2011-195907

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Op. No. 4826 (S.C. Ct. App. refiled June 23, 2011)

C-Sculptures, LLC, ... Respondent,

v.

Gregory A. Brown and Kerry W. Brown,. ..... Petitioners.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 23, 2011.

INTRODUCTION

Pursuant to Rules 240 and 242, SCACR, the Petitioners Gregory A. Brown and Kerry W. Brown ("Owners") hereby request that this Court issue a Writ of Certiorari to review the Court of Appeals' decision in *C-Sculptures, LLC v. Brown*, Op. No. 4826 (S.C. Ct. App. re-filed June 23, 2011) (Shearouse Adv. Sh. No. 21 at 52). The Court of Appeals affirmed the circuit court's order which upheld the decision of the arbitrator finding (1) C-Sculptures ("Contractor") was not precluded from bringing the action in this case despite its failure to possess a valid license to perform the work under the residential home building contract; and (2) Contractor was the "prevailing party" under the mechanic's lien statute so as to be entitled to an award of fees and costs, even though the final award was closer to "zero" than the amount Contractor demanded in the pleadings ($150,092.69) until the first day of the arbitration proceedings. These rulings are erroneous under settled law of this Court.

Owners request that this Court grant this petition, reverse the Court of Appeals' decision, reverse the circuit court's decision, and remand the matter with instructions to dismiss the claim because of C-Sculptures' violation of South Carolina law. Owners also request that this Court reverse the finding that the procedure followed in this case for determining the "prevailing party" under the mechanic's lien statute was within the arbitrator's discretion.

QUESTIONS PRESENTED

A. Did the Court of Appeals err in affirming the circuit court's order which upheld the arbitrator's decision not to dismiss the mechanic's lien action because the Court of Appeals viewed the enforcement provisions of South Carolina Code Ann. § 40-11-370(c) (2011) as not "well defined, explicit, and clearly applicable" to this case?

B. Did the Court of Appeals err in affirming the circuit court's order which erroneously upheld the arbitrator's finding that Contractor was the prevailing party for purposes of S.C. Code Ann. § 29-5-10(b)(2007) under the facts of this case?

STATEMENT OF THE CASE

On September 10, 2005, Contractor filed and served a Notice and Certificate of Mechanic's Lien against Owners' home. Contractor asserted it was owed $39,357.48 for work done.

On January 20, 2006, Contractor filed a Notice and Certificate of Lis Pendens regarding foreclosure of its mechanic's lien. Contractor also filed an Amended Notice and Certificate of Mechanic's Lien asserting Owners owed Contractor $150,092.69 based upon a sworn Amended Statement of Account. That same date, Contractor filed a Complaint against Owners seeking foreclosure of its mechanic's lien. Contractor also alleged a statutory violation for failure to make undisputed payments on the claims. Contractor alleged that Owners owed $150,092.69 for work Contractor performed on Owners' home. (Complaint, ¶ 17, R. p. 51).

On March 10, 2006, Owners moved to dismiss the civil action and submit the matter to arbitration pursuant to the agreement. On June 14, 2006, the court entered a consent order to stay the action pending arbitration. (R. p. 1).

On July 26, 2006, Contractor filed an Amended Complaint, and once again asserted a balance due of $150,092.69. (R. p. 138, ¶ 17).

On October 10, 2006, Owners moved to dismiss Contractor's claims for quantum meruit and violation of the South Carolina Unfair Trade Practices Act. On October 23, 2006, the arbitrator issued an order dismissing the quantum meruit claim but denying the motion to dismiss the Unfair Trade Practices claim.

On November 6, 2006, Contractor filed its Pre-Arbitration Brief in support of its claims. In the brief, Contractor asserted Owners owed $150,092.69 for work under the contract. (R. pp. 151, 157, 161). Contractor acknowledged that Owners were asserting that they were due credits based upon various factors, including $55,900 paid directly to vendors, $5,250 retainage previously billed, and other amounts not due.

On November 8, 2006, Owners filed their Prehearing Brief, outlining the credits they should receive against Contractor's claims. (R. p. 164-174). Owners also filed a Motion to Dismiss on the ground Contractor was not appropriately licensed under South Carolina law. (R. p. 175-180).

Following a week-long hearing, the Arbitrator entered his order: (1) permitting Contractor to amend its claim to reflect the credits claimed by Owner totaling $59,845.00, reducing the "amount claimed in the arbitration" from $150,092.69 to $90,155.00 (the actual result is $90,247.69); (2) denying Owners' motion to dismiss under the licensing statutes; (3) finding a balance due to be $85,863.00; (4) denying Contractor's claim under the SC Unfair Trade Practices Act; (5) finding in favor of Owners for credits of $34,132.50; (6) finding Contractor was due $51,730.50 under the contract; (7) awarding

Contractor interest of $10,484.74 under the contract; and (8) finding Contractor to be the "prevailing party" under S.C. Code Ann. § 29-5-10 and § 27-1-15 so as to support an award of attorney's fees of $24,707.00 and costs of $2,698.84. Accordingly, the arbitrator awarded Contractor $89,621.08 and ordered Owners to reimburse Contractor for their share of the administrative fees and expenses of the arbitration. (R. pp. 4-6)

On January 8, 2007, Owners filed a Motion and Petition to Vacate Arbitration Award with the circuit court. Owners asserted the arbitrator erred in denying their motion to dismiss Contractor's claim, erred in permitting Contractor to amend its demand for arbitration for purposes of § 29-5-10 (attorney fee statute), and erred in finding Contractor was the "prevailing party" for purposes of the attorney fee statute. (R. p. 216).

On March 14, 2007, the circuit court entered a brief order denying Owners' Motion to Vacate the Arbitration Award. On July 9, 2007, the circuit court entered a more complete order denying Owners' Motion to Vacate the Arbitration Award. (R. pp. 8-9).

On July 20, 2007, Owners moved the circuit court to reconsider its ruling, to alter or amend that ruling, and to vacate the arbitration award. On January 8, 2008, the circuit court entered its order denying Owners' motion. (R. pp. 10-18).

Owners filed and served their Notice of Appeal on February 8, 2008. On December 8, 2010, the Court of Appeals heard oral arguments in the matter and by amended opinion filed June 23, 2011, the Court affirmed the circuit court order. Owners sought rehearing but the Court of Appeals denied their petition in an amended opinion (the Court corrected a scrivener's error in a footnote).

This petition for writ of certiorari follows.

ARGUMENTS

I. THE COURT OF APPEALS SHOULD NOT HAVE AFFIRMED THE CIRCUIT COURT'S ORDER ON THE GROUND THAT THE ENFORCEMENT PROVISIONS OF SOUTH CAROLINA CODE ANN. § 40-11-370(C) (2011) WERE NOT "WELL DEFINED, EXPLICIT, AND CLEARLY APPLICABLE" TO THIS CASE

The Court of Appeals erred in finding the scope of judicial review precluded the Court from reversing the circuit court (and hence the arbitrator's) decision in this matter. The applicable law is, in fact, well-defined, explicit and clearly applicable to this case, so that the arbitrator manifestly disregarded the law in refusing to apply it to this case.

Owners learned from the first day's testimony before the arbitrator that Contractor was not a licensed residential builder, but instead held a license as a General Contractor under a classification of "building" and in "Group Two." (R. p. 217, ¶ 12). Group Two contractors are restricted to bids and jobs not to exceed $100,000. S.C. Code Ann. § 40-11-260 (1998) (Group Two general contractors limited to contracts not to exceed $100,000); S.C. Code Ann. § 40-11-270 (1998) (licensee confined to limitations of the licensee's license group and license classifications or subclassifications as provided in the chapter). Owners actually paid Contractor over $882,000 under their agreement. (R. p. 4, ¶ 3). Owners moved to dismiss the matter, asserting that Contractor was effectively unlicensed because it had exceeded its licensing authority, and the Agreement was therefore void and unenforceable. The arbitrator, however, denied the motion to dismiss "after due consideration of all the evidence and authorities presented by the parties in the Arbitration." (R. p. 4, ¶ 2).

The Court of Appeals noted that the Owners' contention about the invalidity of the Contractor's license "may be correct," but held the law on the issue was not "perfectly

clear" because "no cases are directly on point...." Slip Op. at 4 (Shearouse Adv. Sh. No. 21 at 58). Thus, the Court found the arbitrator did not manifestly disregard the law since there was no "governing" principle the arbitrator refused to apply. This holding is contrary to the plain language of the applicable statute as well as the jurisprudence from this Court and from the Court of Appeals.

The statute itself, S.C. Code Ann. § 40-11-370 (C), instructs "[a]n entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract." (Emphasis added). The code section therefore provides a statutory prohibition against the enforcement of contracts and mechanic's liens which is an affirmative defense to any claim by a non-complying contractor. *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 703 S.E.2d 221 (2010).

This Court has held that these licensing door-closing statutes are plain and unambiguous and should be applied literally. *Duckworth v. Cameron*, 270 S.C. 647, 244 S.E.2d 217 (1978) (construing predecessor to current S.C. Code Ann. § 40-59-30(B) (2011)); See also *Lenz v. Walsh*, 362 S.C. 603, 607, 608 S.E.2d 471, 472-473 (Ct. App. 2005) ("Our supreme court has stated that, because the statute is plain and unambiguous, it should be applied literally..."). In *Duckworth*, this Court stated, "[i]t is our opinion that § 40-59-130 [now § 40-59-30(B)] is clear and unambiguous. Any builder who violates the chapter by entering into a contract for home construction without obtaining the required license simply cannot enforce the contract." See also *Skiba v. Gessner*, 374 S.C. 208, 648 S.E.2d 605 (2007) (noting trial court "correctly dismissed" contractor's action pursuant to S.C. Code Ann. 40-11-370 because contractor did not have a valid license at

the time work was performed so that contract was illegal).

This Court has indicated that "substantial compliance" with these statutes is not sufficient. See *Burry & Son Homebuilders, Inc. v. Ford*, 310 S.C. 529, 426 S.E.2d 313 (1992) (Court rejected "substantial compliance" argument, finding the mandate of § 40-59-130 [now § 40-59-30(B)] "clear and unambiguous"). Compare *Costa and Sons Construction Co., Inc. v. Long*, 306 S.C. 465, 412 S.E.2d 450 (Ct. App. 1991) (Court of Appeals agreed with circuit court that where owner of company maintained general contractor's license, the company demonstrated sufficient compliance with S.C. Code Ann. § 40-59-140 (exempting any person licensed as a general contractor from the requirements of the residential home builders statutes)).

Settled law in South Carolina also provides that contracts entered in violation of South Carolina law are illegal, void, and unenforceable. See, *e.g.*, *Ward v. West Oil Co., Inc.*, 387 S.C. 268, 274, 692 S.E.2d 516, 519-520 (2010) (Supreme Court noted that an appellate court takes its own notice of anything contrary to public policy if it appears from the pleadings or evidence, and that a plaintiff will be denied relief "for to hold otherwise would be to enforce inappropriately an illegal agreement"); *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) ("The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions."); *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (holding that illegal contracts are void and unenforceable, such that actions for its breach may not be

maintained). See also *W&N Construction Co., Inc. v. Williams*, 322 S.C. 448, 472 S.E.2d 622 (1996); *Wagner v. Graham*, 296 S.C. 1, 370 S.E.2d 95 (Ct. App. 1988) (applying bar to recovery even though homeowner knew contractor was not licensed). Cf. *McMullen v. Hoffman*, 174 U.S. 639, 654 (1899) ("The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought in which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract.").

To permit an unlicensed contractor to circumvent licensing requirements by payment of a small fine would defeat the legislative intent and not serve the policy of protecting the public. *W&N Construction Co., Inc. v. Williams*, 322 S.C. at ___, 472 S.E.2d at ___ (licensing statutes protect the public); *Watson v. Harmon*, 280 S.C. 214, 312 S.E.2d 8 (Ct. App. 1984) (a purpose of the statute and regulations governing the licensing of residential home builders is "to protect the home-buying public from financially irresponsible builders").

Furthermore, published decisions of the South Carolina Chief Procurement Officer hold that subcontractors who are not properly licensed in South Carolina are "unqualified subcontractors" for purposes of invitations for competitive bidding. (R. pp. 23-40). These decisions demonstrate that a contractor who is not properly licensed pursuant to Chapter 11 of Title 40 is not considered a qualifying contractor, i.e., is considered "unlicensed" in South Carolina.

There is no dispute that the Contractor in this matter did not have a valid license

as required by Chapter 11 of Title 40. Contractor was "under-licensed," and was not authorized to perform the work that Contractor contracted to perform. Therefore Contractor did not have a "valid" license as required by Chapter 11. The language of the statute is perfectly clear: Contractor may not bring any action to enforce its contract because it did not have a valid license as required by South Carolina law. The contract was illegal and not enforceable under South Carolina statutory and case law.

The fact that this particular situation – the arbitration of an invalid contract – has never been addressed by an appellate court does not render the applicable law unsettled, lacking in clarity, or lacking definition. The statute in and of itself is clear, defined, explicit and unquestionably applicable. The arbitrator simply chose not to apply the plain language of the statute, and that decision demonstrates a manifest disregard of the express, clear and unequivocal language of the law. The Court of Appeals overlooked the fact that the arbitrator, for reasons known only to the arbitrator, decided to ignore the statute and refused to apply its plain language to this case.

Refusing to apply the clear and correct law is equal to a manifest disregard of the law. *Gissel v. Hart*, 382 S.C. 235, 676 S.E.2d 320 (2009) (an arbitrator's "manifest disregard of the law," as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it). Cf. *Young v. Hyman Motors*, 199 S.C. 233, 19 S.E.2d 109 (1942) (a conclusion of fact which has no reasonable basis in the evidence is an error of law); Compare *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986) (a trial court abuses its discretion when its decision is controlled by an error of law or, if based on factual conclusions, is

without evidentiary support). The arbitrator in this case was made aware of the applicable law; he simply chose not to apply it. There can be no clearer "manifest disregard of the law" than occurred in this case.

If the decision in this case is permitted to stand, an arbitrator could decide that he or she will not apply the applicable law the courts would be powerless to modify that decision. For instance, if an arbitrator decided the applicable statute of limitations was unfair and decided to ignore it, the courts could not remedy the situation. An arbitrator might also decided that a legislatively imposed limitation on recovery should not apply, and so long as there was no case on point, the courts would have to permit the erroneous application of the law to stand. This cannot be correct. Even in arbitration, litigants have to be able to expect that the law is the law, and that where the law is clear, the law will be properly applied in a predictable manner.

Accordingly, this Court should grant this Petition, issue a writ of certiorari to review the Court of Appeals' decision, reverse that decision, and remand the matter with instructions that Contractor's claims be dismissed with prejudice.

II. UNDER THE FACTS OF THIS CASE, THE COURT OF APPEALS ERRONEOUSLY UPHELD THE CIRCUIT COURT'S ORDER WHICH UPHELD THE ARBITRATOR'S FINDING THAT C-SCULPTURES WAS THE PREVAILING PARTY FOR PURPOSES OF S.C. CODE ANN. § 29-5-10(B)(2007), THE MECHANIC'S LIEN ATTORNEY FEE STATUTE

The Court of Appeals ruled that the arbitrator acted within his discretion in permitting the Contractor to delay its "offer" (asserted by pleading only) until the day of the arbitration hearing and then amend its pleading so that it could serve as the offer under S.C. Code Ann. § 29-5-10(B) (2007), the mechanic's lien attorney fee statute. Under the facts and circumstances of this case, the Court should find that what the Contractor did here was fundamentally unfair and not in accord with the purposes and procedures set forth in the applicable statute.

The facts of this case are telling. To begin with, this is not a matter where Owners are trying to get something for nothing or are trying to avoid paying anything on the contract. Owners paid Contractor $882,804.72 directly. (R. p. 47). Owners also received other credits for nearly $100,000.00, so that the arbitrator concluded Contractor was due only $51,730.50 on this nearly million-dollar contract. There were numerous deficiencies in the workmanship and failure to meet deadlines under the agreement, and Contractor essentially abandoned the contract and sought recovery in this action. (R. pp. 164-174). The Court should not get the impression that this case involves a property owner who is trying to avoid any payment for benefit the owner received.

As for the facts relevant to the "prevailing party" analysis, on January 18, 2006, Contractor filed an Amended Notice and Certificate of Mechanic's Lien claiming it was owed $150,092.69 for labor and materials Contractor supplied and furnished pursuant to

the Agreement. (R. p. 77). At the same time, Contractor filed and served an action seeking foreclosure of a mechanic's lien to collect the stated sum of $150,092.69. (R. p. 51, ¶ 17). Contractor attached an Amended Statement of Account asserting it invoiced Owners $1,032,897.41, provided credits of $882,804.72, and the total due was $150,092.69. (R. p. 80). These were Contractor's first assertion that $150,092.69 was the amount owed to it (Contractor asserted it three separate times).

Six months later, on July 26, 2006, Contractor filed and served an Amended Complaint adding a claim for violation of the South Carolina Unfair Trade Practices Act. The remainder of the complaint remained the same from the original, including Contractor's assertion that it was owed $150,092.69 under the contract. (Second assertion that $150,092.69 was owed).

On November 6, 2006 – eleven months after initiating this action – Contractor filed its Pre-Arbitration Brief in support of its claims. In the brief, Contractor once again asserted Owners owed $150,092.69 for work under the contract. (R. p. 151, 157, 161). Contractor acknowledged Owners asserted they were due credits based upon various factors, including $55,900 paid directly to vendors, $5,250 retainage previously billed, and other amounts not due (i.e., $61,150.00 in claimed offsets). This was Contractor's third assertion that $150,092.69 was owed, and was made on the eve of the arbitration hearing.

The matter was heard from November 13 through November 17, 2006. (R.p. 3). On the first day of the arbitration hearing, the parties stipulated Owners were entitled to receive credits totaling $59,845.00 related to Owners' payment of portions of the amounts

claimed by Contractor. Contractor then moved to amend its demand in its claim from $150,092.69 to $90,155.00. Owners objected, specifically citing the "prevailing party" procedure for the award of attorneys' fees and costs under South Carolina law, and claiming Contractor's tactic of repeatedly claiming $150,092.69 and then at the hearing acknowledging the credits Owners claimed the entire time subverted the policies underlying that procedure. The arbitrator, however, granted the motion and permitted Contractor to amend its claim from the amount Contractor had repeatedly stated in the pleadings ($150,092.69) to $90,155.00.

The arbitrator ultimately held the actual amount due under Contractor's claim was $85,863.00. He arrived at that figure by deducting $59,845.00 from the Contract Balance less the total Owners had previously paid. (R. p. 4, ¶ 3). The arbitrator then outlined credits Owners were due as offsets which totaled an additional $34,132.50 to be offset from the total Contractor claimed was due. (R. p. 5, ¶ 5). Accordingly, the arbitrator found Contractor was entitled to payment of only $51,730.50. (R. p. 5, ¶ 6).

The arbitrator then found that because $51,730.50 was closer to Contractor's claim in its Complaint as amended on the first day of the hearing than the offer Owners made (zero), Contractor was the "prevailing party" pursuant to S.C. Code Ann. § 29-5-10 (Supp. 2005) as well as under the parties' contract. The arbitrator therefore awarded Contractor attorney's fees and costs pursuant to § 29-5-10, in accordance with the Agreement, and in accordance with S.C. Code Ann. § 27-1-15.[1]

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[1] Owners challenged these separate foundations for the award before the circuit court and the Court of Appeals. However, the only ground addressed in both courts was the award under the mechanic's lien statute.

Contractor should be bound by the amount it claimed continuously and repeatedly was due, up until the first day of the arbitration hearing. Section 29-5-10 provides, in part:

> (b) Not less than fifteen days before the first term of court at which the trial is set, either party may file and serve on the other party an offer of settlement, and within ten days thereafter the party served may respond by filing and serving his offer of settlement. The offer shall state that it is made under this section and specify the amount, exclusive of interest and costs, which the party serving the offer is willing to agree constitutes a settlement of the lien. If the action is not reached for trial, then not less than fifteen days before the next term of court and subsequent terms of court at which the trial is set, either party may file and serve on the other party an offer of settlement or an amendment of a prior offer of settlement and, within ten days after that, the party served may respond by filing and serving his offer or amended offer of settlement. The offer or amended offer supersedes any offer previously made under this section by the same party.

(emphasis added). Furthermore, Section provides:

> An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer, five days before the commencement of the term.
>
> If the offer is rejected it may not be referred to for any purpose at the trial, but may be considered solely for the purpose of awarding costs and litigation expenses under this section.
>
> For purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic's lien and the consideration of compulsory counterclaims. The party whose offer is closer to the verdict reached is considered the prevailing party in the action. If the difference between both offers and the verdict is equal, neither party is considered to be the prevailing party for purposes of determining the award of costs and attorney's fees.
>
> If the plaintiff makes no written offer of settlement, the amount prayed for in his complaint is considered to be his final offer of settlement.
>
> If the defendant makes no written offer of settlement, the value of his counterclaim is considered to be his negative offer of settlement. If the defendant has not asserted a counterclaim, his offer of settlement is

considered to be zero.

(Emphasis added). Here, the legislature has carefully crafted a procedure which forces each party to adequately and efficiently evaluate the claims and defenses in advance of the hearing and make an offer or demand in good faith to obtain an award of fees and costs. The essential purpose is to promote early resolution of claims, to reward good faith demands or offers, and to penalize those who refuse to bargain in a reasonable manner. The reason time limits exist in the statute is to allow the parties time to negotiate from the offers before getting to trial.

In allowing Contractor to drop his amount claimed in the Complaint on the morning of the first day of the arbitration hearing, the arbitrator permitted Contractor to ambush Owners. This last-minute gamesmanship took away Owners' ability to respond to the "offer" under the plain language of the statute. The procedure used in this case did not adhere to the "not less than 15 days" limit for making an offer of judgment under the statute and deprived Owners of any time, much less the 10 days, to respond to the offer.

In ruling that the Arbitrator acted within his discretion in permitting the Contractor to delay its offer until the day of the hearing and amend its pleading so that the pleading could serve as the offer, the Court of Appeals overlooked or misapprehended that C-Sculptures never made an offer under the statutory scheme, but simply relied upon the amount it claimed, repeatedly, to be due: $150,092.69. This was deemed to be the demand going into trial. By permitting C-Sculptures to amend its demand at the hearing, the Arbitrator permitted C-Sculptures to adhere to a position Owners knew was false but avoid the consequences by adjusting its claim at trial. This procedure did not allow

Owners any reasonable time to respond, much less the ten days outlined in the statute.

The Court of Appeals chastised Owners for not responding immediately based upon C-Sculptures' "concession" that Owners were due nearly $60,000 in credits. However, this was information Owners had been telling C-Sculptures all along. The Court was correct, however, that Owners were complaining that the arbitrator permitted Contractor to manipulate "the range of the possible award to increase [Contractor's] odds of 'being closest to the pin.'" Slip Op. at 4 (Shearouse Adv. Sh. No. 21 at 60). What happened here is, in fact, fundamentally unfair, and should not be allowed to occur. It certainly should not form the basis for an award of fees and costs under the plain language of the statute. The statute creates a procedure that gives parties a period of time – before trial – to make demands and adjust demands. This is not a process where parties make new bets while walking in the courthouse door.

This Court should grant this Petition, issue the writ of certiorari, and reverse the Court of Appeals' decision on this point. The Court should hold that under the policies reflected by the language contained in § 29-5-10(b), it was error for the Arbitrator to permit C-Sculptures to maintain its false claim for $150,092 until the day of trial and then have a late-in-the-day conversion manipulating its ability to recover fees and costs.

CONCLUSION

For the reasons stated this Court should grant this Petition, reverse the Court of Appeals' decision, and remand the matter for further proceedings consistent with this Court's rulings.

Respectfully submitted,

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