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STATE OF SOUTH CAROLINA)
 COUNTY OF BARNWELL)
 Triad Corrugated Metal, Inc.)
 Plaintiff,)
 v.)
 Eugene Edward Bolen, Jr. and Frances F.)
 Bolen, First Financial Bank, and Hart's)
 Farm and Building Supply, Inc.)
 Defendants.)

IN THE COURT OF COMMON PLEAS

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C/A No.: 2014-CP-06-00454 MAR 18 2016

SC Court of Appeals

ORDER
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THIS MATTER came before the Court on December 8, 2015 upon the Motion for Attorney's Fees by Eugene Edward Bolen, Jr. and Frances F. Bolen (the Bolens). The Bolens were represented by Wesley D. Peel, Esquire, and Triad Corrugated Metal, Inc. was represented by Paul K. Simons, Esquire. In their Motion, the Bolens sought to recover \$19,714.83 in attorney's fees and costs for defending Triad's Mechanic's Lien.

FACTUAL AND PROCEDURAL BACKGROUND

Triad Corrugated Metal, Inc. (Triad), a metal roofing materials supplier, filed a mechanic's lien against the Bolens' property related to material Triad supplied to the Bolen's general contractor. Subsequently, Triad filed a foreclosure action on the Mechanic's Lien and also a Lis Pendens, thereby encumbering the Bolens' property.

The Bolens are chicken farmers and contracted with Hart's Farm and Building Supply, Inc. (Hart's Farm) as their general contractor to build two new chicken houses on their farm (the Project) for \$283,000.00. Hart's Farm ordered roofing materials from Triad on May 19, 2014, which Triad delivered to Hart's Farm on June 9, 2014. Triad sent invoices for the materials to Hart's Farm on June 10, 2014, totaling \$26,546.77. Hart's Farm did not pay Triad, and the Bolens contend that

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Triad walked off the job. The Bolens hired a new contractor, Traywick Construction, Inc. (Traywick), to finish the Project. Traywick's estimated cost was approximately the balance left on Hart's Farm's contract. However, the Bolens contend that the actual cost to complete the barns exceeded the original contract with Hart's Farm.

On August 27, 2014, Triad served the Bolens with a Notice and Certificate of Mechanics Lien in the amount of \$26,546.77. On December 9, 2014, Triad filed a Summons and Complaint for foreclosure of the mechanic's lien and unjust enrichment against the Bolen Defendants. Prior to the Answer and by letter dated February 5, 2015, the Bolens requested that Triad remove the lien and provided Triad's counsel with documentation establishing that the Bolens did not owe anything to Hart's Farm. Triad declined to remove the lien. The Bolens answered and asserted a complete payment defense, as they owed nothing to Hart's Farm.

Triad obtained an Order for Default Judgment for its breach of contract cause of action against Defendant Hart's Farm for \$28,646.77. Triad enrolled the Order for Default Judgment on February 10, 2015, and served it on Hart's Farm.

Triad continued to pursue its claim against the Bolens, despite having elected its remedy against Hart's Farm. The Bolens expended additional time, effort and attorney's fees to have the lien removed from their property. Triad's counsel offered to 40(J) the case, which the Bolens declined. On March 23, 2015, the Bolens' counsel wrote Triad's counsel and again requested that Triad dismiss the action in exchange for the attorney's fees incurred by the Bolens as of March 19, 2015. At that time, the Bolens' attorney's fees were only \$1,888.75.

Triad declined the Bolens' offer and second request to dismiss the lien, and the Bolens proceeded with depositions. On April 14, 2015, the Bolens' counsel took Triad's 30(b)(6) deposition and defended the deposition of Mr. Bolen. Counsel for the Bolens also attended and

presented arguments at the hearing regarding the Motion to for Summary Judgment on April 15, 2015.

The Bolens' Motion was denied, and the parties prepared to refer the case to a special referee or move forward with trial. The Bolens' counsel made several attempts to add this case to the trial roster. In October of 2015, after the majority of attorney's fees in this matter were incurred, Triad voluntarily dismissed this action and cancelled the Mechanics Lien and Lis Pendens before the matter could be tried. The Order of Dismissal specifically reserved the Bolen's right to seek attorney's fees under the Mechanic's Lien statute. On November 23, 2015, the Bolens then filed a Motion for Attorney's Fees pursuant to S.C. Code Ann. § 29-5-10.

DISCUSSION

- I. This Court holds the Bolen Defendants are entitled to attorney's fees pursuant to S.C. Code Ann. § 29-5-10 and Cedar Creek Properties v. Cantelou Associates, Inc.**

The Bolens are entitled attorney's fees as they are the prevailing party pursuant to S.C. Code Ann. § 29-5-10 because Triad fully and voluntarily cancelled the lien and Lis Pendens and dismissed this action. The Bolens received the relief they sought, the dismissal of the lien. Cedar Creek Properties v. Cantelou Associates, Inc., 465 S.E.2d 774, 320 S.C. 483. (Ct. App. 1995).

In Cedar Creek, Cantelou Associates, Inc. served and filed its notice and certificate of mechanic's lien on the property owner, Cedar Creek Properties. Cantelou Associates, Inc. performed nearly \$1,000,000 worth of improvements on the property. Cedar Creek brought an action to dissolve a mechanic's lien. Cantelou cancelled its lien prior to the hearing on the merits of the lien, but Cedar Creek "still had to defend against the lien until the issue was resolved, and it incurred attorney's fees and costs during that time." Cedar Creek at 776. As a result, Cedar

Creek sought an award of attorney's fees for successfully defending against the mechanic's lien. In its closing, the Cedar Creek Court stated that "[b]ecause we have held Cedar Creek is the 'prevailing party' in this action under the mechanic's lien statute, the trial court must, on remand, award attorney's fees to Cedar Creek." Cedar Creek at 776. In a footnote, the Cedar Creek Court further held that "[a] contrary interpretation of § 29-5-10(a) would allow a party to file a mechanic's lien, encumbering the defendant's title to the property, yet never face the possibility of having to pay attorney fees so long as the lien was cancelled prior to trial. This result could not have been the legislature's intent." Cedar Creek at 776, FN 1.

The present matter is analogous to the facts in Cedar Creek. Triad filed and served the lien against the Bolens' property in accordance with the provisions of § 29-5-10, and thereby effectuated a cloud of title over the property. Triad's actions restricted the Bolens ability to transfer the property or use it as collateral. In addition, Triad possessed all of documents evidencing the Bolens' full payment defense as of February, 2015 and was asked several times to dismiss the lien.

Having availed itself of the protections afforded under the mechanic's lien statute, Triad invoked full operation of the statute, including the possibility that the Bolens would prevail in their attempt to avoid the lien. Triad's decision to offensively seek dissolution of the lien rather than wait for the Bolens to seek foreclosure at a hearing on the merits cannot be said to act as a waiver of the Bolens' potential right to collect fees and costs under § 29-5-10(a). Cedar Creek at 775-776. The Bolens incurred costs and attorney's fees in successfully defending Triad's lien and are entitled to a reasonable attorney's fees.

Like the property owner in Cedar Creek, the Bolens were forced to defend against Triad's lien. As in Cedar Creek, the lien claimant voluntarily dissolved the lien prior to a judicial

determination on the merits. Therefore, the Bolens are the prevailing party under S.C. Code § 29-5-10.

Plaintiff argued that the Bolens cannot be a prevailing party because they were denied summary judgment in this case and thus were not “meritorious” in defending against the lien, citing Keeney’s Metal Roofing, Inc. v. Palmieri, 345 S.C. 550 (S.C. Ct. App. 2001). However, denial of summary judgment is not a determination on the merits of the case. Accordingly, the Bolens were prepared to go forward with a hearing on the merits before Plaintiff voluntarily dismissed the Mechanic’s Lien.

Cedar Creek makes it clear that a ruling on the merits is not required for the Bolens to recover attorney’s fees under S.C. Code § 29-5-10. The Code and Cedar Creek clearly define “prevailing party” in accordance with the intent of the legislature, which is to deter wrongfully filed liens and to foster resolution of these types of cases. Keeney’s Metal Roofing does not change the holding and applicability of Cedar Creek to this case. In fact, the Court in that case supports and reaffirms the holding in Cedar Creek, noting that “although the property owner [in Cedar Creek] got the relief it sought, that is, avoidance of the lien, it still had to defend against the lien until the issue was resolved, and it incurred attorneys fees and costs.” Keeney’s Metal Roofing at 554. Because Triad elected to voluntarily dismiss the case before it could be heard, the Bolens are necessarily the prevailing party in this case. Cedar Creek, 465 S.E.2d 774, FN 1 (S.C. Ct. App. 1995).


After considering the evidence and arguments of counsel, the Court makes the following findings of fact and conclusions of law:


1. The Bolens are the prevailing party in accordance with the Mechanic’s Lien Statute.
2. The Bolens are entitled to reasonable attorney’s fees.

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3. The Bolens have presented their affidavit of fees to the Court and set forth their arguments as to reasonableness. Plaintiff has thirty (30) days from the date of this Order to contest the reasonableness of the Bolens' attorney's fees.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants Eugene Edward Bolen Jr. and Frances F. Bolen's Motion for Attorney's Fees is hereby GRANTED.


The Honorable Doyet A. Early III
Circuit Court Judge
Second Judicial Circuit

 South Carolina
February 11, 2016