

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

THE HONORABLE DIANE S. GOODSTEIN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2015-002198
CIVIL ACTION NO. 2012-CP-18-2001

R. H. Moore Company, Inc.,

versus

Knight's Precast, Inc.; Tobias & West, LLC;
Eric W. Tobias, P.E.; Dorchester County Water
and Sewer Department; Underground Solutions, Inc.;
B.P. Barber and Associates, Inc. n/k/a URS Corporation;
and Utility Services Authority, LLC;

Of which Underground Solutions, Inc. is the

RESPONDENT,

DEFENDANTS,

APPELLANT.

FINAL APPELLANT'S BRIEF

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STATEMENT OF ISSUES ON APPEAL

The Trial Court erred in granting summary judgment to Respondent R.H. Moore Company, Inc. on Appellant Underground Solutions, Inc.'s counterclaims and/or defenses for unjust enrichment and recoupment/offset where:

1. the evidence in the record and the inferences arising therefrom raise a genuine issue of material fact as to whether Underground Solutions had an expectation of payment for benefits conferred upon R.H. Moore; and
2. expectation of payment is not an issue or element of a claim and/or defense for recoupment and offset as a matter of law.

STATEMENT OF THE CASE

This case arises out of a public works project for the Dorchester County Water and Sewer Department for which Appellant Underground Solutions, Inc. (“Underground Solutions”) was the supplier of a “20 inch DR 21, [fusible] PVC pipe” (the “FPVC Pipe”) used on a portion of the project. A section of the FPVC Pipe failed to pass a pressure test, and it was thereafter determined that the FPVC Pipe had cracked, the cause of which has never been identified and remains unknown.

As a result of the pipe failure, Respondent R.H. Moore Company, Inc. (“R.H. Moore”), which served as the general contractor on the project, initiated an action against Underground Solutions in the Dorchester County Court of Common Pleas on August 21, 2012 [R.pp. 10-18; Complaint.]¹ Thereafter, R.H. Moore filed a Third Amended Complaint on October 17, 2014, asserting five causes of action against Underground Solutions: (1) breach of contract; (2) strict liability; (3) breach of the implied warranty of merchantability under S.C. CODE ANN. § 36-2-314; (4) breach of the implied warranty of fitness for a particular purpose under S.C. CODE ANN. § 36-2-315; and (5) breach of express warranty. [R.pp 6-9, 12; Third Am. Compl., ¶¶ 19-20, 24-45, 61-64.]

On October 31, 2014, Underground Solutions filed its Answer and Counterclaim to the Third Amended Complaint, denying the material allegations of the complaint and asserting counterclaims for unjust enrichment and recoupment against R.H. Moore for the value of replacement pipe and investigation and repair services provided by Underground Solutions to R.H. Moore. [R.pp. 49-56; Answer and Counterclaim.] R.H. Moore

¹ R.H. Moore also brought suit against Defendants Knight’s Precast, Inc.; Tobias & West, LLC; Eric W. Tobias, P.E.; Dorchester County Water and Sewer Department; B.P. Barber and Associates, Inc. n/k/a URS Corporation; and Utility Services Authority, LLC. These defendants are not involved in this appeal.

replied to the counterclaims on November 13, 2014, denying responsibility for the value of the replacement pipe and services provided to it by Underground Solutions. [R.pp. 57-60; Reply.]

R.H. Moore filed a motion for summary judgment on its claims against Underground Solutions on March 20, 2015. [R.pp. 61-62; Motion.] Underground Solutions also moved for summary judgment on the claims asserted against it on March 23, 2015. [R.p. 63; Motion.] Underground Solutions further filed a memorandum in support of its motion for summary judgment on April 16, 2015 arguing, in part, that it was entitled to summary judgment on all claims asserted against it because R.H. Moore failed to establish the existence of a design or manufacturing defect. [R.pp. 64-72; Memorandum.]

A hearing on the parties' motions for summary judgment was held before the Honorable Diane S. Goodstein on April 17, 2015. [R.pp. 77-148; Hearing Tr.] On October 1, 2015, the Trial Court issued its order on the parties' motion for summary judgment. [R.pp. 1-9; Order.] The Trial Court denied both R.H. Moore's and Underground Solutions' motions for summary judgment on R.H. Moore's claims for breach of contract and breach of warranties. [R.pp. 5-6, 8; Id. at pp. 5-6, 8.] The Trial Court granted Underground Solutions' motion for summary judgment on R.H. Moore's strict liability claims and dismissed such claims. [R.pp. 7-8; Id. at pp. 7-8.] Finally, the Trial Court granted R.H. Moore's motion for summary judgment as to Underground Solutions' counterclaims for unjust enrichment and recoupment, dismissing the entirety of Underground Solutions' counterclaims. [R.pp. 6-8; Id. at pp. 6-8.]

Underground Solutions timely filed and served its Notice of Appeal with this Court on October 21, 2015.

STATEMENT OF FACTS

This case arises out of a public works project entitled “The Waste Water System Improvements of Dorchester County Water and Sewer Department, for the pump station 67 upgrade and a new 20 inch force main” (the “Project”). [R.p. 3; Third Am. Compl., ¶ 10.] Dorchester County Water and Sewer Department, the owner of the Project, contracted with R.H. Moore to serve as the general contractor for the construction of the pump station 67 upgrade and the installation of the new 20 inch force main. [R.p. 4; Id. at ¶ 12.] A portion of the Project required the drilling of what is known as a fusible PVC pipe under the ground and beneath the Ashley River. [R.p. 2; Order, p. 2.]

On June 17, 2011, R.H. Moore contracted with Underground Solutions for the purchase of a “20 inch DR 21, [fusible] PVC pipe” (the “FPVC Pipe”) to be used on a portion of the Project. [R.p. 4; Third Am. Compl., ¶ 13.] R.H. Moore contracted with Defendant Utility Services Authority, LLC (“Utility Services”) for the installation of the FPVC Pipe. [R.p. 4; Id. at ¶ 14.]

Underground Solutions shipped the FPVC Pipe to the Project site where R.H. Moore was responsible for unloading and storing the FPVC Pipe on-site to protect it from damage until the pipe was ready to be fused and installed. [R.p. 232, ll. 1-18; Deposition of Steve Thornton, p. 28, ll. 1 – 18.] The pipe was installed by Utility Services using the horizontal directional drilling (HDD) method. [R.pp. 605-618; Affidavit of Henry Moore, Ex. C.] This is accomplished by drilling a hole in the ground of sufficient diameter to allow the pipe section to be pulled through the hole. [R.pp. 40, ll. 10-13; 81, l.

13 – 82, l. 5; Deposition of Gary Shepherd, p. 40, ll. 10-13; Hearing Tr. pp. 5, l. 13 – 6, l. 5.] The total length of pipe installed was over 6000 feet. [R.p. 158, ll. 11-17; Deposition of Dr. Gene Palermo, p. 10, ll. 11-17.] Some of the pipe was installed in the conventional trench method and some by the HDD method. All of the pipe was subjected to the same pressure tests.

Subsequent to the installation of a 1900 foot HDD section of the FPVC Pipe, the FPVC Pipe was pressure tested; however, that section failed to pass the pressure test. [R.p. 155, ll. 6-15; Palermo Dep., p. 7, ll. 6-15.] Thereafter, it was determined that the FPVC Pipe had cracked, the cause of which has not been identified and remains unknown. [R.pp. 160, l. 15 – 161, l. 2; 82, ll. 20-22; 87, ll. 22-25; Id. at pp. 12, l. 15 – 13, l. 2; Hearing Tr. pp. 6, ll. 20-22; 11, ll. 22-25.] Likewise, the initiation point of the crack also remains unknown. [R.pp. 161, ll. 8-11; 87, ll. 19-20; Palermo Dep., p. 13, ll. 8-11; Hearing Tr. p. 11, ll. 19-20.] The cause of the failed pressure test has also never been determined. [R.pp. 163, l. 6 – 164, l. 12; Palermo Dep., pp. 15, l. 6 – 16, l. 12.] Other than another 300 foot section of HDD pipe that failed because of bullet holes in the pipe, no other sections of pipe failed the pressure tests.

Importantly, with respect to the failure of the FPVC Pipe, R.H. Moore's only FPVC Pipe expert, Dr. Eugene Palermo, testified that he did not have an opinion as to the cause of ultimate failure of the pipe. [R.p. 164, ll. 7-12; Id. at p. 16, ll. 7-12.] Instead, Dr. Palermo could only speculate as to some of the numerous potential causes of the FPVC Pipe failure, including damage to the pipe prior to installation or a gouge or damage that occurred during installation. [R.pp. 163, ll. 6-22; 168, ll. 6-16; Id. at pp. 15, ll. 6-22; 20, ll. 6-16.] Specifically, Dr. Palermo testified:

Question: Are you rendering an opinion as to whether any one of those possibilities did exist, or is more likely to exist, or any other possibility did exist or slightly exist, or are you just not rendering an opinion on that other than there are many—many possible reasons that the pipe failed?

Answer: Okay. That's a long question. I think the answer to that—to all those series of questions would be that my opinion is that the pipeline itself did not pass the leak pressure test. It failed to meet the requirements of the leak pressure test as required by the standards. **Why the pipe failed, I enumerated a variety of reasons. It could be any one of those. I don't have an opinion as to which one of those was the cause, the actual cause of the failure.**

[R.pp. 163, l. 23 – 164, l. 12; Id. at pp. 15, l. 23 – 16, l. 12 (emphasis added).]

Additionally, when asked whether there was evidence of a design or manufacturing defect in the FPVC Pipe, Dr. Palermo testified:

Question: Okay. You started an answer by saying that you've got no evidence the pipe itself was improperly manufactured. Is that still your testimony?

Answer: I have seen **no concrete evidence** definitively saying there is a **defect in this pipe or it was improperly manufactured.**

[R.p. 166, ll. 5-10; Id. at p. 18, ll. 5–10 (emphasis added).]

Due to the location of the FPVC Pipe, it was not feasible to remove the pipe and attempt to identify the initiation point of the crack, determine the cause of the pipe failure, or repair the FPVC pipe. [R.pp. 164, l. 13 – 165, l. 13; Id. at pp. 16, l. 13 – 17, l. 13.] As a result, the parties agreed to install new, replacement pipe which Underground Solutions supplied and fused solely as a settlement offer. [R.pp. 167, ll. 3-11; 23; 50, 55; 102, ll. 5-15; 141, ll. 9-12; Palermo Dep., p. 19, ll. 3-11; Third Am. Compl., ¶ 19; Answer & Counterclaim, ¶¶ 10, 54; Hearing Tr. pp. 26, ll. 5-15; 65, ll. 9-12.] This included efforts

undertaken and costs incurred by Underground Solutions to investigate the cause of, repair, and replace the 1900 foot section of pipe at issue, as well as costs incurred by Underground Solutions in repairing the separate 300 foot section of pipe that failed due to damage caused by a bullet and not by any fault of Underground Solutions. [R.pp. 50, 55; 158, ll. 22-25; 284, ll. 11-22; 102, l. 20 – 103, l. 3; Answer & Counterclaim, ¶¶ 10, 54; Palermo Dep., p. 10, ll. 22-25; Thornton Dep. p. 80, ll. 11-22; Hearing Tr. pp. 26, l. 20 – 27, l. 3.] Despite Underground Solutions' attempt to resolve the pipe section failures through the provision of replacement pipe and repair services, R.H. Moore nevertheless brought this lawsuit seeking damages against Underground Solutions as a result of the pipe section failures.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is only proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Willis v. Wu, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-South Mgmt., Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). If triable issues exist, those issues must go to the jury. Mulherin-Howell v. Cobb, 362 S.C. 588, 591, 608 S.E.2d 587, 595 (Ct. App. 2005).

ARGUMENT

The Trial Court erred in granting summary judgment to Respondent R.H. Moore Company, Inc. on Appellant Underground Solutions, Inc.'s counterclaims and/or defenses for unjust enrichment and recoupment/offset where:

- 1. the evidence in the record and the inferences arising therefrom raise a genuine issue of material fact as to whether Underground Solutions had an expectation of payment for benefits conferred upon R.H. Moore; and**
- 2. expectation of payment is not an issue or element of a claim and/or defense for recoupment and offset as a matter of law.**

By way of counterclaim, Underground Solutions brought a claim based on the theories of quantum meruit and unjust enrichment against R.H. Moore to recover the value of the replacement pipe and services it provided in investigating and repairing the pipe failures that were not the responsibility of Underground Solutions. [R.pp. 55-56; Answer and Counterclaim, ¶¶ 54-57.] Underground Solutions also asserted an affirmative defense/claim for recoupment/offset of all costs it incurred in repairing and replacing the pipe section failures against any damages for which Underground Solutions may be found liable.² [R.p. 56; Id. at ¶ 59.]

“Unjust enrichment is an equitable doctrine, which permits recovery of the amount that the defendant has been unjustly enriched at the expense of the plaintiff.” Regions Bank v. Wingard Props., Inc., 394 S.C. 241, 256-57, 715 S.E.2d 348, 356 (Ct. App. 2011). One seeking to recover for unjust enrichment must show: “(1) a benefit conferred by the plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value.” Myrtle Beach Hosp.,

² In its Order, the Trial Court observed that a claim for recoupment is in the nature of an affirmative defense. Tuloka Affiliates, Inc. v. Moore, 275 S.C. 199, 268 S.E.2d 293 (1980):

Inc. v. City of Myrtle Beach, 341 S.C. 1, 8–9, 532 S.E.2d 868, 872 (2000); see also Chase Home Fin., LLC v. Risher, 405 S.C. 202, 212, 746 S.E.2d 471, 476–77 (Ct. App. 2013); JASDIP Props. SC, LLC v. Estate of Richardson, 395 S.C. 633, 640, 720 S.E.2d 485, 489 (Ct. App. 2011) (“To recover on a theory of restitution, the plaintiff must show (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value.”).

“Recoupment . . . is the right of the defendant to cut down or diminish the claim of the plaintiff in consequence of his failure to comply with some provision of the contract sought to be enforced, or because he has violated some duty imposed upon him by law in the making or performance of that contract.” Tuloka Affiliates, Inc. v. Moore, 275 S.C. 199, 202, 268 S.E.2d 293, 295 (1980). A defendant is also entitled to a set-off of any amounts previously paid toward a plaintiff’s damages. Russell v. Ashe Brick Co., 267 S.C. 640, 230 S.E.2d 814 (1976).

The Trial Court struck Underground Solutions’ counterclaim for unjust enrichment and defense of recoupment, ruling that R.H. Moore was entitled to summary judgment on these claims. [R.p. 7; Order, p. 7.] The Trial Court based its ruling on the erroneous factual finding that the only evidence was that Underground Solutions sent the replacement pipe and performed related repair services for its sole benefit and had no expectation of being paid by R.H. Moore. [R.pp. 4, 7; Id. at pp. 4(18), 7.]

In granting R.H. Moore’s motion for summary judgment on Underground Solutions’ counterclaims and/or defenses for unjust enrichment and recoupment, the Trial Court relied on the deposition testimony of Gary Shepherd, a regional sales manager for

Underground Solutions. [R.pp. 7; 441, ll. 14-18; Order, p. 7; Shepherd Dep., p. 6, ll. 14-18.] Shepherd testified that while he was not involved in the discussions as to why Underground Solutions sent replacement pipe, he believed that Underground Solutions made a tactical decision to assist in the repair of the Project by sending replacement pipe to maintain relations with the entities involved in the Project because the entities involved, including R.H. Moore, provided a “great marketplace” and were “all good customers.” [R.pp. 492, l. 14 – 493, l. 3; Shepherd Dep., pp. 57, l. 14 – 58, l. 3.] Shepherd further testified that the decision of Underground Solutions to send replacement pipe with repair services on its own volition was made based on the circumstances “at the time” of the pipe failure and before R.H. Moore commenced litigation against Underground Solutions. [R.pp. 493, l. 4 – 495, l. 11; Id. at pp. 58, l. 4 – 60, l. 11.]

The inference arising from Shepherd’s testimony is that Underground Solutions was hoping to resolve the matter at the time of the Project failure. Therefore, before any litigation was filed by R.H. Moore, Underground Solutions did have an intention to settle the matter by sending the replacement pipe and performing related services. R.H. Moore rejected this offer of settlement by filing the lawsuit against Underground Solutions. [R.p. 141, ll. 9-12; Hearing Tr. p. 65, ll. 9-12.]

Viewing the evidence and the inferences arising therefrom in the light most favorable to Underground Solutions, a jury could determine that while Underground Solutions had the initial intention “at the time” to send the replacement pipe and perform repair services without expectation of payment to maintain good relations with the Project entities, once R.H. Moore nevertheless sued Underground Solutions for damages regardless of the efforts made by Underground Solutions, Underground Solutions was

entitled to recover the costs it had incurred in attempting to correct the Project failure without litigation. [R.pp. 492, l. 14 – 495, l. 11; Shepherd Dep., pp. 57, l. 14 – 60, l. 11.] The conditions under which Underground Solutions made its initial decision to send replacement pipe and perform repair services without expectation of payment changed once R.H. Moore filed its lawsuit.

To deny Underground Solutions the right to assert its counterclaim for unjust enrichment and its defense of recoupment/offset at trial, especially if a jury ultimately determines that Underground Solutions is not liable to R.H. Moore and was not at fault for the pipe failures due to the lack of any evidence of a design or manufacturing defect, is to allow R.H. Moore to inequitably retain the benefit of goods and services provided by Underground Solutions without paying their value even though Underground Solutions may be faultless. See Myrtle Beach Hosp., Inc., 341 S.C. at 8–9, 532 S.E.2d at 872 (unjust enrichment prevents the “retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value.”); see also JASDIP Props. SC, LLC, 395 S.C. at 641-42, 720 S.E.2d at 489 (holding where jury had determined that neither buyer nor seller had breached purchase agreement, buyer was entitled to the money paid towards the purchase price as well as half of the earnest money under the theory of restitution where: (1) buyer paid seller \$205,000 towards the purchase price and the sale did not go through despite the fact that neither party breached; (2) seller kept the \$205,000 although he also retained the property; and (3) seller keeping the \$205,000 is inequitable because the Seller still has the property and the jury found neither party breached).

Moreover, there is conflicting evidence in the record as to whether Underground Solutions expected payment and as to whether R.H. Moore knew Underground Solutions was expecting payment which the Trial Court failed to recognize in its order granting summary judgment to R.H. Moore. Shepherd testified that after the Project failure, Underground Solutions contacted different contractors for pricing on repair and replacement services “to determine what might be possible for pipe extraction, for installing new pipe, and for existing bore or new bore installation.” Underground Solutions shared these quotes with “R.H. Moore to determine a path forward . . . whether [to] try the pipe extraction, whether to install the new pipe, or just go through a new bore and a new installation.” [R.p. 479, ll. 4-23; Shepherd Dep., p. 44, ll. 4-23.] Underground Solutions’ transmission of quotes to R.H. Moore is evidence that R.H. Moore would be expected to incur some costs of the repair work.

Bradley King, the manager of construction services for Underground Solutions, testified that estimates for reinstallation were for R.H. Moore and that Underground Solutions had no intention to pay for reinstallation or to pay for the re-drill or removal of the pipe. [R.pp. 504, ll. 1-13; 518, l. 14 – 519, l. 17; Deposition of Bradley S. King, pp. 7, ll. 1 – 13; 21, l. 14 – 22, l. 17.]

Steve Thornton, project manager for R.H. Moore, concurred that he was not expressly told by anyone at Underground Solutions that it was going to pay for all of the repair and replacement work with respect to the pipe failures:

Q: Now, did Mr. Davis tell you that Underground Solutions was going to assume the costs for all of this work?

A: He didn’t say I was going to pay for it. He said they would replace the drill.

Q: Well, he didn't specifically say Underground Solutions is accepting responsibility and we are going to pay for all of this, did he?

A: He didn't put it in those words.

Q: You took his statement that we will replace the drill - - Is that what you're basing your statement on that they agreed to replace the drill and pay for it?

A: Yes, sir.

[R.pp. 210, ll. 12-14; 258, l. 23 – 259, l. 11; Thornton Dep., pp. 6, ll. 12-14; 54, l. 23 – 55, l. 11.]

The above testimony raises an issue of fact for the jury to determine whether Underground Solutions intended to provide replacement pipe and repair services without any expectation of any payment from R.H. Moore. Thornton's testimony is evidence that R.H. Moore was never informed by Underground Solutions that it would provide repair services to R.H. Moore at no cost.

Thornton also agreed that Underground Solutions was not responsible for the failure of a 300 foot section of pipe which was caused by a bullet hole in the pipe. [R.p. 284, ll. 11-19; Id. at p. 80, ll. 11-19.] He agreed that Underground Solutions paid \$33,000.00 for the repair of that particular portion of the pipe. [R.p. 285, ll. 19-23; Id. at p. 81, ll. 19-23.] He further agreed that R.H. Moore should "probably pay them [Underground Solutions]" for the costs Underground Solutions incurred in fixing that portion of the pipe and that if R.H. Moore recovered damages for the failure of the 1900 foot section of pipe that failed, Underground Solutions would be entitled to an offset for the amount it paid for the 300 foot section of pipe. [R.pp 285, l. 24 – 287, l. 5; Id. at pp. 81, l. 24 – 83, l. 5.]

At the very least, the Trial Court erred in granting summary judgment to R.H. Moore on Underground Solutions' counterclaim for unjust enrichment and defense of recoupment/offset with respect to the 300 foot section of pipe damaged by a bullet where R.H. Moore acknowledges that Underground Solutions was not at fault for that particular pipe section failure and is entitled to an offset for the costs it incurred in repairing that section of pipe.

Finally, the Trial Court erred as a matter of law in granting summary judgment to R.H. Moore on Underground Solutions' affirmative defense/claim for recoupment and offset. Whether Underground Solutions expected payment or not for its provision of replacement pipe and repair services is not an issue or element of a claim or defense of recoupment and offset. If a jury finds Underground Solutions liable for damages relating to the replacement of the 1900 foot section of pipe, Underground Solutions is entitled to either recoup or offset from any award of damages the amounts it already paid in repairing and replacing the damaged pipes. Prohibiting Underground Solutions from either recouping or offsetting costs that it has already paid while allowing R.H. Moore to recover these same damages is unjust and erroneous under the law. See Russell v. Ashe Brick Co., 267 S.C. 640, 230 S.E.2d 814 (1976) (allowing defendant to offset and credit \$5,500.00 previously paid to the injured party from the \$7,000.00 judgment).

The evidence in the record and the inferences arising in and from that evidence as to whether Underground Solutions gratuitously or non- gratuitously repaired and replaced the 300 foot and 1900 foot sections of pipe raise a genuine issue of material fact and as such, the Trial Court erred in granting summary judgment to R.H. Moore on Underground Solutions' counterclaims/defenses of unjust enrichment and recoupment

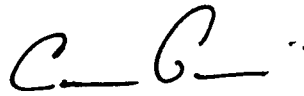
based on the erroneous factual finding that Underground Solutions had no expectation of payment.

At a minimum, the Trial Court erred in granting summary judgment to R.H. Moore on Underground Solutions' counterclaims/defenses where R.H. Moore admits Underground Solutions was not at fault for the 300 foot section of pipe that failed and is entitled to the recovery of costs it incurred in repairing the 300 foot section of pipe. Whether Underground Solutions had an expectation of payment also should not be taken into consideration for the defense of recoupment/offset. Therefore, Underground Solutions requests this Court to reverse the Trial Court's grant of summary judgment to R.H. Moore on its counterclaims and/or defenses for unjust enrichment and recoupment/offset.

CONCLUSION

For the reasons set forth herein, Appellant Underground Solutions, Inc. respectfully requests this Court to reverse the Trial Court's grant of summary judgment to Respondent R.H. Moore Company, Inc. on Underground Solutions' counterclaims and/or defenses for unjust enrichment and recoupment/offset and order that Underground Solutions be entitled to present such claims and/or defenses to a jury at trial.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

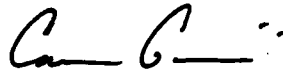
The undersigned hereby certifies that this Final Brief of Appellant complies with
Rule 211(b), SCACR.

Respectfully submitted,

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MAY 27 2016

SC Court of Appeals



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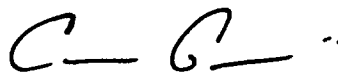
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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellant, Underground Solutions, Inc., do hereby certify that I have this date served two copies of the foregoing Final Appellant's Brief, dated May 27, 2016, by personally depositing copies of the same in a United States Postal Service mailbox, postage prepaid, addressed to the parties indicated below:

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Date: May 27, 2016.