IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

RECEIVED
AUG 31 2016
SC Court of Appeals

Appellate Case No. 2015-002626

Builders Mutual Insurance Company,
For Itself and its insured, Peachtree Electrical Services, ... Appellants

vs.

Bob Wire Electric Inc., and South Carolina Home Builders
Self Insurance Fund, ... Respondents

FINAL BRIEF OF RESPONDENTS

Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pope@popejohnsonlaw.com
Attorney for the Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Statutes and Rules

STATEMENT OF ISSUES ON APPEAL

I. Did Judge Manning rule correctly in holding that the findings in the First Order were not the law of the case, when both appellate courts had found that findings in the First Order were not the law of the case

II. Did Judge Manning rule correctly in finding that Peachtree could not recover on its claim for quantum merit/unjust enrichment/restitution because Peachtree failed to prove that it conferred a non-gratuitous benefit on Bob Wire

III. Did Judge Manning rule correctly in finding that Peachtree was not entitled to recover on its claim for equitable indemnification since Peachtree had failed to prove that there was imputed fault or a special relationship between Peachtree and Bob Wire that would be a basis for the equitable indemnity claim

IV. Did Judge Manning rule correctly that Peachtree was not entitled to recover on its claim for attorney's fees and costs since Peachtree did not prevail in the workers' compensation proceeding, where most of the fees were asserted and since Peachtree had failed to prevail in this action

V. Did Judge Manning rule correctly in finding that the equities did not weigh in favor of Peachtree

VI. Did Judge Manning rule correctly that when he also held that the doctrine of res judicata did not apply in this case because the adjudication in the workers' compensation proceeding was not an adjudication by a court of competent jurisdiction

STATEMENT OF THE CASE

On March 18, 2014, Peachtree Electrical Services, Inc. and Builders Mutual Insurance Company ("Peachtree") filed this action in equity against Bob Wire, Inc. and South Carolina Home Builders Self Insurers Fund ("Bob Wire) to recover payments made to or on behalf of Claimant, Christopher Price, in a workers' compensation proceeding. (R. pp.018-028). Peachtree maintained that payments it made to or on behalf of Christopher Price after he had a second accident on November 3, 2003 while employed by Bob Wire were the obligations of Bob Wire. Peachtree maintained that Bob Wire was obligated to reimburse Peachtree for the payments it had made.

Peachtree also asserted that findings in the Appellate Panel's Order dated May 4, 2007 (First Order) constituted the law of the case since Bob Wire's appeal from the First Order was dismissed as being untimely. Based thereon, Peachtree asserted claims for declaratory judgment, quantum merit/unjust enrichment/restitution and equitable indemnity. (R. pp. 018-028).

Bob Wire, in its Answer, asserted a general denial for failure to state a claim, statute of limitations, defense of laches and unclean hands, res judicata and waiver. (R. pp. 029-033). Bob Wire also asserted that the Court of Appeals in *Price v. Peachtree Electrical Services, Inc.*, 396 S.C. 403, 721 S.E.2d 461 (2012) and the Supreme Court which affirmed as modified in *Peachtree Electrical Services, Inc. v. Bob Wire Electric, Inc.*, 405 S.C. 455, 748 S.E.2d 229 (2013) had vacated the First Order and held that the findings in the First Order were not the law of the case.

The action came before the Honorable L. Casey Manning on March 16, 2015 for a non-jury trial. Judge Manning issued an Order dated September 9, 2015 entering judgment

in favor of Bob Wire. In his Order, Judge Manning found that the Court of Appeals had held that the First Order did not establish the law of the case and had vacated the First Order. Judge Manning found that the South Carolina Supreme Court had affirmed the Court of Appeals that the First Order was not the law of the case and had vacated the First Order. Both Courts held that the South Carolina Workers' Compensation Commission did not have subject matter jurisdiction to hear Peachtree's equitable claims. Judge Manning found that he had no authority to circumvent or rule contrary to the clear and unambiguous rulings of the Court of Appeals or the South Carolina Supreme Court. (R. pp. 003-013).

Judge Manning also found that Peachtree could not recover on its claims for unjust quantum merit/unjust enrichment/restitution or equitable indemnity. He found that Peachtree failed to prove its unjust enrichment/restitution claim because Peachtree had failed to prove that it conferred a non-gratuitous benefit on Bob Wire. He found that Peachtree failed to prove that there was imputed fault or a special relationship that would support a claim for equitable indemnity. He also found that the equities did not favor Peachtree and that res judicata did not apply and that Peachtree, as the non-prevailing party, could recover attorney fees and costs. (R. pp. 003-013).

On September 21, 2015, Builders Mutual made a motion for reconsideration, which motion was denied on November 16, 2015. (R. pp.014-015). Peachtree's appeal followed:

STANDARD OF REVIEW

In reviewing a proceeding in equity, this court may find facts based on its own view of the preponderance of the evidence. *Greer v. Spartanburg Technical College*, 338 S.C. 76, 79, 524 S.E.2d 856, 858 (Ct. App. 1999). This broad scope of review does not require this

court to ignore the findings below when the trial court was in a better position to evaluate the credibility of the witnesses. *Clardy v. Bodolosky,* 383 S.C. 418, 679 S.E.2d 527 (2009).

> "We have imposed two requirements on parties seeking equitable indemnification for attorney's fees. First '[t]he attorney['s] fees and costs must be the natural and necessary consequence of the defendant's act' *Town of Winnsboro v. Wiedeman-Singleton, Inc.,* 307 S.C. 128, 132, 414 S.E.2d 118, 121 (1992) (citations omitted). Second, '[I]n order to sustain a claim for equitable indemnity, the existence of some special relationship between the parties must be established.' *Toomer v. Norfolk S. Ry. Co.,* 344 S.C. 486, 492, 544 S.E.2d 634, 637 (Ct. App. 2001). *McCoy v. Greenwave Enterprises, Inc.* "

ARGUMENT

I.

Judge Manning ruled correctly in holding that the findings in the First Order were not the law of the case when both appellate courts had found that findings in the First Order were not the law of the case.

Peachtree is simply incorrect in arguing that Judge Manning erred in finding that the Court of Appeals and Supreme Court had considered and rejected Peachtree's position that findings in the First Order were the law of the case. Peachtree raised the law of the case issue in both appellate courts and both appellate courts rejected Peachtree's position on the law of the case issue.

> "The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right.... Ordinarily an interlocutory order which merely decides some point or matter essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case, and may be reconsidered and corrected by the court before entering a final order on the merits." *Shirley's Iron Works, Inc. v. City of Union,* 403 S.C. 560, 743 S.E.2d 778 (2013).

Peachtree is not entitled to a second or third bite of the apple. Peachtree is also incorrect in arguing that Judge Manning erred in finding that he had to follow the holdings of the appellate court.

A review of the record in the two appellate court proceedings reveals that Peachtree, in its Respondent's brief[1] in Price, argued as follows:

> "All but one exception raised by Appellants in this appeal were ruled upon previously by the South Carolina Workers' Compensation Commission's First Appellate Panel Order and those findings are now the law of the case." (Brief of Respondent, p. 9)

Bob Wire responded in its Reply Brief[2] as follows:

> **"I. All of the arguments raised by the Appellants are preserved for review and are properly before the Court of Appeals.**
>
> The Respondents argue, inexplicably, that 'the findings of Fact and Conclusions of Law contained in [the Appellate Panel Order of May 4, 2007] are the law of the case.' and that; therefore, the question of whether the Workers' Compensation Commission has the jurisdiction or authority to order the Appellants to pay the Respondents '$112,789.42 in medical benefits' and temporary total disability benefits 'in the total amount of $47,023.99' under a theory of either equitable indemnity or equitable subrogation is not properly before the Court of Appeals at this time. The Appellants respectfully submit that the Respondents' argument is without merit and that all of the issue raised by the Appellants are preserved for review and are properly before the Court of Appeals at this time." (Appellant's Reply Brief, p. 1)

---

1 This brief was not presented to Judge Manning. However, the court is asked to take judicial notice of the brief. Rule 201, SCRE. *Wise v. Wise,* 394 S.C. 591, 716 S.E.2d 117 (2011) (the appellate court can take judicial notice of something that was not before the trial court if it is indisputable.) *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) (a court can take juridical notice of its own records, files and proceedings for all proper purposes including facts established in its records.) *S.C. Department of Social Services v. Janice C.,* 383 S.C. 221, 678 S.E.2d 463 (2009) (judicial notice may be taken at any stage of the proceeding.)

2 This brief was not presented to Judge Manning. However, the court is asked to take judicial notice of the brief. Rule 201, SCRE. *Wise v. Wise,* 394 S.C. 591, 716 S.E.2d 117 (2011) (the appellate court can take judicial notice of something that was not before the trial court if it is indisputable.) *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) (a court can take juridical notice of its own records, files and proceedings for all proper purposes including facts established in its records.) *S.C. Department of Social Services v. Janice C.,* 383 S.C. 221, 678 S.E.2d 463 (2009) (judicial notice may be taken at any stage of the proceeding.)

The Court of Appeals, in a unanimous decision in *Price*, rejected Peachtree's argument that findings in the First Order were the law of the case, holding:

> "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." (at page 463 of 721 S.E.2d)

Peachtree then filed a petition for rehearing[3] and made, as its first argument, the following:

---

3 This petition was not presented to Judge Manning. However, the court is asked to take judicial notice of the brief. Rule 201, SCRE. *Wise v. Wise,* 394 S.C. 591, 716 S.E.2d 117 (2011) (the appellate court can take judicial notice of something that was not before the trial court if it is indisputable.) *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) (a court can take juridical notice of its own records, files and

"I. This Court misapprehended or overlooked the Respondents' argument that the rulings in the First Appellate Panel Order are the law of the case and are not preserved for appeal. (Petition for Rehearing in Price, p. 2).

A petition for rehearing has a limited purpose.

> "A petition for rehearing must show points supposedly overlooked or misapprehended by the court. Its purpose is not to present points the lawyers of losing parties overlooked themselves or to have the case tried in the Court of Appeals a second time. *See Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933)." *Checker Yellow Cab Company, Inc. v. Checker Cab and Parcel Service, Inc.*, 287 S.C. 608, 340 S.E.2d 549 (1986).

In a unanimous decision, the Court of Appeals denied Peachtree's petition for rehearing.

Peachtree then filed a petition for a writ of certiorari[4] in which Peachtree argued as follows:

> "I. The Court of Appeals was bound to apply the findings of fact and conclusions of law reached in the first Appellate Panel Order as the law of the case. (Petition for Writ of Certiorari in Price, p.7).

The Supreme Court unanimously affirmed the Court of Appeals decision with modification. The Supreme Court was equally direct on Peachtree's law of the case issue. 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 pane was not immediately appealable. **Therefore, the Court of Appeals properly found Bob Wire's failure to file an immediate appeal from the**

---

proceedings for all proper purposes including facts established in its records.) *S.C. Department of Social Services v. Janice C.*, 383 S.C. 221, 678 S.E.2d 463 (2009) (judicial notice may be taken at any stage of the proceeding.)

4 This petition was not presented to Judge Manning. However, the court is asked to take judicial notice of the brief. Rule 201, SCRE. *Wise v. Wise,* 394 S.C. 591, 716 S.E.2d 117 (2011) (the appellate court can take judicial notice of something that was not before the trial court if it is indisputable.) *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) (a court can take juridical notice of its own records, files and proceedings for all proper purposes including facts established in its records.) *S.C. Department of Social Services v. Janice C.*, 383 S.C. 221, 678 S.E.2d 463 (2009) (judicial notice may be taken at any stage of the proceeding.)

order did not render the findings of fact and conclusions of law therein the law of the case." Emphasis supplied. (at page 230 of 748 S.E.2d).

The law of the case issue was raised by Peachtree in both appellate courts and each held that Builders Mutual's failure to file an immediate appeal did not render the findings in the Final Order the law of the case. It is not without reason that the motto of the Supreme Court is nil ultra. The Supreme Court has the final say. When Supreme Court speaks and holds that the findings of the First Order are not the law of the case, then the findings in the First Order are not the law of the case. This Court, like Judge Manning, has no authority to hold otherwise. Furthermore, Peachtree's claims are all premised on the findings in the First Order being the law of the case. Since the Supreme Court has held that the findings are not the law of the case, all claims must fail. (See Appellant's Brief p.21).

II.
Judge Manning ruled correctly in finding that Peachtree could not recover on its claim for quantum merit/unjust enrichment/restitution because Peachtree failed to prove that it conferred a non-gratuitous benefit on Bob Wire.

Judge Manning also held that Peachtree could not recover on its claim for quantum merit/unjust enrichment/restitution because Peachtree failed to prove that it had conferred a non-gratuitous benefit on Peachtree. (R. pp. 007-009). Judge Manning began by identifying what must be proved to sustain a claim for quantum merit/unjust enrichment/restitution. He held that:

> "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). (R. pp. 007-008).

Judge Manning identified the basis for the claim as outlined in Peachtree's complaint as follows:

> "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." (R. p. 008)

Judge Manning held that Peachtree had failed to prove that it had conferred a non-gratuitous benefits on Bob Wire by its payments to or on behalf of the claimant related to the second accident. (R. p. 009). Judge Manning held that Peachtree knew of the second accident as early as December 18, 2003. (R. pp. 009). Judge Manning found and held as follows:

> "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 11th, when did you actually.
A. I actually went back to work on the 18th 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 17th, I started working for Bob-Wire electric part time." (Price Depo. p.12, line 21 to p.13, line 7) (R. pp. 008).

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 18th, 2003. The motion was not filed until April of 2005." (R. pp. 009).

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. (R. pp. 135).

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/restitution." (R. pp. 008-009).

Peachtree, in its brief in this appeal, has failed to identify or explain how Peachtree conferred a non-gratuitous benefit by paying a claim that had never been made against Bob Wire. Clearly, there is evidence that Peachtree knew of the second accident and the subsequent employment with Bob Wire as early as December 18, 2003. Peachtree knew that the claimant was not working for Peachtree at the time of his deposition on December 18, 2003. In the deposition, the claimant specifically said that on October 17 he started

working for Bob Wire. Peachtree knew that there had been a second accident and knew that the claimant was not working for Peachtree at the time of the accident. Furthermore at the hearing before Commissioner Huffstetler on June 15, 2006, Bob Wire's attorney raised the issue specifically stating that Peachtree was put on notice of a further deposition of the claimant. Thus, Peachtree knew or should have known of the second accident as early as 12/18/2003.

Since Peachtree failed to establish that it conveyed a benefit on the Fund, Peachtree has no claim for quantum merit/unjust enrichment/restitution and the order of Judge Manning should be affirmed for this additional reason.

III.

Judge Manning ruled correctly in finding that Peachtree was not entitled to recover on its claim for equitable indemnification since Peachtree had failed to prove that there was imputed fault or a special relationship between Peachtree and Bob Wire that would be a basis for the equitable indemnity claim.

Judge Manning correctly ruled that Peachtree was not entitled to recover a claim for equitable indemnification. (R. pp. 009-011). Peachtree's third cause of action is for equitable indemnification. Judge Manning held as follows:

"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* between the parties must be established.'

Here, there is no evidence of imputed fault and there is no special relationship between Peachtree and Bob Wire that would be a basis for equitable indemnity. (R. pp. 009-011). Accordingly, Judge Manning's Order should be affirmed and Peachtree's claim for equitable indemnity should be denied.

IV.

Judge Manning ruled correctly that Peachtree was not entitled to recover on its claim for attorney's fees and costs since Peachtree did not prevail in the workers' compensation proceeding, where most of the fees were asserted and had failed to prevail in this action and since there was no special relationship between Peachtree and Bob Wire.

Judge Manning analyzed the claim as follows:

> "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." (Judge Manning's Order, p.9-10).

There are two requirements on parties seeking equitable indemnity for attorney's fees.

> "We have imposed two requirements on parties seeking equitable indemnification for attorney's fees. First '[t]he attorney['s] fees and costs must be the natural and necessary consequence of the defendant's act' *Town of Winnsboro v. Wiedeman-Singleton, Inc.,* 307 S.C. 128, 132, 414 S.E.2d 118, 121 (1992) (citations omitted). Second, '[I]n order to sustain a claim for equitable indemnity, the existence of some special relationship between the parties must be established.' *Toomer v. Norfolk S. Ry. Co.,* 344 S.C. 486, 492, 544 S.E.2d 634, 637 (Ct. App. 2001). *McCoy v. Greenwave Enterprises, Inc. " Clardy v. Bodolosky,* 383 S.C. 418, 679 S.E.2d 527 (2009).

Since Peachtree is not the prevailing party on the equitable indemnity claim and since Peachtree failed to prove a special relationship, Peachtree is not entitled to recover any attorney fees and costs. (R. pp. 011-012).

V.

Did Judge Manning rule correctly in finding that the equities did ot weigh in favor of Peachtree.

Judge Manning analyzed this issue as follows:

"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." (R. pp. 012-013).

"When this court is sitting in equity, and thus viewing evidence for its preponderance, we are to consider the equities of both sides, balancing the two to determine what, if any, relief to give.' *Anderson v. Buonforte,* 365 S.C. 482, 493, 617 S.E.2d 750, 755 (Ct. App. 2005). 'The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. *First Union Nat'l Bank of S.C. v. Soden,* 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998). 'He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes

> the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief.' *Emery v. Smith,* 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004) (quoting *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.,* 324 U.S. 806, 814, 65 S.Ct. 993, 89 L.Ed. 1381 (1945)). 'The decision to grant equitable relief is in the discretion of the trial judge.' *Soden,* 333 S.C. at 568, 511 S.E.2d at 379." Goss v. Timberline Building Systems, Inc., 383 S.C. 180, 678 S.E.2d 443 (2009).

Judge Manning was correct in this holding that Peachtree was ill advised in joining Bob Wire to the workers' compensation proceeding and in pursuing equitable claims in a workers' compensation proceeding. The claim involving Bob Wire was never made by the claimant. Peachtree's representative and its attorney both acknowledged that they were not aware of any action before the Commission in which a claim for equitable indemnification was filed and was successfully asserted. (R. p. 087, line 13 to p. 088, line 2). Peachtree had other options that were identified by Judge Manning. Peachtree in its appeal has failed to identify any equity that weighs in favor of Peachtree. Judge Manning's holding in equities did not weigh in favor of Peachtree should be affirmed. Contrary to Peachtree's argument, Judge Manning did not engage in any misguided Monday morning quarterbacking in finding that the equities did not favor Peachtree. Instead, Judge Manning's reasoning was correct and his order should be affirmed.

VI.
Judge Manning ruled correctly that when he also held that the doctrine of res judicata did not apply in this case because the adjudication in the workers' compensation proceeding was not an adjudication by a court of competent jurisdiction.

Judge Manning correctly concluded that the doctrine of res judicata did not apply in this case because the Commission lacked subject matter jurisdiction to determine Peachtree's claim for equitable indemnity and because the adjudications in the workers'

compensation proceeding were not adjudications by a "court of competent jurisdiction". For res judicata to apply, it must be shown that: (1) the identities of the parties in the prior litigation; (2) subject matter jurisdiction is the same as in 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, 452 S.E.2d 832 (1995). Since the Court of Appeals held that the Commission did not have subject matter jurisdiction over Peachtree's claims for equitable relief, then the doctrine of res judicata would have no applicability to Peachtree's claims for equitable relief. (R. pp. 010-011).

CONCLUSION

This Court, like Judge Manning, has no authority to rule contrary to the holdings of the Supreme Court. Judge Manning's Order should be affirmed.

Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (Fax)
pope@popejohnsonlaw.com
Attorney for the Respondents

Columbia, South Carolina
August 29, 2016

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

RECEIVED
AUG 31 2016
SC Court of Appeals

Appellate Case No. 2015-002626

Builders Mutual Insurance Company,
For Itself and its insured, Peachtree Electrical Services, ... Appellants

vs.

Bob Wire Electric Inc., and South Carolina Home Builders
Association Self Insurance Fund, ... Respondents

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the Final Brief of Respondents complies with Rule 211(b), SCACR.

Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pope@popejohnsonlaw.com
Attorney for the Respondents