abandoning its mechanic's lien/contract claim, Judge Keesley invited post-trial memoranda which were submitted by all parties. (R. p. 289, line 21-p. 290, line 25; R. pp. 85-89).

In late February and early March, 2013, the post-trial memoranda were submitted and the Court considered the case for decision. Again, due to the unusual move of the Appellant in abandoning the contract claim in face of having plead there were contracts and the evidence introduced at trial of a contract between the general contractor, Cooler, and Rose for \$54,339.13 of the \$65,094.52 sought and the evidence of a contract between Rose and Southern Produce for the remaining \$10, 755.39 in extras sought, Judge Keesley held a post-trial hearing to clarify the parties positions on these matters. (R. pp. 485-489; R. pp. 434-484). Specifically, the parties were asked to address the matters set out in the emails sent to

¹ 7/26/2011; 1/23/2012; 7/13/2012 for \$ 18,000.00.

the parties by the Judge. That hearing was held on October 23, 2013. The Judge entered a Form 4 Judgment in the case on October 24, 2013 and issued the formal Order on January 30, 2014 denying Appellant Rose relief and awarding costs and attorney fees to Respondents. (R. pp. 434-484; R. pp. 50-51; R. pp. 1-19).

On February 21, 2014, Appellant Rose filed a Motion for Reconsideration on basically the same grounds as it has now included as issues in this appeal. Judge Keesley issued the order on that motion on June 11, 2014 which was recorded on June 16, 2014. (R. pp. 20-49). In the June Order, the award to Southern Produce and S2P of interest on its attorney fee and cost award was stricken and several typographical errors in the January Order were corrected, but the remaining grounds of Rose's motion were denied. (R. pp. 20-49).

On July 24, 2014, Appellant Rose served its Notice of Appeal from the January, 2014 Order and June, 2014 Order.

STATEMENT OF THE FACTS

This matter arises out of the construction of a produce processing facility at the new S.C. State Farmer's Market in Lexington in late October and November, 2010. The facility itself is essentially two big refrigerated coolers with plumbing and electrical for the processing and packaging of vegetables and fruit sold to wholesalers and retailers. (R. p. 106, lines 8-16). Respondent S2P was the owner of unimproved land which it leased to Respondent Southern. (R. p. 54; R. pp. 60-61; R. pp. 233, line 20-p.234, line 12). Southern then entered into a written contract with Cooler Erectors for construction of the refrigeration building in issue and Cooler engaged Appellant Rose as a subcontractor to provide the electrical scope of work set forth in the plans and specification for the project. (R. pp. 52-56; R. p. 233, lines 4-19; R. p. 221, line 8-p. 222, line14; R. pp. 402-404; R. pp. 405-407). Cooler also hired other

subcontractors for various parts of the work, including Defendant Custom Concrete of Lexington, Inc. for the concrete and paving work and Defendant James Dunlap for the plumbing work. (R. pp. 422-426; R. pp. 427-431; R. pp. 52-59).

Southern was aware of the general contractor, Cooler Erectors, because it was performing other projects of a similar nature for other businesses at the new Farmer's Market. (R. p. 141, lines 10-19). Southern entered into a written contract for the turnkey construction of its building which included the plans, specifications, labor, and material for a fixed lump sum of \$213,385.00. (R. pp. 402-404; R. pp. 405-407; R. p. 222, line 16-p. 224, line 19). The general contractor, Cooler, then hired all the subcontractors needed for the job, including Appellant Rose. Prior to and simultaneously with the Southern Produce job, Rose had worked as the electrical subcontractor for the Cooler on other projects at the Farmer's Market. (R. p. 127, lines 13-22).

Prior to accepting the work, Homer Rose of Rose Electric was provided a copy of the October 5, 2010 project plans and specifications and then began to perform the required scope of work on the project. (R. p. 129, line 6-p. 130, line 10). During construction, the general manager of Southern, Dan Stocker, requested several upgrades and addition, hereafter "extras", from Rose to the electrical work. (R. p. 238, line 21-p. 240, line 16). Southern agreed to pay for those "extras" and Rose agreed to supply the materials and labor, although no price for the same was set at that time. The building permit was issued by Lexington County on November 2, 2010 and the Certificate of Occupancy was issued on November 30, 2010, although the building was not finished. (R. pp.379-380).

Rose started and completed its scope of work under its agreement with Cooler and the "extras" requested by Southern in late November to early December, 2010. (R. p. 238, line

21-p.241, line 20). In late November and December, 2010, Rose invoiced Cooler Erectors for \$54,339.13 due under its subcontract and \$10,755.39 for the “extras”. (R. p. 144, lines 2-25; R. pp. 387-390; R. p. 433). When Appellant Rose did not get paid by Cooler, it then began sending invoices not only for the \$10,755.39 “extras” to Southern for payment, but also for the amount owed to it by the general contractor under the subcontract for \$54,339.13. (R. p. 145, line 6-p. 146, line 16; R. pp. 391-400; R. p. 187, line 20-p. 109, line 15). While Southern acknowledged it owed for the “extras”, it advised Rose it was not responsible for the amount owed by Cooler Erectors. (R. p. 157, line 21-p. 158, line 13; R. pp. 71-78). Unfortunately, by the time Appellant advised it had not been paid by Cooler, Southern Produce had paid out to the general contractor all but \$10,108.00 of the \$213,385.00 contact price and Cooler had abandoned the job and the left the Farmer’s Market. (R. pp. 409-414; R. p. 238, lines 5-20; R. p. 245, line 17-p. 247, line 12). Cooler also left other subcontractors on the Southern Produce project without paying what they were due. (R. pp.422-431).

Southern explained the situation by letter to Rose and thereafter offered to pay for the extras and Rose’s prorate share of the contact funds it was holding as required under the South Carolina mechanic’s lien statutes. (R. pp. 71-78). Rose filed its mechanic lien on March 4, 2011 seeking \$54,339.13 under its subcontract with Cooler Erectors and \$10,755.39 for the “extra” under its agreement with Southern for a total lien of \$65,094.52. (R. pp. 381-385; R. p. 175, line 8-p. 182, line 7). The lien was recorded in Lexington County at Lien Book 14754, Page 57. In May, 2011, Appellant filed this action seeking to foreclose on the mechanics lien, breach of contract and unjust enrichment and quantum meruit claims as set out above. (R. pp. 52-58). Prior to trial and during the course of discovery, Southern Produce made three Offers of Settlement/Judgment under the mechanic’s lien statutes, Rule

68 of the South Carolina Rules of Civil Procedure, and S.C. Code Ann. §15-35-400. (R. pp. 71-78; R. pp. 79-80; R. pp.81-84; Supplemental R. pp.491-493). The first offer was on July 26, 2011, the second offer was on January 23, 2012 and the third offer was on July 13, 2012 for \$18,000.00. Appellant Rose did not respond to any of the offers and pursuant to South Carolina law made its silence an offer of \$65,095.52 as set forth in the complaint for purposes of the award of cost and attorney fees to the prevailing party after the decision of the trial judge.

A bench trial was held on February 13, 2013. At the start of trial, Appellant Rose abandoned its lien claim and proceeded against Respondents Southern and S2P solely on its quantum meruit claims. (R. pp. 485-486; R. p. 3; R. p. 471, line 4-p. 474, line 15). Southern and S2P defended by introducing evidence of the two contract Rose had that encompassed the money it was seeking under its equitable claims, which defeated Rose's ability to recover under unjust enrichment and quantum meruit. Proof of the subcontract that was introduced of the expressed contract between Cooler Erectors and Rose included the plans and specifications, Rose's proposals and invoices, the prior course of conduct between Cooler and Rose and Rose's own Mechanic's Lien and Complaint where it plead it had a contract with Cooler Erectors. (R. p. 147, lines 4-25; R. p. 129, line 6-p. 132, line 23; R. p. 127, lines 13-22). Likewise, the course of conduct between Rose and Southern for the extra work performed and the agreement of the parties was introduced to prove the expressed contract between Southern and Rose for the \$10,755.00 in "extras" sought by Rose as well as the lien and complaint of Rose.(R. pp. 381-385; R. pp. 52-58).

Proof of all mechanics' liens filed on the project was entered and was undisputed. The lien's filed by subcontractors on the project were as follows:

2/08/2011	Custom Concrete	\$14,529.20	18.36%
2/18/2011	Dunlap Services	\$20,210.93	12.90%
3/04/2011	Rose Electric	<u>\$54,339.13</u>	<u>68.74%</u>
Total		\$79,139.26	100%

The amount owed to Rose under the general contractor’s subcontract was 68.74% of the \$10,108.00 being held by Southern or \$6,948.24 plus the \$10,755.39 Southern had agreed to pay Rose for the “extras” per their contract. (R. pp. 85-89). This totaled \$17,703.63 under the lien claim that was abandoned by Appellant.

The trial court held that because there were two expressed contracts for the amounts sought, recovery under quantum meruit was not available. (R. pp. 487-489; R. pp. 50-51; R. pp. 8-9; R. pp. 436-443). The court also found that even if there were no expressed contracts that encompassed the money sought by Appellant Rose, the facts in this case did not entitle Rose to recovery. Specifically, the Court found that the element of retention by Southern and S2P of the benefits of work conferred by Rose were not unjust in as much as Southern had paid all but \$10,108.00 of the total contract price of \$213,385 to the general contractor and stood ready and offered to pay Rose its prorated share of the retainage and for the “extras” which Rose has constantly and consistently refused to accept. (R. pp. 9-12).

Last, the court then made its ruling on the award of cost and attorney fees incurred by Respondents Southern and S2P in defending against Appellant Rose’s lien and foreclosure action. The lien had been on file since March 4, 2011 and was still pending at the time of the Court’s hearing on October 24, 2013. (R. pp. 85-89; R. p. 474, line 16-p. 476, line 25). Pursuant to S.C. Code Ann. §§ 29-5-10 and 29-5-20, Respondent Southern was the

prevailing party because its last offer of \$18,000.00 was closer to the court's award of \$0 to Rose than was Rose's offer of \$65,094.52 as set forth in its pleadings. The court reviewed and considered the Affidavit and Supplemental Affidavit of counsel for Respondent Southern as to the cost and attorney fees that had been incurred in defending against the action. The undisputed Affidavits showed that Southern Produce had incurred from March, 2011 through January 17, 2014 attorney fees of \$24,256.50 and costs of \$156.10 totaling \$24,412.60; and using the analysis required for determining the reasonableness of attorney fees found that an award of \$24,256.50 was reasonable. (R. pp. 12-17). Likewise, the court also found that Respondent S2P had incurred \$11,103.10 in attorney fees and costs in defending against the mechanic's lien action through November 12, 2013 which amount was reasonable. The court awarded judgment of \$11,103.10 against Appellant Rose in favor of Respondent S2P. (R. pp. 14-17). The judgment was entered against Appellant Rose in the amount of \$24,212.60 in favor of Respondent Southern Produce and judgment was entered against Appellant Rose in the amount of \$11,103.10 in favor of Respondent S2P. The court also ordered that the lien of Rose Electric filed in Lexington County at Lien Book 14754 at page 57 be immediately discharged and released. (R. pp. 16-17; R. p. 480, line 9-p. 483, line22).

ARGUMENTS

I. THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT ROSE RELIEF BASED ON QUANTUM MERUIT WHERE THE COURT FOUND THERE WAS AN EXPRESSED CONTRACT BETWEEN APPELLANT AND THE GENERAL CONTRACTOR AND THE APPELLANT AND RECONDENT SOUTHERN PRODUCE FOR THE MONEY SOUGHT IN THIS MATTER.

A. Contracts

Appellant Rose filed this action to foreclose on its mechanic's lien which is an action based on contract and other claims against certain of the Defendants. On the morning of trial, Rose chose to abandon its mechanic's lien foreclosure claims against Southern and S2P. Rose took the position for the **first** time at trial on February 13, 2013 that it did not have a contract with Cooler or Southern Produce and sought to recover \$65,094.54 based on the equitable remedy of quantum meruit. Appellant argued that because it did not have a **written** contract with a **set** price for its work there were no agreements and thus only equitable relief was available. Respondents took the position and the undisputed evidence showed that there was an oral agreement between Rose and Cooler coupled with their past conduct on other jobs, their conduct on this project, the October, 2010 plans and specifications, November, 2010 Rose proposal, and Rose invoices which constituted an express contract. A set price is not a requirement for establishment of a contract. Further, the November, 2010 Rose proposal for the Southern produce job was signed by Rose, although not by Cooler and Rose had already started work when it submitted the proposal to the general contractor.

Southern Produce admitted it had an agreement to pay Rose directly for the changes and additions it request on the project. Rose provided the cost for that work in a letter dated 2/16/2011 accompanied by 2/10/2011 Change Orders 2-12 which amounted to \$ 10,755.39. (R. pp. 391-400). This is the same amount sought in the lien and pled by Rose in its Complaint as constituting its contract with Southern Produce.

The March, 2011 mechanic's lien filed by Rose was still on record with the Lexington County Register of Deeds at Mechanic Lien Book 1474 at Page 57 when the trial court issued its order dated January 30, 2014. The lien encumbered not only the leased property where the Southern Produce building was constructed, but also the remaining portion of the 4 acre tract owned by Respondent S2P. The real estate had been encumbered for almost 3 years when the trial court

issued its Order in 2014. Respondents Southern Produce and S2P had to defend against the lien beginning on March 4, 2011 up through and even after trial. Even after Rose's tactical decision to abandon its contract based claims at trial in February, 2013, it did not remove the lien that was still of record encumbering the real estate as late as February, 2014.

First, Appellant Rose is precluded from recovering under the equitable theory of quantum meruit. Actions in quantum meruit are based on the absence of a contract. Quantum meruit and contract claims are mutually exclusive and one cannot recover under the equitable theory when the complaint alleges a contract. Swanson v Stratos, 350 S.C. 116, 564 S.E.2d 117 (Ct. App. 2002). Rose alleged in its subcontractor lien and the Complaint that it had contracts with Cooler and with Southern Produce. A party is bound by the allegations in its pleadings.

Second, a contract can be expressed or implied in fact. If the agreement or intent of the parties is manifested in spoken or written words, the contract is said to be "express". If the mutual undertaking of the parties is inferred from their conduct alone, without oral or written words, then the contract is "implied in fact". It does not matter whether the mutual promises of the parties are expressed in word, written or oral, or are implied from the conduct of the parties. Both are contracts entitling the parties to contractual remedies, but not equitable remedies. Key Corporation Capital, Inc. v County of Beaufort, 373 S.C. 55, 644 S.E.2d 675(2007).

To have a contract for materials, labor, and/or services does not require a set price at the contract's outset. Consulting a doctor or lawyer without a predetermined charge implies a promise to pay for those services and constitutes a contract between the parties. Likewise, the hiring of a contractor to provide materials and labor, even without a predetermined price implies a contract to pay for those materials and services. The evidence clearly shows the existence of contracts between Rose and Cooler for the scope of work under the October, 2010 plans and between Rose and Southern Produce for the requested "extras" on the project. The Rose proposal to perform the work for \$56,488.07, the Rose invoices, and the oral agreement of

Southern Produce to pay for the “extras” clearly evidenced the contracts implied in fact established by the conduct of the parties.

Last, Appellant Rose is bound by its pleadings and the evidence produced at trial, even though it decided to forgo its contract claims. Rose plead in paragraphs 10,11,12,19, and 20 of the Complaint that it had contracts with Cooler and Southern Produce. In the Notice of Mechanic’s Lien and Statement of Account sworn to by Homer Rose, as president of Rose Electric, Inc., he affirmed that Rose had agreements with Cooler Erectors and Respondent Southern and sought the “contract price” of \$65,094.52.

Based on the forgoing, the trial court correctly ruled that there were two expressed contracts in this matter.

B. Quantum Meruit

Quantum meruit, unjust enrichment, and restitution are equivalent terms for equitable remedies for a contract implied by law, as opposed to an expressed contract or contract implied in fact.

Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, at 8, 532 S.E.2d 868, at 872 (2000); Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259,261,440 S.E.2d 129,130 (1994). The equitable remedy of quantum meruit is not available if the services and materials for which the party is seeking to recover are encompassed in an express contract or one implied in fact. Swanson v. Stratos, 350 S.C.116, 122, 564 S.E.2d 117,120 (Ct. App, 2002); Columbia Wholesale Co., 440 S.E.2d at 130-131(1994). Here the evidence clearly showed that Rose had an expressed contract with the general contractor for the scope of work it performed for which it sought recovery of \$54,399.13 and had an expressed contract with Southern Produce for the changes and extras it requested for which Rose sought \$10,755.39 making up the total mechanic's lien of \$65,094.52. This evidence of contract includes the fact that Appellant Rose in Paragraphs 3, 10, 11, and 12 of the complaint plead that it entered into a contract with the general contractor with the

knowledge of Southern Produce to perform work for payment. Respondents Southern Produce and S2P admitted the contract of Rose with Cooler Erectors in their Answers. Appellant is bound by its pleadings. Further, Homer Rose testified that he had done previous jobs as electrical subcontractor for Cooler Erectors at the new Farmer's Market prior to the Southern Produce project based on a handshake and he expected to be paid by Cooler Erectors, just as he had been in the other jobs. The oral agreement was further evidenced by a written proposal and a series of written invoices from Appellant Rose, first to Cooler Erectors and then to Respondent Southern. Rose testified and Dan Stocker of Southern Produce confirmed that Respondent Southern requested the "extras" from Rose and agreed to pay for the same. Because there were contracts under which recovery was available but which Appellant chose to abandon, recovery under quantum meruit was not proper as held by the trial court.

Even if there were no contracts encompassing Appellant's claim for recovery, Rose, under the facts of this case, would still not be entitled to an award under quantum meruit. The elements of quantum meruit are: 1) a benefit conferred on the defendant by the plaintiff; 2) realization of that benefit by the defendant; and 3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. (Emphasis added). Earthscapes Unlimited, Inc. v Ulbrich, 390 S.C. 609, 703 S.E.2d 221 (2010); Columbia Wholesale, 312 S.C. 259, 440 S.E.2d 129 (1994); Shirley's Iron Works, Inc. v City of Union, 387 S.C. 389, 693 S.E.2d 1 (Ct. App. 2009). The main focus of this inquiry is whether the enrichment to the owner is unjust. In claims of unjust enrichment by subcontractors, the courts typically deny recovery where the owner has paid on its contract with the general contractor. Columbia Wholesale, supra; Shirley's Iron Works, Inc., supra; Myrtle Beach Hospital, Inc., supra. Since Southern Produce had paid all but \$10,108.00 of the \$213,385.00 contract price for the services and materials provided, it was not unjust for it to

retain the benefits as Southern Produce has paid for them. To require Southern Produce to pay twice would have been unjust. Further, Respondent Southern offered to pay Appellant Rose \$10,755.39 for the “extras” per its verbal contract and pursuant to S.C. Code Ann. §29-5-10, but Rose refused the same. Southern Produce offered to pay Rose it’s pro rata share of the remaining balance due Cooler Erectors per S.C. Code Ann. §29-5-20 of \$6,953.29, but Rose refused the same. Appellant Rose made the strategic decision to abandon its contract/lien claims against Respondents Southern Produce and S2P and thus must live by that decision which resulted in a verdict for the Respondents.

II. THE TRIAL COURT DID NOT ERR IN DETERMINING THE AMOUNT TO WHICH APPELLANT ROSE WOULD HAVE BEEN ENTITLED FROM THE UNPAID CONTRACT BALANCE OWED TO GENERAL CONTRACTOR BASED ON THE PRORATION AMONG OTHER UNPAID SUBCONTRACTORS WITH MECHANIC’S LIENS.

The undisputed evidence at trial and as found by the trial court was that there was a turnkey written contract between Respondent Southern and Cooler Erectors for \$213,385.00 which included Cooler providing the plans and specifications for the job and all labor and materials for the produce processing facility to be completed by November 30, 2011. It was also admitted that Southern had no previous association with the general contractor; whereas Appellant Rose had done multiple jobs as an electrical subcontractor for Cooler Erectors prior to the Southern Produce job and did several jobs contemporaneously with this project. Rose admitted it had never had a written contract with Cooler and handled this job the same as it had handled all others with Cooler.

It was not until Cooler failed to pay Rose and several other subcontractors on this project, abandoned the job before it was completed, and left the Farmer's Market that Rose and Southern Produce learn Cooler Erectors was not a licensed contractor. However, while S.C. law prevented Cooler Erectors from suing to collect its remaining contract balance of \$10,108.00 that was held by Southern, it did not prevent the subcontractors, who themselves had contracted with and worked for an unlicensed general contractor, from filing mechanics lien's to seek payment from Respondent Southern from the funds not disbursed under the contract to Cooler. Pursuant to S.C. Code Ann. § 29-5-20, § 29-5-40, and § 29-5-60, Respondent Southern was liable only for the prorate share of the retainage to each of the three subcontractors which filed mechanic liens totaling \$79,139.26 as set out above. Rose Electric's lien was for \$54,339.13 owed under its agreement with the general contractor, which was 68.74% of the total lien amount. Pursuant to S.C. subcontractor lien statutes, Appellant Rose was entitled to 68.74% of the \$10,108.00 held by Southern or \$6,948.24 which was offered by Southern Produce to Rose before it filed its lien, before it filed the lien foreclosure action, during the discovery period, and prior to trial. Appellant Rose flatly refused each offer of payment. Rose never challenged the calculations under the statute for proration nor did Rose ever avail itself of the opportunity to have the court consider the proration computation per S.C. statutory authority. At trial, Appellant Rose abandoned its lien claim and as a result of its strategic decision to pursue only the quantum meruit claim. The proration calculation became irrelevant as it related to any recovery by Rose at trial. The proration calculation was relevant at trial only as it applied to the court's evaluation of Southern Produces Offers of Judgment and its entitlement to attorney fees and cost for defending this action.

III. THE TRIAL COURT DID NOT ERR IN DENYING AN AWARD OF PREJUDGEMENT INTEREST TO APPELLANT ROSE WHERE NO AMOUNT WAS FOUND TO BE OWED TO APPELLANT AND WHERE APPELLANT HAD REJECTED THREE OFFERS OF JUDGEMENT FROM RESPONDENT SOUTHERN PRODUCE PRIOR TO TRIAL.

Prejudgment interest is due on the liquidated amount owed to a claimant. In as much as the court found that there were contracts between Rose and the general contractor and Rose and Southern Produce and it abandoned those claims at the start of trial, no prejudgment interest was due or recoverable on the award of \$0 to Rose since the contracts barred any recovery to it based on the quantum meruit claims.

CONCLUSION

For the reasons stated above, this Court should affirm the judgment of the trial court and remand this case to Judge Keesley for supplementing the award of attorney fees and costs incurred by Respondent Southern Produce, Inc. and Respondent S2P, LLC as a result of this appeal.

Respectfully submitted.



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NOV 18 2015

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Appellate case No. 2014-001633
Civil Action No. 2011-CP-32-1929

Rose Electric, Inc.,

Appellant

v.

Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC, Certified
Development Corporation of South Carolina, Senn Bros., Inc., Custom Concrete of
Lexington, Inc., and James Dunlap d/b/a Dunlap Services, Defendants


Of Whom

Southern Produce, Inc. and S2P, LLC are

Respondents

CERTIFICATE OF COMPLIANCE

I hereby certify that the FINAL BRIEF OF RESPONDENT SOUTHERN
PRODUCE, INC. complies with Rule 211(b) of the South Carolina Rules of Appellate
Practice.



Kathryn M. Cook
306 Calhoun Road
Myrtle Beach, South Carolina 29577
(843) 222-2116
Attorney for Respondent Southern Produce, Inc.

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THE STATE OF SOUTH CAROLINA

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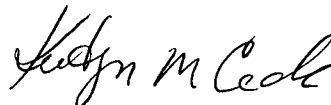
Of Whom

Southern Produce, Inc. and S2P, LLC are

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PROOF OF SERVICE

I hereby certify that I have served the FINAL BRIEF OF RESPONDENT SOUTHERN PRODUCE, INC. by depositing copies of it in the United States Mail, overnight delivery, postage prepaid, on November 16, 2015 to William E. Booth, III, attorney for Appellant at 3231 Sunset Blvd., Suite A, West Columbia, S.C. 29169 and J. Robin Turner, attorney for Respondent S2P, LLC at P.O. Box 11646, Columbia, S.C. 29211 along with a copy of this Proof of Service and Certificate of Compliance.



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