

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2015-CP-23-05871

Classic Pools of Spartanburg, LLC,)
)
)
Plaintiff,)

vs.)

Scott E. Bisbee, et al,)
)
)
Defendants.)

ORDER

RECEIVED

MAY 26 2017

SC Court of Appeals

This is a mechanic's lien foreclosure that involves installation of a swimming pool liner in a residential pool located in Greenville County, South Carolina. Plaintiff contends that all work was done in a quality, workmanlike manner and that it is entitled to full payment of the remaining \$1,700.00 due. Defendant contends that there are several substantive defects in the pool liner and refuses to pay the outstanding balance due on the invoice.

By consent, the case was referred. The case was tried on March 13, 2017.

Suffice it to say that the parties are unable to agree on virtually any of the factual events that have occurred in this case. Basically, the parties agree that Plaintiff installed a swimming pool liner at Defendant's residence, but beyond that they agree on very little else.

Plaintiff's owner, Mr. Jerry Bridges, testified that at the time of the initial installation, one of his installers made an indentation in the liner at the top of the liner. Mr. Bridges testified that the indentation, made with a screwdriver, did not cause a hole, rip or tear. Out of an abundance of caution, Mr. Bridges testified that he placed a small piece of adhesive caulking, about the size of a pencil eraser, at the area of the indentation. Defendant and his wife, on the other hand, testified that there was a hole in the liner in the area in question when it was installed

and that it has progressively gotten worse since its initial installation in April or early May of 2015.

Mr. Bridges also testified that the diamond patterns in the liner were level and properly installed and that any initial problems were a result of Defendant not properly filling the pool with water. Defendant and his wife testified that, from the time of the initial fill-up of the pool, one side of the diamond pattern of the pool liner was “wavy” and that the issue has stayed the same or gotten worse.

Mr. Bridges testified that following the initial installation, one area of the liner “popped out” of its holder and that he promptly returned and corrected the issue. He also testified that was the only time he was called out for this problem and that all was corrected during this one visit. Defendant and his wife testified that, while Plaintiff did come out initially to attempt to correct the issue, the issue still exists and that the liner continues to “pop” or come out of its holder in one area. Defendant further testified that Plaintiff has come out either two or three times since the initial reattachment in an effort to correct the problems.

Mr. Bridges testified that he and his attorney performed an on-site visit, with Defendant being present, on April 13, 2016. He testified that, based upon his personal observations that day, the liner was not pulled out, the diamond pattern on the liner was properly positioned, and that Defendant never mentioned or complained of a hole in the pool liner. In fact, Mr. Bridges testified that until he received photos from Defendant’s attorney during discovery, Defendant had never raised the issue about the liner having a hole in it. As relates to the April 13, 2016 visit, Defendant, who was not represented by an attorney at that time, testified that the diamond pattern was wavy on that date, and that he, during the visit, showed Plaintiff the hole in question.

Defendant introduced certain photographs of the areas and alleged deficiencies into evidence. One exhibit, Defendant’s Exhibit No. 6, purports to show the area in question where Defendant contends a hole has existed since the time of initial installation. Mr. Bridges, in his

testimony, stated that Defendant's No. 6 was not in the area where his initial worker caused the indentation and that he does not know what happened nor who attempted to patch the hole in question.

Mr. Bridges testified that if there was a problem with the liner, that the Defendant had rights pursuant to a warranty with the manufacturer. However, he further testified that such a warranty did not commence until such time as Plaintiff was paid in full on this job. Defendant, conversely, testified that he had contacted the manufacturer after being unable to get the matter resolved with Plaintiff and that the manufacturer directed Defendant to deal with Plaintiff on these purported issues. Mr. Bisbee testified he was unable to resolve the issues with the Plaintiff.

As set forth above, this is clearly a case of credibility and significant factual differences and recollections. And, the Court is in the unenviable position of having to review the testimony and evidence, and issue its findings and conclusions. All witnesses appear genuine and convinced that their version of the facts are correct.

Based upon a full review of the record, including a review of the testimony and photographs, the Court finds that the greater weight of the evidence supports Defendant's position. While it is clear that the parties have significant disagreements, the Court finds that the preponderance of the evidence supports the contentions of Defendant.

Defendants have also filed a counterclaim seeking damages for Defendant's alleged negligent work and seeking damages for monies he paid to correct Plaintiff's work. Defendant also seeks his attorney's fees and costs.

While Defendant testified that he had paid some nominal amount of money to someone to come out and repair the pool and give their professional opinion on Defendant's concerns, there was no evidence of any repairs or future expenses that may be involved in remedying the current situation. As such, as relates to Defendant's counterclaim for damages, the Court declines to award any damages.

Notwithstanding the above, and as relates to Defendant's attorney's fees and costs, under §29-5-10 and §29-5-20 SC Code of Laws, 1976, as amended, the Court is compelled and required to award attorney's fees and costs to the prevailing party. Even though Plaintiff's initial claim was only for \$1,700.00, it is clear that both parties have expended far more in attorney's fees and costs than the amount in controversy. Notwithstanding this fact, the Court finds that under either §29-5-10 or §29-5-20, Defendant is the prevailing party. See, Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC, 641 S.E.2d 459 (SC App. 2007). Accordingly, the Court finds that Plaintiff shall pay to Defendant the sum of \$2,750.00 for Defendant's attorney's fees. This is less than the full amount sought by Defendant and is based on the competing recollections noted above and the fact that some of Defendant's attorney fees were related to his counterclaim.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the Court finds in favor of Defendant as relates to Plaintiff's claim for damages;
2. The Court finds in favor of Plaintiff as relates to Defendant's claim for breach of contract;
3. That Defendant is entitled to judgment against Plaintiff for attorney's fees and costs in the amount of \$2,750.00 with said amount to be entered as a judgment against Plaintiff;

AND IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE ON PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Classic Pools Of Spartanburg LLC vs. Scott E Bisbee , defendant, et al
Case Number: 2015CP2305871
Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)