

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Builders Mutual Insurance Company )  
for itself and its insured, Peachtree )  
Electrical Services, )  
Plaintiffs, )

Civil Action No. 2014-CP-40-01818

vs. )

ORDER

Bob Wire Electric, Inc. and South )  
Carolina Home Builders Self )  
Insurers Fund, )  
Defendants. )

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DEC 29 2015  
SC Court of Appeals  
2015 SEP 21 11 10 AM  
DEPARTMENT OF SOCIAL SERVICES  
NORTH AND SOUTH CAROLINA  
FILED

**INTRODUCTION**

This is an equitable action by Builders Mutual Insurance Company ("Builders Mutual") to recover payments it made to or on behalf of a claimant in a workers' compensation proceeding. Builders Mutual maintains that its payments to or on behalf of Christopher Price after he had a second accident on November 3, 2003 while employed by Bob Wire Electric, Inc. were the obligation of the South Carolina Home Builders Self Insurers Fund (the "Fund") and that the Fund was obligated to reimburse Builders Mutual.

The following orders were issued in the workers' compensation proceeding:

1. Transmittal Order of Commissioner Susan S. Barden dated June 21, 2005 adding Bob Wire/SCHBA
2. Decision and Order of Commissioner Huffstetler dated July 5, 2006 who found that there was no accident with Bob Wire Electric, Inc. and dismissed the Fund
3. SC Workers' Compensation Commission Appellate Panel Order dated May 4, 2007 ("First Appellate Panel Order") which reversed the decision of

Commissioner Huffstetler and remanded the action to the Single Commissioner for a determination of benefits due.

4. Order of Judge Steven H. John dated December 20, 2007 dismissing Defendant's Appeal from First Appellate Panel Order as untimely
5. Order of Commissioner Funderburk dated June 12, 2008 (Order of Remand) who ordered reimbursement for \$112,789.42 in medical benefits and \$47,023.88 in compensation benefits
6. Amended Appellate Panel Order dated January 6, 2009 which affirmed the Order of Commissioner Funderburk
7. Order of Circuit Court Judge Ben Culbertson dated September 14, 2009 affirming Second Appellate Panel Order
8. The Court of Appeals decision in Christopher Price v. Peachtree Electrical Services, et al., Opinion No. 4923 (S.C. Ct. App. Filed December 21, 2011) which vacated the Single Commissioner's, the Appellate Panel's and the circuit court orders. The order specifically held that the Appellate Panel Order dated May 4, 2007 did not establish the law of the case.
9. The Supreme Court Order on Writ of Certiorari to the Court of Appeals filed September 11, 2013 which affirmed as modified the Order of the Court of Appeals
10. The Supreme Court Order dated November 7, 2013 taxing fees and costs against Builders Mutual Insurance Company and Peachtree Electrical Services

In this action, Builders Mutual has asserted claims for declaratory judgment, quantum meruit/unjust enrichment/restitution, and equitable indemnity. In response, the Fund has asserted a number of defenses including a general denial, failure to state a claim, the statute of limitations, the defenses of laches and unclean hands, *res judicata*, and waiver. The Fund also asserted that the Orders of the Single Commissioner, Appellate Panel, and the circuit court had been vacated and were therefore of no effect.

The action came before the Court on March 16, 2015 for a non-jury trial. A representative of Builders Mutual and its attorney testified. The exhibits offered by

Builders Mutual were admitted into evidence over the objection of the Fund. Builders Mutual also submitted its attorney's bills for an in-camera review by the court. The exhibits offered by the Fund were admitted into evidence over the objection of Builders Mutual. Based thereon, I make the following findings of fact and conclusions of law.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A.

#### CAUSE OF ACTION FOR DECLARATORY JUDGMENT

(1) Builders Mutual has alleged a cause of action for declaratory judgment, alleging:

"39. In accordance with the Appellate Panel Order, Plaintiffs are entitled to a declaratory judgment ordering reimbursement from Defendants for all amounts paid by Plaintiffs to Price in connection with his Second Accident, which total \$112,789.42 in medical benefits and \$47,023.88 in temporary total disability benefits, together with the costs including reasonable attorneys' fees on the grounds set forth herein above, in an amount to be determined by the Court pursuant to S.C. Code Ann. §15-53-10, et. seq. (1977), together with pre-judgment interest at the highest rate allowed by law."

(2) Builders Mutual's cause of action for declaratory judgment is based upon the following allegations:

"37. The Appellate Panel Order, dated May 4, 2007, which has not been vacated, altered or modified by the Court of Appeals' Opinion or any other appellate action, specifically holds that the injury suffered by Price on November 3, 2003, during his employment with Bob Wire, was a second accident for which Defendants, not Plaintiffs, are properly responsible.

38. The Appellate Panel Order, from which there has been no appeal, specifically provides for and required an apportionment of benefits paid and/or to be paid to Price in connection with his Second Accident between Plaintiffs and Defendants in accordance with the determination that a Second Accident did in fact occur for which Defendants are responsible."

(3) The Court of Appeals dealt with the effect of Appellate Panel Order dated May 4, 2007 directly. The Court of Appeals held that the Appellate Panel's Order dated May 4, 2007 was an intermediate order and that the Fund was not required to immediately appeal the Appellate Panel Order. The Court of Appeals specifically held that the May 4, 2007 Order did not establish the "law of the case". The Court of Appeals stated:

"Bob Wire contends the Commission lacks subject matter jurisdiction to deal with Peachtree's equitable claim for reimbursement because the Commission's authority is derived strictly from statute in derogation of the common law. We agree.

As a threshold matter, Peachtree contends the findings in the Appellate Panel's first order of May 2007 (First Order) constitute the law of the case because the appeal from that order was dismissed as untimely. We disagree.

Peachtree is correct in asserting that, in effect, no immediate appeal was taken from the First Order because Bob Wire's appeal was late. However, we disagree that Bob Wire was required to immediately appeal the First Order to prevent its findings from becoming the law of the case. An intermediate order may be appealed if it involves the merits of the case as described in section 14-3-330(1). Section 14-3-330 merely allows the aggrieved party to appeal an intermediate order involving the merits; it does not require an appeal at that time. The aggrieved party may wait until a final judgment is rendered and then appeal. See Lancaster v. Fielder, 305 S.C. 418, 421, 409 S.E.2d 375, 377 (1991) ("[I]f there is a final judgment, and the party timely files his notice of intent to appeal from that judgment, under section 14-3-330(1) this [c]ourt can review any intermediate order or decree necessarily affecting the judgment not before appealed from.").

Accordingly, Bob Wire was not required to appeal the First Order immediately following its issuance to avoid the findings therein becoming the law of the case. Instead, Bob Wire, as it was permitted to do, appealed the final judgment of the single commissioner on remand. Bob Wire continued to raise the jurisdictional question on subsequent appeals to the Appellate Panel, the circuit court, and this court. **Therefore, the findings of the First Order regarding subject matter jurisdiction did not constitute the law of the case, and the issue is properly preserved for our consideration in this appeal.** Emphasis supplied.

The Order of the Court of Appeals is clear and unambiguous.

(4) The Supreme Court affirmed the Court of Appeals decision with modification. The Supreme Court Was equally direct. The Supreme Court held:

"Accordingly, the Court of Appeals' reliance upon section 14-3-330 was in error. However, even under section 1-23-380, the order of the appellate panel was not immediately appealable. **Therefore, the Court of Appeals properly found Bob Wire's failure to file an immediate appeal from the order did not render the findings of fact and conclusions of law therein the law of the case.**" Emphasis supplied.

The Order of the Supreme Court is clear and unambiguous.

(5) This Court has no authority to circumvent or rule contrary to clear and unambiguous rulings of the Court of Appeals or the Supreme Court. When both the Court of Appeals and the Supreme Court, by its affirmance, have found that the Commission lacked subject matter jurisdiction of Builders Mutual's claim for equitable indemnity and when both courts have specifically found that the May 4, 2007 Order of the Appellate Panel did not establish the law of the case, then the May 4, 2007 Order of the Appellate Panel did not establish the law of the case. This Court cannot and will not hold otherwise.

## B.

### CAUSE OF ACTION FOR QUANTUM MERUIT/UNJUST ENRICHMENT/RESTITUTION

Builders Mutual's second cause of action is for quantum meruit/unjust enrichment/restitution.

"Quantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy. *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004) (citations and internal quotation marks omitted) (alteration by court). The terms 'restitution' and 'unjust enrichment' are modern designations for the older doctrine of quasi-contracts." *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988). To prevail

on a quantum meruit claim, a plaintiff must establish (1) he conferred a benefit upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value. *Swanson v. Stratos*, 350 S.C. 116, 121, 564 S.E.2d 117, 119 (Ct. App. 2002); see also *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010) (providing the same requirements).” *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 734 S.E.2d 177 (2012).

Builders Mutual’s cause of action for quantum meruit, unjust enrichment and restitution are based upon the following allegations:

“41. Plaintiffs unwittingly conferred a non-gratuitous benefit upon Defendants by virtue of their payment to Price of benefits in connection with his Second Accident, all of which benefits were properly payable by, and should have been paid by, Defendants.

42. Defendants realized a benefit from Plaintiffs’ payments of benefits to Price in connection with his Second Accident since all benefits payable to Price in connection with his Second Accident were the sole liability and responsibility of Defendants.

43. Defendants knew the Claimant had suffered a second accident while working for Defendant Bob Wire, yet they knowingly and silently allowed the Plaintiffs to provide benefits under the South Carolina Workers’ Compensation Act to Price.”

However, there is no evidence that Builders Mutual conferred “a non-gratuitous benefit” on the Fund by its payments to or on behalf of the claimant related to the second accident. The claimant made no claim against the Fund in the hearing conducted by Commissioner Huffstetler or in the hearing before Commissioner Funderburk. Furthermore, there is no evidence that the Fund “knowingly and silently” allowed Builders Mutual to provide benefits under the South Carolina Workers’ Compensation Act related to the second accident. Instead, there is evidence that Builders Mutual knew of the second accident and subsequent employment with Bob Wire as early as December 18, 2003 when Builders Mutual’s attorney deposed Christopher Price.

“Q. Okay. Did you go back to work?

- A. Yes. I did.
- Q. You told me you were supposed to back to work on the 11<sup>th</sup>, when did you actually.
- A. I actually went back to work on the 18<sup>th</sup> of August.
- Q. Who did you go to work with?
- A. I went back to work on my own, doing side work.
- Q. When you say side work, was that electrical work?
- A. Yes, until October 17<sup>th</sup>, I started working for Bob-Wire electric part time." (Price Depo. p.12, line 21 to p.13, line 7)

The alleged second accident was on November 3, 2003. The Fund's attorney raised this issue specifically at the hearing on June 5, 2006 before Commissioner Huffstetler.

"Mr. Smith: Yes, Your Honor, I would just like to add because they were placed on notice per the deposition of the claimant that they conducted on December 18<sup>th</sup>, 2003. The motion was not filed until April of 2005."

Bob Wire and the Fund were not joined as parties to the workers' compensation proceeding until June 21, 2005. See Transmittal Order dated June 21, 2009.

Builders Mutual has failed to establish that it conferred a benefit on the Fund. Builders Mutual's payments to or on behalf of the claimant did not benefit the Fund. Instead, Builders Mutual paid a claim that the claimant did not make against the Fund. Therefore, I find that the Fund is not liable to Builders Mutual on the basis of the Fund's claim of quantum meruit/unjust enrichment/restoration.

### C.

#### CAUSE OF ACTION FOR EQUITABLE INDEMNIFICATION

Builders Mutual's third cause of action is for equitable indemnification. In order to state a claim for equitable indemnification, a party must plead and support the following elements:

"(1) the indemnitor was liable for causing the Plaintiff's damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff's claims against it which were eventually proven to be the fault of the indemnitor."

*Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 60, (Ct. App. 1999).

A claim for equitable indemnification is based upon some imputed fault or where there is some special relationship between the parties. In the case of *Rock Hill Telephone Company, Inc. v. Globe Communications*, 363 S.C. 385, 611 S.E.2d 235 (2005), the Supreme Court stated:

"In general, indemnity may be defined as a 'form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party.' *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 449 (1994) (quoting *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 303 S.C. 52, 398 S.E.2d 500 (Ct. App. 1990), *aff'd*, 307 S.C. 128, 414 S.E.2d 118 (1992)). The right to indemnity arises by operation of law 'in cases of imputed fault or where some special relationship exists between the first and second parties.' *Id.* In other words, a right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join.

*Stuck v. Pioneer Logging Mach., Inc.*, 279 S.C. 22, 24, 301 S.E.2d 552, 553 (1983) (citations omitted). We have held that the relationship between a contractor and a subcontractor supports a claim for equitable indemnification. *First Gen. Servs.*, 314 S.C. at 442, 445, S.E.2d at 448; *Town of Winnsboro*, 307 S.C. at 131, 414 S.E.2d at 120."

Here, there is no issue of imputed fault and there is no special relationship between Builders Mutual and the Fund that would be a basis for equitable indemnity. Accordingly, Builders Mutual's claim for equitable indemnity is denied.

#### D.

Although Builders Mutual did not plead the defense of *res judicata*, Builders Mutual has raised it. However, I find that the defense of *res judicata* has no application in this case. *Res judicata* is an affirmative defense which must be pled. Rule 8(c), SCRCP. *Res judicata* has not been pled. *Res judicata* can be raised as a defense.

when a plaintiff seeks to re-litigate a matter that was previously litigated.

In the recent case of *Dozier v. American Red Cross*, Opinion No. 5272, filed September 17, 2014, the Court of Appeals described the defense of *res judicata* as follows:

"*Res judicata* encompasses both issue preclusion and claim preclusion. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 834 (1997). However, *res judicata* is more commonly referred to simply as claim preclusion. *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998). *Res judicata*, or claim preclusion, bars plaintiffs from pursuing a later suit when the claim (1) was litigated or (2) could have been litigated. *Crestwood Golf Club, Inc.*, 328 S.C. at 216, 493 S.E.2d at 835. *Res judicata* is shown if (1) the identities of the parties are as in the prior litigation; (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction. *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 250-51, 452 S.E.2d 832, 833 (1994)."

Builders Mutual has not pled *res judicata*. Even if Builders Mutual had pled *res judicata* in its complaint, it would not have availed Builders Mutual. The Court of Appeals has held, and the Supreme Court has affirmed, that the Commission lacked subject matter jurisdiction to determine Builders Mutual's claim for equitable indemnity. Therefore, the adjudications in the workers' compensation proceeding were not adjudications by a "court of competent jurisdiction". Accordingly, I find that Builders Mutual is not entitled to prevail based upon the defense of *res judicata*.

E.

#### CLAIM FOR ATTORNEY'S FEES AND COSTS

Builders Mutual has asserted that it is entitled to recover its attorney's fees and costs which total \$111,062.40. Most of these fees and costs were incurred in the workers' compensation proceeding. Builders Mutual did not prevail in the workers'

compensation proceeding. The Supreme Court had no trouble in determining which party was the prevailing party in the workers' compensation proceeding. The Supreme Court taxed fees and costs against Builders Mutual pursuant to Rule 242, SCACR. Builders Mutual failed to prevail in that action and has failed to prevail in this action. The Court notes that Builders Mutual's fees are some five (5) times higher than the fees and costs of the prevailing party. However, it is unnecessary to review and analyze what would be a reasonable fee since Builders Mutual has failed to prevail in both actions. Therefore, I find that Builders Mutual is not entitled to recover its attorney's fees and costs from the Fund.

**F.**

**THE EQUITIES DO NOT WEIGH IN FAVOR OF BUILDERS MUTUAL**

In determining these equitable claims, the Court has weighed the equities in favor or against each party. The equities do not weigh in favor of Builders Mutual. Builders Mutual's joinder of Bob Wire and the Fund in the workers' compensation proceeding was ill advised. Builders Mutual joined the Fund as a third party to the workers' compensation proceeding and asserted a claim for equitable indemnification in the workers' compensation proceeding. Builders Mutual's representative and its attorney acknowledged that they were not aware of any action before the Commission in which a claim for equitable indemnification was filed and/or successfully asserted. Builders Mutual did not have to join the Fund to the workers' compensation action. Builders Mutual could have defended the claim based on the second accident on the basis that it was not liable for the second accident and Builders Mutual could have sought a credit for benefits paid to or on behalf of Christopher Price related to the

second accident. Builders Mutual nevertheless chose to proceed on its claim for equitable indemnification against the Fund in the workers' compensation proceeding. This has delayed the disposition of this dispute. Builders Mutual's representative testified that she had no idea of how to reach the claimant and he did not testify. Builders Mutual offered no testimony by any expert as to what medical expenses were attributable to a second accident. The equities weigh in favor of the Fund, which successfully defended the claim that Builders Mutual brought in the workers' compensation proceeding and in this action.

G.

#### THE FUND'S DEFENSES

The Fund has asserted a number of defenses. However, in view of my ruling above, I find that it is unnecessary to consider the Fund's defenses.

H.

#### ORDER

Accordingly, IT IS ORDERED that the claims of Builders Mutual and Peachtree Electrical Services in this action are hereby denied and judgment is entered in favor of Bob Wire Electric, Inc. and the South Carolina Home Builders Self Insurers Fund.

AND IT IS SO ORDERED.

  
L. Casey Manning  
Presiding Judge



Columbia, South Carolina

Sept 9, 2015

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
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**RECEIVED**  
 NOV 30 2015  
 IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-01818

**ORDER**

**RECEIVED**  
 DEC 29 2015  
 SC Court of Appeals

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RICHLAND COURT  
**FILED**

This is an equitable action by Builders Mutual Insurance Company (“Builders Mutual”) to recover payments it made to or on behalf of a claimant in a workers’ compensation proceeding. Builders Mutual maintains that its payments to or on behalf of Christopher Price after he had a second accident on November 3, 2003 while employed by Bob Wire Electric, Inc. were the obligation of the South Carolina Home Builders Self Insurers Fund (the “Fund”) and that the Fund was obligated to reimburse Builders Mutual.

The action came before the Court on March 16, 2015 for a non-jury trial. On September 11, 2015, the Court filed an order denying the claims of Builders Mutual Insurance Company and Peachtree Electrical Services and ordering that judgment be entered in favor of Bob Wire Electric, Inc. and South Carolina Home Builders Self Insurers Fund.

The action is now before the Court on Builders Mutual Insurance Company and Peachtree Electrical Services’ motion to alter or amend the Order filed September 11, 2015. For the reasons stated below, the motion to alter or amend is denied.

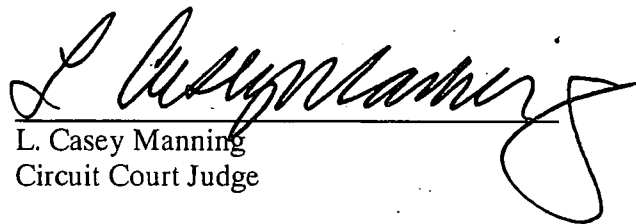
“A party may wish to file such a motion when she believes the court has misunderstood, failed to consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must

**SCANNED**

file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Department of Transportation*, 36 S.C. 9, 602 S.E.2d 772 (2003).

Here, the Court considered, understood and ruled upon the issues raised by the motion in its Order filed September 11, 2015. Upon careful review of the plaintiffs' motion, I find no basis to alter or amend the Order filed September 11, 2015. The plaintiffs have preserved the issues raised by their motion for appellate review. The plaintiffs' motion to alter or amend is hereby denied.

AND IT IS SO ORDERED.

  
L. Casey Manning  
Circuit Court Judge

Columbia, South Carolina

Nov 12, 2015

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