

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 CAROLINA COMFORT)
 SPECIALISTS, LLC)
 Plaintiff,)
)
 vs.)
)
 LINDA MCGEE WEDDLE)
 and DERICK LOYAL WEDDLE)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT COURT
 CASE NO.: 2012-CP-08-1869

ORDER OF JUDGMENT

RECEIVED

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SC Court of Appeals

KARY R. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

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FILED
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Presiding Judge: Dale Edward Van Slambrook
 Master-in-Equity for Berkeley County
 Plaintiff's Attorney: Frank M. Cisa, Esq.
 Defendants' Attorney: Michael H. Murphy, III, Esq.
 Dates of Trial: September 23, 2015, November 9, 2015 and
 April 4, 2016

The above case was referred to me to issue a final order with any appeals to be taken in accordance with §14-11-85, Code of Laws of South Carolina, 1976 as amended. This case came before the Court for trial on September 23, 2015, November 9, 2015 and April 4, 2016.

The Plaintiff, Carolina Comfort Specialist, LLC ("Carolina") was represented by Frank M. Cisa, Esq. The Defendants, Linda McGee Weddle and Derick Loyal Weddle was represented by Michael H. Murphy, III, Esq.

BACKGROUND

Plaintiff is engaged in the business of repairing and installing heating and air conditioning systems. Linda and Derrick Weddle are husband and wife and have been so at all times herein. Linda Weddle owns a residence located at 155 Foxborough Road, Goose Creek, SC in her name, which is a rental property. Defendants contracted with Plaintiff to install a heating and air

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conditioning system in the property located at 155 Foxborough Road, Goose Creek, S.C. ("the subject property") on March 7, 2012.

Plaintiff filed a mechanic's lien against the subject property on May 2, 2012. Plaintiff then sued the Defendants for breach of contract; foreclosure of its mechanic's lien; and implied contract/quantum meruit.

Defendants filed an Answer and Counterclaim wherein they admitted that Plaintiff was engaged in the business of repairing and installing heating and air conditioning systems; that the Defendant, Linda Weddle, owned the subject residence; that jurisdiction and venue were proper. Contrary to Ms. Weddles's testimony at trial, the answer admitted both Defendants entered into an agreement whereby Plaintiff would install a heating and air conditioning system at the subject property. Defendant's also admitted that Plaintiff's mechanic's lien was filed in the RMC Office for Berkeley County on May 2, 2012; and that the Defendants were served with the mechanic's lien. The Defendants also counterclaimed against Plaintiff for breach of the implied warranty of workmanlike service and negligence alleging that the heating and air conditioning system installed by Plaintiff was defective. Both Plaintiff and the Defendants seek the recovery of attorney's fees pursuant to Section §29-5-10, Code of Laws, 1976, as amended.

FINDINGS OF FACTS

Based upon the record in this action and the evidence produced at trial, this Court makes the following findings of fact:

1. Plaintiff is engaged in the business of repairing, servicing and installing heating and air conditioning systems.
2. Defendant, Linda McGee Weddle, is the owner of the subject residence. The subject residence is a rental property.

3. Plaintiff entered into a written agreement dated March 7, 2012 with the Defendants whereby Carolina agreed to install a heating and air conditioning system ("HVAC system") in the subject residence. Pursuant to the agreement, Plaintiff agreed to remove the existing 2.5 ton split heat pump and install a new TRANE model 2.5 ton heat pump; replace the indoor and outdoor units; install new refrigerant pipes and drain lines; replace the electrical disconnect box; install a new platform and drain pan; and replace all duct work with hard pipe. No sheet rock work was included in Carolina's scope of work.
4. There was no credible evidence that Mr. Weddle entered into the agreement without the knowledge or consent of Mrs. Weddle, the actual property owner. To the contrary Mr. Weddle appeared to be acting with the express permission and consent on behalf of himself and Mrs. Weddle in negotiating and executing contract.
5. Plaintiff timely filed its mechanic's lien in the RMC Office for Berkeley County on May 2, 2012 and thereafter had the mechanic's lien served on the Defendants.
6. Pursuant to the aforesaid agreement, the Defendants agreed to pay Plaintiff the sum of \$9,000.00 upon completion.
7. As shown by Plaintiff's Statement of Account, payment of the \$9,000.00 was due on March 9, 2012.
8. Although the Defendants contend that the installation of the HVAC system in the subject residence was defective, the Defendants have not paid any money to repair or replace any part or component of the HVAC system installed by Plaintiff as of the last date of trial held on April 4, 2016. The HVAC system has been operating for over four (4) years.

9. The subject property has been rented since the HVAC system was installed except for a short period of time when the Defendants undertook additional renovations to the subject property.
10. Defendants failed to produce any records that would show that the HVAC system has been serviced since it was installed by Carolina on March 9, 2012.
11. According to the testimony of the Defendants' expert, John Bailey, the duct work looked like a clean installation; the mastic was good; the duct system was acceptable; and he did not see any code violations. Mr. Bailey found two boots that needed to be sealed with caulk which would take about ten minutes. These inadequacies were minor and not material to the essence of the work performed pursuant to the contract.
12. Defendants failed to offer any testimony or evidence that the HVAC system installed by Plaintiff was not properly heating or cooling the subject residence.
13. Plaintiff offered to repair the minor inadequacies by sealing the boots but the Defendants refused to allow the work.
14. Plaintiff installed the outside stand for the condensing unit as instructed by Mr. Weddle. Carolina also installed the duct work on the floor of the attic as instructed by Mr. Weddle.
15. According to the testimony of Gene Pardee, an expert called by Plaintiff, the HVAC system was installed properly and he did not observe any problems or deficiencies.
16. No offers of settlement were made by either party in accordance with Section §29-5-10, Code of Laws of South Carolina, 1976 as amended.

17. The HVAC system installed by Plaintiff in the subject residence was installed in accordance with the contract entered into by and between the parties and installed in accordance with industry standards and all applicable codes.

CONCLUSIONS OF LAW

(Breach of Contract)

Derrick Weddle was acting with the apparent if not express authority to bind Linda Weddle regarding the installation of an HVAC unit with the Plaintiff.

Plaintiff has proven by the preponderance of the evidence that the Defendants' breached the agreement entered into by the parties by failing to pay Plaintiff \$9,000.00 that was due on March 9, 2012. Defendants have not paid any money to anyone to correct or repair the system since it was installed over four (4) years ago. Defendants further have failed to present any evidence that the system was not properly heating and cooling. The subject residence has been occupied by tenants for the majority of the time since the system was installed.

(Counterclaim for Breach of Implied Warranty of Workmanlike Service and Negligence)

Defendants have failed to prove by a preponderance of the evidence that the Plaintiff breached the implied warranty of workmanlike service or was negligent relative to the installation of the HVAC system. The HVAC system has been operating for over four (4) years without any repairs being necessary. The house has been occupied by tenants and there has been no evidence that the system is not properly heating and cooling.

(Foreclosure of Mechanic's Lien)

Plaintiff has proved by a preponderance of the evidence that labor and materials it supplied relative to the installation of the HVAC system were for the improvement of the subject property and supplied with the knowledge and consent of the Defendants. Plaintiff is entitled to the

foreclosure of its mechanic's lien in the amount of \$9,000.00 together with prejudgment interest thereon at 8 3/4% of and from March 9, 2012 together with attorney's fees and costs.

Pursuant to S.C. Code Ann. Section 29-5-10 (1976, as amended), "the costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney fee, may be recovered by the prevailing party. The fee must be determined by the Court in which the action is brought but the fee and the court costs may not exceed the amount of the lien". The amount of the mechanic's lien filed by Carolina in this action was \$9,000.00. Carolina was the prevailing party.

Further in determining the amount of attorney's fees, pursuant to Glasscock vs. Glasscock 304 S.C. 158, 403 S.E.2d 313 (1991) and Blumberg v. Nealco, 310 S.C. 492, 427, S.E.2d 659 (1993) the Court has considered the following factors:

1. The nature, extent of difficulty of the case, based upon the affidavit of the Plaintiff's counsel and based upon the Court's observation at the trial of this case.
2. The time devoted to the case which the court finds was necessary for competent representation of the Plaintiff.
3. The Court has also considered the professional standing of counsel. The Plaintiff's counsel has practiced law since 1977. He is competent and skilled trial attorney. His hour rate is reasonable and well within the customary legal fees charged in this area for the quality of services rendered by him to the Defendant. The Defendant's counsel enjoys high professional standing and a good reputation in his community.
4. Contingency of compensation: A portion of the Plaintiff's attorney's fees remain outstanding and unpaid which is shown by the affidavit of the Plaintiff's counsel.
5. The Plaintiff obtained a beneficial result relative to the trial of this case.

6. The fact that the fees charged were customary for services in a case of this kind.

Court finds and concludes that the attorney fees awarded to the Plaintiff are reasonable in light of the fact that the Plaintiff's attorney fees and costs exceed the amount of the Plaintiff's lien.

Although Carolina submitted an Affidavit of Attorney's Fees in the amount of \$11,877.74, Carolina's recovery is limited to the amount of the recovery on its mechanic's lien in the amount of \$9,000.00. Therefore, in accordance with the express language of the South Carolina Mechanic's Lien Statute Section §29-5-10(a) and the factors enumerated above, Carolina is awarded \$9,000.00 in attorney fees and costs.

IT IS THEREFORE

ORDERED, that the Plaintiff, Carolina Comfort Specialist, LLC is entitled to judgment in the amount of \$9,000.00 against Linda McGee Weddle and Derick Loyal Weddle, together with prejudgment interest at the rate of 8 3/4% of and from March 9, 2012 together with attorney fees and costs in the amount of \$9,000.00; and it is further

ORDERED, that in the event the Defendants fail to pay the amount of the judgment rendered in fifteen (15) days, the subject property described in the Complaint shall be sold at public auction, at the Berkeley County Courthouse 300 California Ave, Moncks Corner, S.C. on the following terms, that is to say:

1. The sale shall be for cash, and the highest bidder, other than the Plaintiff, shall be required to make a cash deposit of five (5%) percent of the bid as earnest money and as evidence of good faith. If the Plaintiff is the successful bidder at the sale, the Plaintiff may, after paying the costs of the sale, apply the debt due upon its Mechanic's Lien against its bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of his bid by depositing the said

five (5%) percent cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the selling officer may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of his bid within thirty (30) days of the final acceptance of this bid, then the selling officer shall readvertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of the bids in cash as prescribed above. The Master-In-Equity shall return all deposits except the deposit securing the highest bid.

2. That the Master-In-Equity, by advertisement according to law, shall give notice of the time and place of such sale, and the terms thereof; that the Master-In-Equity shall convey to the purchaser, or purchasers, a deed to the property sold; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers, should fail to comply with the terms thereof, the Master-In-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured.
3. That the Master-In-Equity shall apply the proceeds of the sale as follows:

FIRST: To payment of the amount of costs and expenses of this action, including the cost of advertising the Notice of Sale.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's total debt, including interest, attorney's fees and other

charges as set forth above, or so much thereof as the purchase money will pay the same.

NEXT: Any surplus funds to be held subject to further Order of this Court in accordance with the law and custom of this Court;

It is further ORDERED, ADJUDGED AND DECREED that upon the making of the sale of said property, as hereby ordered, and the execution and delivery to the purchaser of a deed to the premises, the said purchaser or purchasers be let into possession of the property on production of the deed; and the Sheriff of Berkeley County upon issuance of a Writ of Assistance shall put the holder of the deed into possession of the property;

It is further ORDERED, ADJUDGED AND DECREED that the Defendant and all persons or entities whatsoever claiming under her be barred and foreclosed of all right, title, interest, and equity of redemption in the below described property so sold, or any part thereof.

ALL that piece or lot of land, with improvements, thereon, situate, lying and being in Berkeley County, South Carolina, and shown and designated at Lot 94, on plat by E.M. Seabrook, Jr., Inc., dated August 18, 1972, entitled "FOXBOROUGH BERKELEY COUNTY, SOUTH CAROLINA, Lots 73-102 and recorded in Plat Book U, Page 95, in the office of the Clerk of Courts for Berkeley County. Reference is had to said plat for a further and more complete description of the size, shape, buttings, dimensions and locations of said Lot 94.

BEING the same property conveyed to the grantor by deed of John M. DeLoach,

dated October 22, 1975, and recorded in Book A 298, Page 142, in the office of the

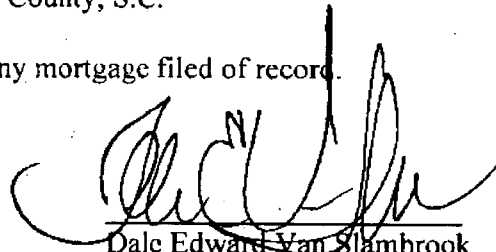
Clerk of Courts for Berkeley County, S.C.

Subject to terms and conditions of any mortgage filed of record.

AND IT IS SO ORDERED!

This 24th day of May, 2016

Monks Corner, S.C.



Dale Edward Van Slambrook
Master-in-Equity for Berkeley County