

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

NOV 03 2016

SC Court of Appeals

William P. Keesley, Circuit Court Judge

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Case No. 2011-CP-32-1929

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Rose Electric, Inc., ..... Appellant

v.

Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC, Certified  
Development Corporation of South Carolina, Senn Bros., Inc.,  
Custom Concrete of Lexington, Inc., and  
James Dunlap d/b/a Dunlap Services, ... Defendants

Of whom

Southern Produce, Inc., and S2P, LLC are Respondents

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RETURN TO PETITION FOR REHEARING OF RESPONDENT  
SOUTHERN PRODUCE, INC.

Opinion No. 5444

Heard June 16, 2016 – Filed September 28, 2016

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William E. Booth III  
3231 Sunset Boulevard, Suite A  
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SC Bar No. 771

Attorney for Appellant

Appellant, Rose Electric, Inc. ("Rose Electric") responds to the Petition for Rehearing ("Petition") filed by Respondent Southern Produce, Inc. ("Southern Produce"). This Court applied well-established principles of law to this case for payment for construction work dispute, and no material fact was overlooked or disregarded. As detailed in the reasons below, the Petition should be denied.

I. There was no evidence that the parties agreed upon a definite method for determining the price based upon costs of labor and materials.

The argument of Southern Produce is that the parties had agreed upon a method for determining the price rather than a fixed price initially for the work. This argument was not presented to the trial court and was not discussed in the Respondent's Brief. The references to the Statement of Account and the paragraphs of the Complaint referring to other causes of action are irrelevant. Rose Electric abandoned and withdrew all causes of action other than the cause of action for quantum meruit. The abandonment of those causes of action included the abandonment of any foreclosure claim and any rights under the mechanic's lien. Rose Electric produced no evidence of any agreement on price or any agreement on the method for determining the price. The evidence presented by Rose Electric was that the fair value of the work performed was the amount sought. Otherwise, Rose Electric would have had to elect on the cause of action for consideration by the trial court.

II. There was no need for the Court of Appeals to consider the Offers of Judgment or the Offers of settlement since any issues related to them was not preserved or presented to the Court.

Southern Produce attaches to the Petition copies of three offers of judgment. That Rose Electric did not accept or counter to these offers is not an argument that can be made for granting the Petition for Rehearing. That Rose Electric chose not to accept or counterclaim the offer was a decision solely within the discretion of Rose Electric. Rose Electric sought payment of the entire amount associated with making the improvements.

III. This Court should not instruct the trial court to award additional attorney's fees to Southern Produce.

One of the grounds asserted was placed in the conclusion portion of the Petition with no other argument and asked this Court to modify its order to tell the trial court to make a new determination of the award of costs and attorney's fees. This was not raised in the arguments presented by Southern Produce and the trial court may not consider this. Instead, the Rule 222 of the Rules of Appellate Practice provide for the award of attorney's fees and costs.

### CONCLUSION

For the reasons set forth above, Rose Electric respectfully requests this Court deny Southern Produce's Petition for Rehearing.

November 3, 2016



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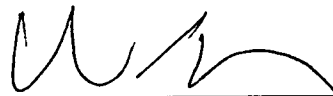
Of whom

Southern Produce, Inc., and S2P, LLC are Respondents

PROOF OF SERVICE

I certify that I have served the Return to Petition for Rehearing of Respondent Southern Produce, Inc. by causing to be mailed via Priority US Mail with sufficient postage affixed thereto, on November 3, 2016, addressed to the Respondent Southern Produce, Inc.'s attorney of record, Kathryn M. Cook, Esquire, Kathryn M. Cook, PA, 306 Calhoun Road, Myrtle Beach, SC 29577.

November 3, 2016



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Of whom

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PROOF OF SERVICE

I certify that I have served the Return to Petition for Rehearing of Respondent Southern Produce, Inc. by causing to be mailed via First Class US Mail with sufficient postage affixed thereto on November 3, 2016, addressed to the Respondent S2P, LLC's attorney of record, Jon Robin Turner, Esquire, P.O. Box 11646, Columbia SC 29211.

November 3, 2016



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November 3, 2016

## VIA HAND DELIVERY

Honorable Jenny Abbott Kitchings  
Clerk of Court of the Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

**RECEIVED**  
NOV 03 2016  
SC Court of Appeals

Re: Rose Electric, Inc. vs. Southern Produce, Inc., et al.  
C/A No. 2011-CP-32-1929  
Appellate Case No. 2014-001633  
(Our File No. 4657.1151)

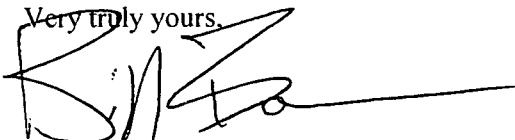
Dear Ms. Kitchings:

I represent the Appellant in this action and I enclose the following:

1. Original and six (6) copies of Return to Petition for Rehearing of Respondent Southern Produce, Inc.;
2. Proof of Service on Respondent Southern Produce, Inc.; and
3. Proof of Service on Respondent S2P, LLC.

By copy of this letter, I am serving a copy of the Return and Proofs of Service on each Respondent. If you have any questions on this or need anything further at this time, please let me know.

Very truly yours,



William E. Booth III

WEBIII/eje

Enclosure

C: J. Robin Turner, Esquire (w/Enc.)  
Kathryn M. Cook, Esquire (w/Enc.)