RECEIVED
SEP 28 2012
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY
Joseph M. Strickland, Master in Equity

---

Case Tracking #: 2012-210746
Civil Docket No. 2009-CP-40-64

---

F.M. Haynie d/b/a Docwild's ................................................................Appellant

v.

Paul E. Cash and Carole S. Cash ..........................................................Respondent

---

# INITIAL BRIEF OF APPELLANT

---

F. M. Haynie
1469 Florawood Drive
Columbia, South Carolina 29204
(803) 238-0757

**APPELLANT**
*Pro Se*

## Table of Contents

TABLE OF AUTHORITIES ........ 3

STATEMENT OF ISSUES ON APPEAL ........ 5

STATEMENT OF THE CASE ........ 5

ARGUMENTS ........ 13

1. **IN REFORMING A WRITTEN INSTRUMENT, AN EQUITY COURT IN NO WAY ALTERS THE AGREEMENT OF THE PARTIES. INSTEAD, THE REFORMATION ONLY CORRECTS THE DEFECTIVE WRITTEN INSTRUMENT SO THAT IT ACCURATELY REFLECTS THE TRUE TERMS OF THE AGREEMENT ACTUALLY REACHED. HAYNIE AND THE CASHES HAD A PLAIN VANILLA COST-PLUS CONTRACT. THE COURT MAY NOT RESTATE THE CONTRACT AS A SUM CERTAIN.** ........ 13

2. **THE REMEDIAL PRINCIPLE OF RESTITUTION MIGHT BE EXPRESSED, AS "A PARTY WHO UNJUSTIFIABLY ENRICHES HIMSELF AT THE EXPENSE OF ANOTHER OWES A DUTY TO PAY A SUM OF MONEY THAT WILL DISGORGE THE VALUE OF THE ENRICHMENT." HAYNIE REQUESTED A SOLUTION BASED ON THE EQUITABLE THEORY OF QUANTUM MERUIT. THE COURT ERRED BY NOT FINDING SUCH A REMEDY FOR THE UNJUST ENRICHMENT OF CASH.** ........ 23

3. **THE COURT PREPARES THE FINDINGS OF FACT AND CONCLUSION OF LAW. BY ENDORSING CASH'S PROPOSED ORDER VERBATIM, THE TRIAL JUDGE ERRED IN SUBCONTRACTING FINDINGS OF FACT AND ADJUDICATION TO CASH AND, IN SO DOING, VALIDATED EVIDENCE THAT PROPERLY SHOULD BE EXCLUDED** ........ 27

4. **DHEC REGULATION REQUIRES THE PROPERTY OWNER TO PROCURE A PERMIT FOR WASTE WATER DISPOSAL. CASH INSTALED A WASTE LIFT-STATION 2 YEARS AFTER THE PROJECT ENDED. THE TRIAL COURT ERRED IN GRANTING JUDGMENT IN FAVOR OF CASH FOR WORK THAT WAS NEVER CONTRACTED FOR WITH HAYNIE.** ........ 31

CONCLUSION ........ 33

MISCELANEOUS ........ 34

## TABLE OF AUTHORITIES

### CASES

*Adams v. B & D, INC.,*
*377 SE 2d 315 419- SC: Supreme Court 1989)* ..... 10
*Coleman v. Home Depot, Inc.,*
*306 F.3d 1333, 1343 (3d Cir. 2002)* ..... 17
*Columbia Wholesale Co., Inc. v. Scudder May N.V.,*
*312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994)* ..... 14
*Columbia Wholesale Co., Inc.,*
*312 S.C. at 261, 440 S.E.2d at 130* ..... 14
*Denman v. City of Columbia,*
*387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010)* ..... 14
*Earthscapes Unlimited, Inc. v. Ulbrich,*
*703 SE 2d 221 - SC: Supreme Court 2010* ..... 13, 14
*Ecclesiastes Prod. Ministries v. OUTPARCEL,*
*649 SE 2d 494 - SC: Court of Appeals 2007* ..... 9
*Ellie, Inc. v. Miccichi,*
*594 SE 2d 485 - SC: Court of Appeals 2004* ..... 9
*ERIE INSURANCE CO v. WINTER CONSTRUCTION COMPANY,*
*No. 4841, June 15, 2011 - SC Court of Appeals* ..... 12
*Hawkins v. Greenwood Development Corp.,*
*493 SE 2d 875 - SC: Court of Appeals 1997* ..... 10
*Myrtle Beach Hosp.,* ***Inc.*** *v.* ***City*** *of Myrtle Beach,*
*341 S.C. 1, 8, 532 S.E.2d 868, 872 (2000)* ..... 15
*Old Chief v. United States,*
*519 US 172 -Supreme Court 1997* ..... 10
*Parr v. Parr,*
*231 SE 2d 695 - SC: Supreme Court 1977* ..... 11
*Providence Square,*
507 So.2d at 1369-1371 ..... 12
*QHG of Lake City, Inc. v. McCutcheon,*
*600 SE 2d 105 - SC: Court of Appeals 2004* ..... 17
*S. Dev. Land & Golf Co., v. S.C. Pub. Serv. Auth.,*
*311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993)* ..... 13
*TW Morton Builders v. Von Buedingen,*
*450 SE 2d 87 - SC: Court of Appeals 1994* ..... 8, 9
*United States v. Algernon Blair, Incorporated,*
*479 F. 2d 638 - Court of Appeals, 4th Circuit 1973 (641)* ..... 14
*United States v. El Paso Natural Gas Co.,*
*376 US 651 - Supreme Court 1964* ..... 18

## STATUTES

SC Code Ann §29-5-10
SC Code Ann §40-11-20
SC Code Ann §40-11-30

## OTHER AUTHORITIES

James F. Flanagan, South Carolina Civil Procedure, 59 (2d ed. 1996)
Black's Law Dictionary (8th ed. 2004)
RESTATEMENT (SECOND) OF CONTRACTS
Graham, Handbook of Federal Evidence, § 901.4 (2nd ed. 1986)

## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN RESTATEMENT OF THE CONTRACT AS A SUM CERTAIN CONTRACT?

2. SHOULD THE TRIAL COURT HAVE FOUND THAT APPELLANT WAS ENTITLED TO JUDGEMENT AGAINST RESPONDENT UNDER A THEORY OF *QUANTUM MERUIT*?

3. DID THE TRIAL COURT ADJUDICATE THE ISSUES AT TRIAL?

4. DID THE TRIAL COURT ERR IN GRANTING JUDGMENT IN FAVOR OF RESPONDENT FOR WORK THAT WAS NEVER CONTRACTED FOR WITH APPELLANT?

## STATEMENT OF THE CASE

On March 6, 2007, Paul E. Cash ("Cash") made the initial payment consummating a cost plus agreement with FM Haynie d/b/a DocWild's ("Haynie"), his friend, to build a structure that's design was a moving target every step of the way. Twenty months later, on November 12, 2008 at 3pm, the friendship ended when Cash telephoned and abruptly announced he wasn't paying the bill, 91 days after his last payment.

The case was commenced January 6, 2009 by service of a Summons and Complaint by Haynie on Paul E. Cash and Carole S. Cash (herein collectively "Cash") seeking foreclosure of a Mechanic's Lien filed November 18, 2008, alleging breach of contract and fraudulent intent and, in the alternative, an equitable claim for payment of services rendered under a theory of *quantum meruit*. Cash's answer filed February 4, 2009 included a general denial and counterclaimed fraudulent and deceptive conduct, fraudulent filing of a Mechanics Lien, violation of Unfair Trade Practice Act and trespass. On April 8, 2010 Cash requested a trial delay in order to pursue mediation before Jim

Barber. Haynie was never advised of this, has no knowledge of the matter and there is nothing further in the record. On May 9, 2010 the case was referred to the Master in Equity. On June 9, 2010 Cash amended their counterclaim to include recovery of costs to install a sewage lift station. The case was tried before the Master in Equity on September 19, 2011. On March 5, 2012, the Court adopted Cash's proposed order in which it found for Cash dismissed all claims of Haynie and ordered Haynie to pay for the Lift Station installed April 8, 2011 and attorney fees. Truslow and Truslow (Truslow) notified Haynie by letter March 9, 2012 (received 3/15/12) of the order and their intent to abandon the case. Haynie (now Pro Se) filed a Rule 59(e) SCRCP Motion for Reconsideration on March 26, 2012 and gave notice of intent to appeal April 4, 2012. April 17, 2012 Cash filed a response to the motion arguing the time had tolled and the court was divested of jurisdiction by the appeal. On April 30, 2012, by letter to the Master, Haynie requested clarification of the status of the case. July 13, 2012 the lower Court issued a Summons and Order of Appointment for a conference scheduled for August 9, 2012. August 6, 2012 Haynie filed an Addendum to the Motion for Reconsideration in order to proffer date stamps and non-notated copies of evidence in the record (duplicates). August 8, 2012 the Appellate Court remanded to the Master. August 9, 2012, the Master in Equity entered evidentiary items into the record and declared the Appellate Court had divested it of jurisdiction.

## STATEMENT OF FACTS

Up until November 2008 Cash and Haynie were friends. They played team tennis together regularly for at least 3 years prior to beginning the project. The "ManCave" Haynie was building for Cash was a constant subject of discussion at tennis matches. Haynie had unfettered access to Cash's yard, equipment, and shed for the prior two years. During the first year they met or spoke near daily [Rp.29 line 4]. Cash was given the benefit of doubt on everything, and Haynie worked, probably in excess of 200 hours, for free on what ever he required. Haynie transferred his mother's $720,000 investment account to Cash's supervision at Merrill Lynch in November 2007 [Rp.431 line 9] so that he could enhance/cement his job at Merrill and possibly make his year-end bonus [Rp.125 line 11] and, theoretically, facilitating payment for the work done. Haynie took his tractor and crew over to Cash's church and worked all day one Saturday without pay as a donation [Rp.431 line 1]. With his equipment, he also later graded the AC Flora athletic complex parking lot and drive twice so Cash could score points with his peers (gratis).

Haynie and Cash began planning for the construction of a garage/shed in December 2006. At midpoint in the planning stage, early February, 2007, a 390sf version of the plan [Rp.102-111; PEx.2] was submitted to Forest Acres for review. The permit was applied for based on a 388sf "shop/storage/doghouse" [JointExhibit 1] for $22,000 which was derived from a Cost Book value of a shell (no interior) [P.Ex.6]. During the permitting process a line estimate was worked up, January 30, 2007 [Rp.193 line 18], on the 390sf version for $38,265 including

modest interior finish and a bathroom but no loft or vaulted ceiling (note ceiling joists included & low roof pitch) [D.Ex.20]. In short order via multiple plan iterations, the project morphed into a cabana or, as the defendant called it, a ManCave [Rp.15 line 13]. When the matter of style had somewhat settled and since the design was a moving target [Rp.195 line 15], a simple inclusive half page cost-plus contract between friends was drawn [Rp.191-3; P.Ex.5]:

> *Pursuant to our discussions, we will construct the subject addition (outbuilding) to your home at 1501 Greenhill generally according to the sketch we previously drew on a cost plus 25% basis. My direct labor will be billed at $30 per hour and employees at $18 per hour. All material discounts will pass through to your benefit. Heavy equipment (Bobcat or trackhoe) will be billed based on actual use at $30/hr.*
>
> *We guesstimate the job to take 8 weeks and cost roughly $35,000 greatly contingent upon finish choices as discussed. The actual cost normally is most affected by window, siding & interior detail selections.*
>
> *Initially, we require a $6,000 deposit subsequently we will make bimonthly draws, typically in near $5-10,000 amounts congruent with the construction progress. You are welcome to look at the job books at any time; they are rarely more than a day or two behind the actual cost. Please make checks payable to FM Haynie.*

At the time the agreement was drawn, March 3, 2012, Haynie was already at work. The $35,000 ***guesstimate*** reflected removal of the bathroom (likely due to realization that a costly lift station was necessary). Acceptance was signified by payment of the $6,000 deposit. As the ink was drying, however, the project continued to evolve, eventually nearly doubling in size and including a bathroom, vaulted ceilings, a loft office, provisions for a wet bar and entertainment center and a boy-cave for the Cash's young son [Rp.278-290]. Cash testified the ManCave grew beyond his desire as a result of a Haynie forming error and Haynie chose to absorb the cost [Rp.363 line 21]. This was simple foolishness. From its inception as a bare-bone 380sf shed similar to previous bids of others; it evolved into a similar sized cottage, upon which a building permit was

procured in February, 2007. By the time the agreement was drafted, the footprint was up to 480sf and the main roof was vaulted allowing for a storage loft. Haynie provided no more estimates after that provided in January because it was understood it would be at least $100/sf and largely dependent on the amenities provided. The timeline with evidence is more explicitly presented in the plaintiff's Rule 59(e) SCRCP Motion for Reconsideration Brief.

The fact that the project constantly changed was not a problem because Haynie's function was to build whatever Cash wanted, be it a tool shed or a private sanctuary, and he did [Rp.210]. On March 22, 2007 the loft office was added (the day the slab was formed) [Rp.108 line 9 p.278]. Two days before the slab was poured, Cash added a commode to the wash room [Rp.111 line 6]. A very expensive underground power conversion was done on the main house that involved tunneling under existing concrete. As well, the ManCave was converted to underground service [Rp.113 line 5-p.114]. By the time the third billing statement was presented, June 10, 2007, the ManCave was 55% completed and the cost exceeded $51,600.

There were no other side contracts or agreements regarding supplementary work or projects as Cash testified [Rp.212 line17-p.215] and no evidence of such was proffered at trial. That fact is made crystal clear in the billing statements. There is no need to read between the lines, all work was fully documented, extraneous notation was unnecessary because Haynie was doing whatever Cash requested and Cash had full access to the books at all times as specified in the only contract of record.

There were 6 billing statements presented to Cash, in person and before witnesses that were **formatted specifically to comply with the contract** [Rp.299 line 10]. Reference is made to attachments A, B, D, F & G to the Rule 59 SCRCP Motion to Reconsider Brief pages 6-19:

| Date | Material&Sub | Labor&Equip | +25%PT&OH | TotalDue | PmtReq |
|---|---|---|---|---|---|
| 04/30/07 | 8,774 | 6,765 | 3,885 | **19,424** | 8,424 |
| 06/10/07 | 27,952 | 13,305 | 10,314 | **51,571** | 27,017 |
| 09/29/07 | unavailable/lost (*but witnessed*) | | | | |
| 04/04/08 | 35,824 | 16,748 | 13,143 | **65,715** | 23,215 |
| 11/06/08 | 38,418 | 17,178 | 13,899 | **69,495** | 18,995 |
| 11/12/08 | 38,418 | 22,899 | 21,461 | **76,646** | 26,146 |

All statements, except for the last 2, were submitted in person before witnesses with a detailed statement of material & subcontractor costs, a log of the hours labor charged, an accurate accounting of payments by Cash, and all associated receipts [Rp.133][Motion for Reconsideration Affidavit & Exhibits[1] ].

Cash adamantly insisted at trial the only statement he received was the last, included with the Mechanics Lien [Rp.403-4]. But it is simple implausible to think Haynie, a 40 year veteran contractor, the same contractor who managed the multi-million dollar Riverbanks Botanical Garden construction project, went 20 months without submitting a bill.

When the power was turned on in the ManCave in early September, 2007, Bill Schmidt[2] came in to work on the trim and finish. By September 29, 2007 the cost was

[1] The motion and attachments are a more concise easier read than the account contained herein.
[2] It is not known why neither counselor called for testimony from Schmidt (both gave notice he would be a witness). He has been diagnosed with Lung & Colon cancer. If and when Schmidt gets out

approaching $70,000, Cash was $35,000 in arrears and it was decided to apply the brakes [Rp.93 line 22], which Haynie did. Because Cash had begun abusing Haynie's short-term memory difficulty,[3] Sky Haynie and Schmidt were present at that meeting[Rp.31-32] From that time to Cash's August, 2008, payment the amount owed never dropped below $30,000, though two of the later statements show otherwise. This was because there was a spreadsheet formula error in Haynie's accounting software as explained in testimony and below [Rp.175-179 & p.229 line 8]. For financial reasons, obviously, work proceeded at a snail's pace [Rp.93.22 p.124 line 14-126] until the AC Flora prom party April 4, 2008, held at the ManCave. Haynie and crew helped with the party preparation, cleaned up, broke the equipment down and moved out the day before. They returned the following Monday to cut down a large, 15 ton, Hackberry tree, set the equipment back up and finish the project in earnest.

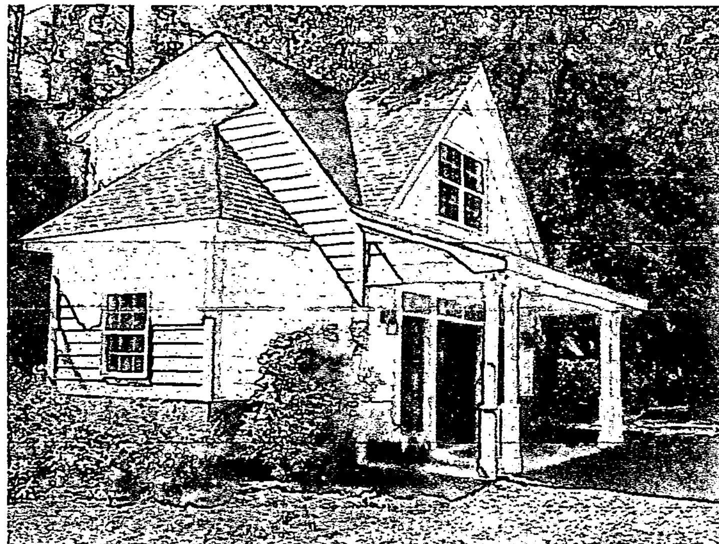
Though Haynie worked long and hard on the project for his friend, Haynie did not log his time on the job for 8 months (beginning mid-July, 2007 [Rp.178.24-180]). To be clear, Haynie did not behave as a typical general contractor, he personally physically built the ManCave: he dug the trenches; he poured the concrete; he framed the building; he did most of the plumbing; he installed the siding and the trim; he was physically involved with every aspect of the job. His 3 person crew, though exceptional labor, did not have the required expertise for the project.

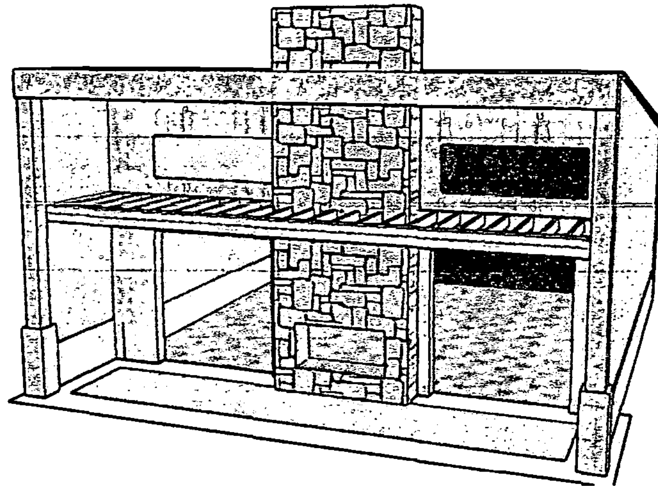
---

of the hospital and is able, he has agreed to provide an affidavit disputing virtually all of Cash's testimony.

[3] Haynie suffered a near fatal brain injury November, 2005 which, among other things, precipitated difficulty with short term memory. To compensate, Haynie began keeping extensive written journals and also began requiring daughter, Sky's, presence for important interactions [Rp.31.17] Truslow would not allow use of the journal at trial.

For 18 months Haynie worked at Cash's discretion ultimately producing a ManCave of his liking. Though his progress payments were grossly insufficient, Haynie continued because Cash was a friend, Cash never complained and he promised full payment would be forth coming. Cash bragged to their tennis team he had the coolest cave in town:





Original 'Shed' Proposed
(December 2006)

November 9, 2008, without warning, Cash notified Haynie that he had been on his property unauthorized for the previous 6 months and he was not paying for the work done. Cash then changed the locks on the doors. Cash likely thought the lien law tolled from the last payment because he timed his announcement exactly 91 days from his last check.

## ARGUMENTS

1. ***IN REFORMING A WRITTEN INSTRUMENT, AN EQUITY COURT IN NO WAY ALTERS THE AGREEMENT OF THE PARTIES. INSTEAD, THE REFORMATION ONLY CORRECTS THE DEFECTIVE WRITTEN INSTRUMENT SO THAT IT ACCURATELY REFLECTS THE TRUE TERMS OF THE AGREEMENT ACTUALLY REACHED. HAYNIE AND THE CASHES HAD A SIMPLE ALL INCLUSIVE COST-PLUS CONTRACT. THE COURT MAY NOT RESTATE THE CONTRACT AS A SUM CERTAIN.***

This case is a very similar to *TW Morton Builders v. Von Buedingen, 450 SE 2d 87 - SC: Court of Appeals 1994.* The contractor had a cost plus contract, the project was a moving target, the estimated maximum cost was dwarfed by the actual and the

owner doubled the size of the project as did Cash. There was even a significant framing change and an accounting error as in the instant case. "Furthermore, Morton personally testified he would never have entered into a fixed price contract for this project."(*Morton 89*) as did Haynie [Rp.103 line 19]. The appellate court affirmed the cost plus contract and affirmed the owner liable for exceeding the estimate and all related issues *(Morton 92).* "There is evidence the von Buedingens did not rely on the draw requests, and knew the project costs were escalating" *(Morton 93)* again, as in the instant case.

As previously noted, Haynie and Cash consummated a cost plus contract by Haynie's acceptance of Cash's payment of the $6000 deposit required on March 6, 2007. The existence of the contract is undisputed. The Order reformed the contract to a sum certain, not based on any words, deeds or other documents but rather solely on an amount preceded by the word "guesstimate" which does not add precision to a statement but rather describes something less than a calculated estimate (think ballpark, in the neighborhood of, or I don't have a clue!). The logic presented by the defendant is that one word rendered the entire agreement ambiguous. The Order then asserts, via reference to *Koontz v. Thomas, 511 S.E.2d 407 (SC Court of Appeals 1999), "parole evidence is admissible to ascertain the true meaning and intent of the parties"* To the contrary, every facet of that decision hinges on the basic parole evidence rule, as recited, "The parole evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or

explain the written instrument." Items 8 through 13 of the Order refers to parole evidence that predates the agreement (evidenced by the date they were created [Motion to Reconsider Addendum pp.5-12]).

The Order's Conclusions of Law are then enshrouded in case law taken out of context (in red is the omitted portions of the citations):

- In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. *Contracts should be liberally construed so as to give them effect and carry out the intention of the parties.* The parties' intention must, in the first instance, be derived from the language of the contract. *In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties.* To discover the intention of a contract, the court must first look to its language-if the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect. *The parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof. In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered (citations omitted) Ecclesiastes Prod. Ministries v. OUTPARCEL, 649 SE 2d 494 - SC: Court of Appeals 2007*
- A contract is ambiguous when the terms of the contract are inconsistent on their face, or are reasonably susceptible of more than one interpretation. *A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business. It is a question of law for the court whether the language of a contract is ambiguous. Once the court decides that the language is ambiguous, evidence may be admitted to show the intent of the parties. (citations omitted) Hawkins v. Greenwood Development Corp., 493 SE 2d 875 - SC: Court of Appeals 1997*

The Order further implies the contract was supplanted by novation. "A novation is a mutual agreement between all parties concerned for the discharge of a valid existing obligation by the substitution of a new valid obligation on the part of the debtor. There can be no novation unless both parties so intend. *Adams v. B & D, INC., 377 SE 2d 315 419- SC: Supreme Court 1989).* Nothing in the record suggests that

Haynie agreed to dissolve his cost-plus contract with Cash. The $35,000.00 figure Haynie submitted was merely an estimate and cannot reasonably be characterized as a substituted agreement to perform unlimited services for a fixed fee.

Given license by the afore mentioned flawed logic, Cash then rearranges the timing and nature of the evidence in a collage to better suit his case and subsequently offered findings of fact (which the Master accepted in the Order) that don't have a scintilla of resemblance to actual fact or reality for the purpose of impeaching Haynie's testimony. In *Old Chief v. United States, 519 US 172 -Supreme Court 1997*, though it pertains to criminal issue, argues: *when a given evidentiary item has the dual nature of legitimate evidence of an element and illegitimate evidence of character: "No mechanical solution is offered. The determination must be made whether the danger of undue prejudice outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making decision of this kind under 403. If, then, relevant evidence is inadmissible in the presence of other evidence related to it, its exclusion must rest not on the ground that the other evidence has rendered it 'irrelevant,' but on its character as unfairly prejudicial, cumulative or the like, its relevance notwithstanding."* The same logic may be applied in a civil matter; the quality of evidence trumps the amount proffered ...factual chronology outweighs presentation, especially when the collage presentation in the Order effectively impeached Haynie. The court subsequently allowed clean, date-authenticated copies into the record, perhaps as means to correct the prejudicial presentation, that renders Cash's assertions meaningless [Motion to Reconsider Addendum pp.5-17].

The evidence in the correct order and context is pertinent to the facts of the case. Faced with such conflicting testimony, the Master was required to decide which version of the events was to be believed. The credibility of the witnesses was thus important. During cross-examination Cash first testified the financial world was in order during 2007 and Merrill Lynch, and thus he, was unaffected by the mortgage crisis of the time [R.p.333.18-335]. Later he had to acknowledge that Merrill wrote down a record 8 billion dollar loss in mortgage obligations and Stan O'Neal, the CEO, was fired in October, 2007 [Rp.434 line 18]. Shortly thereafter Haynie transferred his mother's, Lydia Haynie, $720,000 investment account to Cash.[4] Cash also testified, without corroboration, that an agreement was made to trade-out rent for use of the ManCave as a shop for the Cabinetmaker, Bill Schmidt. Cash elaborated the ManCave had air conditioning and a bathroom making it a desirable summer workplace [R.p.343.20]. Further, as testified and recorded in his purported journal [R.p.346.15-347 & p.380.10], Schmidt started work in July. Stated in the defendants amended answer "Defendants further agreed to allow Haynie and his contractor, Schmidt, to use the shed so Schmidt could work for Haynie. Schmidt used the shed from July of 2007 until April of 2008." All this is a purely fictional accounting of events [Rp.253 line10-25]. Haynie has a fully equipped shop 2 blocks from the Cash home and Schmidt shares a much larger better equipped shop on Main St [Rp. 440]. In fact, Schmidt was working on another large DocWild (Haynie) project, the Columbia College Library renovation, until August 26, 2007. The

[4] Haynie had managed his mother's investments since his father's death, 1998. The original $600,000 account was heavily in equities. Considering the account had weathered the "dot.com" crash and the real estate meltdown (2007) and was valued at nearly a million dollars, including real estate, Cash's investment advice was not needed then or ever. Cash has never met Mrs. Haynie.

bathroom and HVAC of the ManCave were non-functional until early September, 2007, when the electricity was turned on to the building. Until September the entire room was taken up by a huge scaffold to reach the vaulted ceiling. it was functionally impractical for Schmidt to be present and plain silly to enter into the imaginary shop rental agreement.

Such testimony apparently fell on deaf ears at trial because the court bought in to the fabricated contract citing *Parr v. Parr, 231 SE 2d 695 - SC: Supreme Court 1977* "The existence of terms of an oral contract must be proven by evidence which is clear, specific, definite and convincing in nature." The Supreme Court went on to say though "...We are not concerned primarily with the *quantity* of the evidence offered to establish the oral contract. Rather, we are concerned more with the *quality* of the evidence. Such evidence must convincingly prove the existence of the contract." The testimony and evidence fails the quality test.

A large amount of testimony was taken explicitly rebutting the relevance of the early line by line estimate[Def.Ex.20] upon which the Order is primarily based [Rp.192-207]. This exhibit was produced 6 weeks prior to the contract and bears no relationship to any subsequent drawings or the ultimate product.

Since relative veracity, plainly stated by opposing council, is the sum total of Cash's case, for which there is no prima facia evidence offered other than copies heavily notated by Haynie [Rp.144]. The notations were the cited evidence [Rp.243 line18]. Other than 4 timesheets, 2 ledger sheets and a few pictures, every bit of evidence entered into the record was heavily notated or doctored for demonstration purposes long after litigation commenced for Attorney Truslow's edification (i.e.:

privileged) [Rp.106 line 10; Rp.296 line 18-297]. Cash presented, in lieu of, evidence they prejudicially characterized to cast dispersion via presentation of a non-contemporaneous journal (argument 3) and assertions of Haynie's lack of proffered evidence. Cash adamantly testified he never received a billing statement from Haynie for the 18 month duration of his project [Rp.403-4] and accused they were fabricated for trial preparation (CASH: "No sir. I was never given those. He could have made them up after. I never was given them."[Rp.404 line 11]) The fact is Haynie presented 7 billing statements formatted to match the contract complete with documentation of time & materials and accurately documenting the amount paid at that point in time. Aside from being admitted into evidence and thoroughly dissected (actually disassembled) by opposing council, five by virtue of pursuant payment received are authenticated by the reply doctrine elicited in SCRE 901(b)(4) noted: *A common form of authentication permissible under this subsection is the reply doctrine which provides that once a letter, telegram, or telephone call is shown to have been mailed, sent, or made, a letter, telegram or telephone call shown by its contents to be in reply is authenticated without more Graham, Handbook of Federal Evidence, § 901.4 (2nd ed. 1986).*

Please note with particularity that much was made of the fact that all of the spreadsheet copies that accompanied each billing statement bore a date header, 2/7/07, and noted "Contract $35,000". The pocket spreadsheet was never meant to be a primary presentation method. It is offered to provide assimilated details of the billing statement and a compilation of the receipts included. It was explained repeatedly in

deposition and at trial that the date was the date the HandHeld Palm Pilot worksheet was created (the day Haynie paid McFadden to remove 3 trees), and "Contract" was for reference only (as in target price) [Rp.200 line10-25]. Since the spreadsheet's fundamental purpose was to track & record transactions, there was no need to ever change it, and the information was irrelevant. That was explained consistently every time the question arose and was of no consequence ever (it was a reference point for Haynie alone) and, obviously, never accepted. The notations were recorded significantly prior to the contract, February 7, 2007.

On appeal, I suspect the respondent will again attempt repudiation of the merit of the billing statements and their associated spreadsheets. Much was argued and objected to by both councilors about the notations and condition of the billing statements in evidence which Haynie reproduced from an electronic "pdf" version of the documents. The actual statements were 'Word' documents but, since the spreadsheets were a snapshot of a working file in progress, they were printed from a printed document format (pdf) document which we all know is as of that moment in time. It is unknown how council for the defense came to possess notated versions but Truslow was provided a clean version for discovery. The notated versions were for Haynie's purpose explaining the case to Truslow. Though Haynie was powerless to recreate the spreadsheets as of a prior point in time he did manipulate the <u>final version</u> to explain or as a demonstration for Truslow. Many of those factually incorrect versions came into the possession of the defense and separated as if independent documents. Where there were only 6 documents produced in fact (& only 5 available at trial),

Haynie became quite confused and argumentative in deposition and at trial because defense had disassembled the docs and had multiple notated [Rp.175-179; p.227 line 1; p.242 line 10] (privileged) iterations. At this point we still have trouble but can corroborate that only the 4/30/07 timesheet [DEx.7], the 6/10/07 costsheet [DEx.8] and the final spreadsheet [PEx.9] were part of a true billing statement. Which is a surprise considering the number of copies at the witness stand? Neither defense exhibits 9 or 10 should have been entered into evidence because they were both part of a demonstration for the benefit of Truslow after the fact.

A case in point, the defense exhibit 9 is a demonstration of how excel translates the PalmPilot spreadsheet (final version). If one compares it to the plaintiff's 9 (same version) one should note that many cells of the defense version are a string of numbers rather than a total therefor the "COSTS" total indicates $28,259 which is about $10,000 less than the true total shown in the plaintiff's version. If one looks at all of the cost sheets presented with the billing statements we see the list is presented in row cells then summed in the cost column therefor Excel translates and provides the true actual cost total. Incidentally each of those listed numbers corresponded to a check or a receipt. Due to the argumentative nature of cross examination, that point could not be made. This Excel translation was required every time the sheets needed to be printed but not if viewing on the PalmPilot itself as was done often.

No case law can be found that allows construction of a sum certain contract ad-hoc, after the fact, to repair imagined faults in an existing contract. A "valid contract" is defined as "a contract that is fully operative in accordance with the

parties' intent." Black's Law Dictionary 326 (7th ed. 1999). That definition recognizes the general principle of contracts that a contract is sufficiently definite and certain if a court using the proper rules of construction can ascertain the terms and conditions on which the parties intended to be bound. In reforming a written instrument, an equity court in no way alters the agreement of the parties. Instead, the reformation only corrects the defective written instrument so that it accurately reflects the true terms of the agreement actually reached. A reformation relates back to the time the instrument was originally executed and simply corrects the document's language to read as it should have read all along, *Providence Square*, 507 So.2d at 1369-1371. The order, on the other hand, is explicitly indefinite; it muddles the contract rather than add clarity. The court has only the right to impose upon the parties that which they already agreed upon.

As reiterated in *ERIE INSURANCE CO v. WINTER CONSTRUCTION COMPANY, No. 4841, June 15, 2011 - SC Court of Appeals*, "The law in this state regarding the construction and interpretation of contracts is well settled. When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning. In addition, [w]here an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it. (Citations omitted)"

Since Haynie proceeded for 18 months in reliance upon the cost-plus contract and Cash's promise to pay, Cash should be equitably estopped from assertions of a counterclaim by reason of an alternate contract. "The essential elements of estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts" *S. Dev. Land & Golf Co., v. S.C. Pub. Serv. Auth., 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993)*. Haynie filed a mechanics lien based on his cost-plus contract as a matter of law for which $26000 is due[5]. Should the court so decide, Attorney fees of $14,000 pursuant SC Code 27-1-15, and interest would also be due from November 18, 2008 as a matter of law.

2. **THE REMEDIAL PRINCIPLE OF RESTITUTION MIGHT BE EXPRESSED, AS "A PARTY WHO UNJUSTIFIABLY ENRICHES HIMSELF AT THE EXPENSE OF ANOTHER OWES A DUTY TO PAY A SUM OF MONEY THAT WILL DISGORGE THE VALUE OF THE ENRICHMENT." HAYNIE REQUESTED A SOLUTION BASED ON THE EQUITABLE THEORY OF QUANTUM MERUIT. THE COURT ERRED BY NOT FINDING SUCH A REMEDY FOR THE UNJUST ENRICHMENT OF CASH.**

As with the Morton case, *Earthscapes Unlimited, Inc. v. Ulbrich, 703 SE 2d 221 - SC: Supreme Court 2010* is very similar to the instant case except the Master found for the plaintiff and the Supreme Court affirmed. The lower court found for the contractor both as a matter of law, foreclosure of a mechanic's lien, and in equity via

[5] ..and that is an understatement of the cost of the job because of the considerable amount of work that was not logged or billed [Rp.178.24] due to the friendship between he and Cash

quantum meruit theory. Chief Justice Toal points out (Earthscapes 617) "The elements of a quantum meruit claim are: (1) a benefit conferred upon 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. In this case, the circuit court held absent the mechanic's lien claim, 'I would still find in favor of the plaintiff and against the defendant for the same amount of money under the *quantum meruit,* or unjust enrichment claim' The benefit conferred by Respondent to Appellants was the work performed by Respondent on Appellants' property. Appellants have realized and enjoyed the benefit of the work performed by Respondent. Finally, allowing Appellants to retain the benefit of Respondent's work without paying its value under the circumstances of this case would be unjust. Hence, we find under the theory of quantum meruit Appellants owe Respondent the same amount of damages awarded at the circuit court."

The evidence [pictures] clearly demonstrated that the work performed by Haynie conferred a substantial benefit to Cash. It is self-evident by the photos that more than a "shed", as council prefers to call it, was built and, by Cash's testimony, many thousands of dollars of other work was performed (including conversion to underground electrical service for the main home and the ManCave, relocation of the well tank & controls, removal of several large trees on 4 separate occasions, construction of a tree house and multiple repairs to the house, irrigation system, brick & landscaping) [Rp285 line13-p.290]. Further, no complaints were lodged by the respondent for the duration of the project (until long after the lien and suit was filed), Cash was proud of his ManCave and

he bragged about it to his peers. By comparison the Palmetto proposal (the only comparable offered by Cash) to construct a 392sf unfinished garage at a cost of $39,000 is decidedly unfavorable to their case. It proposed a shell (exposed framing) with no interior walls, no insulation, no plumbing or HVAC, a low pitched roof and a bare plywood floor for $100/sf [Rp.411-415]. In comparison that would place the value of Haynie's work at well over $130,000. It is undisputed that Cash realized the benefit of Haynie's work, and that apart from the $50,500 total partial payments given to Haynie, he made no payments beyond the amount of the June 6, 2007 billing statement at which point the project was about half complete and $51,571 was due.

As pointed out in Earthscapes, "An action based on a theory of quantum meruit sounds in equity. *Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994).* When reviewing an action in equity, an appellate court reviews the evidence to determine facts in accordance with its own view of the preponderance of the evidence. *Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010).* Absent an express contract, recovery under quantum meruit is based on quasi-contract *Columbia Wholesale Co., Inc., 312 S.C. at 261, 440 S.E.2d at 130."*

With each billing presentation by Haynie, Cash made a nominal payment [Rp.442 line11] and promised the balance would be forthcoming. Upon reliance, Haynie continued working, not just spending more on labor and material but expending a great deal of personal effort (not logged in the timesheets, impoverishment). "The 'restitution interest,' involving a combination of unjust impoverishment with unjust gain, presents

the strongest case for relief. If, following Aristotle, we regard the purpose of justice as the maintenance of an equilibrium of goods among members of society, the restitution interest presents twice as strong a claim to judicial intervention as the reliance interest, since if A not only causes B to lose one unit but appropriates that unit to himself, the resulting discrepancy between A and B is not one unit but two" (citations omitted) *United States v. Algernon Blair, Incorporated, 479 F. 2d 638 - Court of Appeals, 4th Circuit 1973 (641).* "It should be noted, however, that in suits for restitution there are many cases permitting the plaintiff to recover the value of benefits conferred on the defendant, even though this value exceeds that of the return performance promised by the defendant. In these cases it is no doubt felt that the defendant's breach should work a forfeiture of his right to retain the benefits of an advantageous bargain" *(Algernon).*

Though there appears to be rather substantial calculation error (to the detriment of Haynie's case), an industry standard, The National Building Cost Manual [Rp.139 line18-p.141, methodology was used at trial to propose an $86-100,000 quantum meruit valuation of the work done. Post-trial, yielding substantial benefit to the Respondent as to book valuation of the ManCave and claiming no credit for the considerable additional work performed, a quantum meruit valuation of $92,000 was proposed [Plaintiff's proposed order]. Counter to the subsequently accepted Order's assertion, it matters not one wit what the ultimate purpose is in determining the value of the work. If it were so it would put all swimming pool contractors out of business because you can't build a pool for under its 'appraised value'. We could convincingly argue a value well over $100,000 but will refrain belaboring the point.

"If these plaintiffs (suing under "naked" promises) are not allowed recovery, the defendant may be said to enjoy a windfall. Having made a promise in order to capture a benefit for himself, the defendant cannot fairly be allowed to enrich himself by breaching the promise. In other words, a strong element of unjust enrichment is present. Promises may be thought to create moral obligation over and above the obligations enforced by the legal system on the basis of the technical requirements of reliance. Hence, any plaintiff suing on a promise has at least a prima facie moral claim to enforcement." A Theory of Justice John Rawls 1972

"In a law action, the measure of damages is determined by the parties' agreement, while in equity, `the measure of the recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been unjustly enriched at the expense of the plaintiff" *Myrtle Beach Hosp., **Inc.** v. **City** of Myrtle Beach, 341 S.C. 1, 8, 532 S.E.2d 868, 872 (2000)*. Under these circumstances, it would be unjust for Cash to retain the benefit of the enrichments made by Haynie without paying value for the substantial work performed. Thus the Master erred in denying the sought quantum meruit alternate form of recovery. It follows that attorney's fees and interest should be recovered as well, as a matter of law.

### *3.* THE COURT PREPARES THE FINDINGS OF FACT AND CONCLUSION OF LAW. BY ENDORSING CASH'S PROPOSED ORDER VERBATIM, THE TRIAL JUDGE ERRED IN SUBCONTRACTING FINDINGS OF FACT AND ADJUDICATION TO CASH AND, IN SO DOING, VALIDATED EVIDENCE THAT PROPERLY SHOULD BE EXCLUDED

Judge J. Skelly Wright of the Court of Appeals for the District of Columbia (1963) said:

"Who shall prepare the findings? Rule 52 says the court shall prepare the findings. 'The court shall find the facts specially and state separately its conclusions of law.' We all know what has happened. Many courts simply decide the case in favor of the plaintiff or the defendant, have him prepare the findings of fact and conclusions of law and sign them. This has been denounced by every court of appeals save one. This is an abandonment of the duty and the **trust** that has been placed in the judge by these rules. It is a non-compliance with Rule 52 specifically and it betrays

> the primary purpose of Rule 52—the primary purpose being that the preparation of these findings by the judge shall assist in the adjudication of the lawsuit.
>
> "I suggest to you strongly that you avoid as far as you possibly can simply signing what some lawyer puts under your nose. These lawyers, and properly so, in their zeal and advocacy and their enthusiasm are going to state the case for their side in these findings as strongly as they possibly can. When these findings get to the courts of appeals they won't be worth the paper they are written on as far as assisting the court of appeals in determining why the judge decided the case." Seminars for Newly Appointed United States District Judges (1963), p. 166.

The trial judge has rubber-stamped Cash's proposed order (his only change, scratching out the original's date) adding weight to Wright's summation of its worth. The order posits 94 points of fact for the most part devoid of logic or any evidentiary basis (i.e. of questionable merit). Many points have already, herein, been disputed and I reserve argument on the remainder until later save the one and only defense document, Cash's journal [Rp.336 line 7] presented on a whiteboard at trial [Rp.369 line 10-393]. This was the first time Haynie had ever seen the said "spreadsheet." SCRE Rule 803 (5) excludes entry of recorded recollection into evidence. The facts as presented in Cash's journal are either impossible or highly improbable. By the following logical contradictions presented at trial, Haynie submits the journal was not a contemporaneous product thus should be excluded:

- 3/9 Noted permit, footings dug *[permit actually purchased in February, the footings were dug 3/12-14]*
- 5/7 Noted electric service buried by SCEG and panel inspected *[Regs require SCEG can do nothing until the panel is approved, the permit was obtained 5/8* [Rp.267 line 4] *and the City approved the panel 5/15* [Def.Ex. 11]
- 5/25 Noted billing for power conversion *[a bill was never presented & evidence was not proffered]*
- 6/16 Noted $4000 pmt *[no mention of billing statement but notation 'dried in' was borrowed from statement]*
- 7/9 Noted sheetrock going up *[actually sheetrock was up, finished & paid for 6/18]*

- 7/19 Noted Schmidt started work and agreed to trade work for rent *[as previously stated (top of pg12), the conditions necessary for an agreement didn't exist in July. Neither the parties nor the supposed inducements were available. No further evidence of an agreement proffered]*
- 8/07 Noted 90% complete, Haynie working on his own Shop (Brentwood) [there is *no electrical or fixtures, plumbing incomplete, no trim, siding & soffit unfinished, job may be 70% complete at this point (evidence picture 11/5/07). As for the Brentwood shop, Forest Acres approved the footings (first work) 10/22/07]* [Rp.250 line 23]
- 9/07 Noted Schmidt working on other projects *[Cash has still not met Schmidt*]
- 10/3 Noted received quotation to take down Hackberry tree *[Cash got permit to take down tree 3/3/08 at which point the cost was discussed]*
- 11/13 Noted Schmidt building Tom Salane's cabinets *[Haynie started the Salane remodel job in December, Schmidt started cabinets in February, 2008]*
- 3/8 Noted Haynie requested final payment *[No evidence, I may have requested a payment since he owed $30,000 at the time but the project was nowhere near complete, an updated written billing was presented 4/4 upon vacating for the prom party]*
- 4/11 Noted Schmidt out 13th payment is "overpayment" *[Actually Schmidt and crew left the job 4/4 (prom party) and returned 4/7 to continue working and take down the Hackberry tree, 4/8. We stayed several more weeks. Cash's $5000 check didn't begin to cover the previous 2 weeks work or the tree, much less the past due billing.]*

No corroboration of the journal notes is ever offered, not so much as a matchbook or napkin note. Put the journal in perspective, it's the work of a stockbroker who is required by law to keep a daily fastidious log and notate everything in his business. Of particular note in the journal is the lack of notation regarding the septic tank which is addressed in the next argument? Peculiarly, Cash repeatedly notes and testifies as to Haynie's payroll needs, which were true, but never reconciles that need to Cash's continuous significant past due status.

"This Court has held that compromises are favored and evidence of an offer or attempt to compromise or settle a matter in dispute cannot be given in evidence against the party by whom such offer or attempt was made. This principle is now codified in

Rule 408, SCRE" *QHG of Lake City, Inc. v. McCutcheon, 600 SE 2d 105 - SC: Court of Appeals 2004.* The entry of the journal into evidence violates SCRE 408 as well for it is a recording, after the fact, of contract negotiations, corroborated by Cash's testimony throughout. Specifically it records a compromise "negotiated the final payment for all work" [Rp.393 line 17] and Cash's testimony often acknowledged further compromise via his journal. It seems readily apparent that the whole purpose of the journal is to compromise the contract.

"Only 'unfair prejudice' can tip the scales in favor of inadmissibility: The . . . prejudice against which the law guards [is] . . . unfair prejudice – . . . prejudice of the sort which cloud[s] impartial scrutiny and reasoned evaluation of the facts, which inhibit[s] neutral application of principles of law to the facts as found. . . *Coleman v. Home Depot, Inc., 306 F.3d 1333, 1343 (3d Cir. 2002)*

SCRE Rule 52(b) specifically states that the sufficiency of the evidence in a non-jury matter may be raised in the appellate courts even though there was no motion challenging these findings or a motion for a directed verdict or a motion for judgment. The appellant so challenges the sufficiency. In hindsight the Master may wish to repudiate his endorsement of the order and was offered the chance in Haynie's 59(e) Motion to Reconsidered. I believe the court declined.

Judges called upon to determine whether a promise has been made must look beyond the words and acts which constitute the transaction to the nature of the relationship between the parties and the circumstances surrounding their actions. But relationships and surrounding circumstances do not speak for themselves. They must be

interpreted by judges on the basis of the expectations likely to arise between similarly situated parties. The conclusory tone (adjudication) follows because we are being told what we ought to already understand as members of the community (source unknown). Regarding findings and conclusions and judgment... "Those drawn with the insight of a disinterested mind are, however, more helpful to the appellate court. Moreover, these detailed findings were "mechanically adopted," to use the phrase of the late Judge Frank in ***United States*** v. *Forness,* 125 F. 2d 928, 942, and do not reveal the discerning line for decision of the basic issue in the case" *United States v. El Paso Natural Gas Co., 376 US 651 - Supreme Court 1964.*

*4.* **DHEC REGULATION REQUIRES THE PROPERTY OWNER TO PROCURE A PERMIT FOR WASTE WATER DISPOSAL. CASH INSTALED A WASTE LIFT-STATION 2 YEARS AFTER THE PROJECT ENDED. THE TRIAL COURT ERRED IN GRANTING JUDGMENT IN FAVOR OF CASH FOR WORK THAT WAS NEVER CONTRACTED FOR WITH HAYNIE.**

There are no services owed under cost-plus contract. Under such a contract the client is free to contract with whomever he pleases to do other services that he does not wish to be covered by the prime contract. The lift station was not a repair of work that was done it was to replace what was contracted for under the original contract. It follows that Cash was free to contract independently for the installation of the lift station at any time. Cash and Haynie knew a lift station was needed since the bathroom was added and the approximate costs and location was subsequently discussed.

SC Reg 61-56
102.1 Each dwelling unit, building, business or other structure occupied for more than two (2) hours per day shall be provided with an approved method for the treatment and disposal of domestic wastewater.

102.2 It shall be the responsibility of the **property owner** to ensure that a permit to construct and operate any new, upgraded, or expanded onsite wastewater system is obtained from the Department prior to construction and operation of the system.

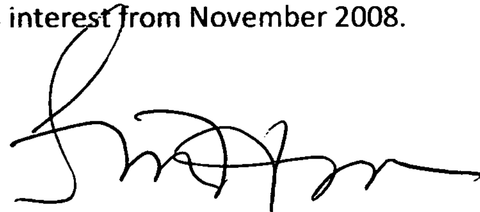
As for the septic tank, it's not; it's a 50 gallon drum holding tank. Even a stockbroker who doesn't know his firm is under fire and his job is at jeopardy knows that sewage won't flow up hill and a 50 gallon holding tank doesn't meet code. It's clear from the actions that followed that both Cash and Haynie were reasonably aware that the septic tank was not an approved long-term solution, especially considering that they were in Forest Acres. Haynie testified he gave no thought to the matter until he was instructed to reverse the bathroom door and install a keyed lock before the big prom party so that Cash's Uncle Lee Holloway, the city attorney, would not find out. Attorneys surely know what will and what won't go up hill. Cash's testimony that the key was to separate the boys and girls is laughable [Rp.343 line 5]. Haynie knew the tank wouldn't pass code but it was intended to be a temporary solution until Cash could afford the lift station which was discussed at length. An exterior electrical circuit was added at the most likely location for the anticipated lift station in July, 2007 [Rp.276 line 8]. Together they planned the tank would ultimately service the dog run.

It is no surprise notations of sewage problems are absent from Cash's journal. The matter was first raised in the Respondent's Amended Answer, June 9, 2010 "Defendants have learned that the plaintiff installed a septic tank in their yard which was not permitted by the City of Forest Acres or DHEC." Counter to their pleading, Cash noted in testimony [Rp.342 line 9] that the system had to be repaired sometime late 07, it was repaired again in late August 2008 at Cash's explicate request. Cash knew what it was

because he watched Haynie personally dig the tank up both times. Moreover, Cash testified at length 'bathroom facilities' was a key point in the supposed 'trade for rent' agreement. Cash may not have known that DHEC regulation requires the owner to procure a septic tank permit and, since Haynie had never done one in his life, he certainly didn't know but a reasonably intelligent person (and both may be) would assume there is a regulation somewhere [Rp.77 line 6]. Regulations or not the lift station was planned for but not contracted for.

## CONCLUSION

Because Mr. Cash now owns the ManCave of his dreams and $10,000 worth of other work, in his own back yard and paid less than half of its value by any standard, this Court should reverse the Master in Equity's order and grant a Quantum Meruit based award of $50,000, and legal fees of $15,000 plus interest from November 2008.



Respectfully submitted,

September 28, 2012

Frank M Haynie
1469 Florawood Dr.
Columbia, SC 29204

803-238-0757

Appellant
Pro Se

MISCELANEOUS
(important notes but less critical)

Most people do not understand engineering nor the construction process, and legal scholars are no exception. This case is a good example in that it has been a constant burden for Haynie to explain to the court and the attorneys fundamental points that seem self-evident. Underlying the inability of the court to recognize this is a basic lack of understanding of the construction process, but it's not that complicated. For example:

*You must have water for a toilet to work and you can't have water in the shed until there is power on the pump that produces the water. There was no electricity in the building until September therefore the toilet was useless. From the Order, this is clearly not as obvious as it seems.*

There is no requisite progression of events in the construction process written in stone but there is a logical natural order and most tasks have pre-requisite conditions. During cross-examination during several lengthy dialogues Haynie simply answered "no" because the assertion was implausible and counsel just didn't get it [Rp.244 line 21]. Such was even more problematic but less apparent with Truslow because he fancied himself universally knowledgeable on construction and engineering.