THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale Edward Van Slambrook, Master-in-Equity

Appellate Case No. 2016-002323
Docket No. 2012-CP-08-1869

Carolina Comfort Specialists, LLC.....Respondent.

v.

Linda McGee Weddle and
Derrik Loyal Weddle.....Appellants,

FINAL BRIEF OF APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

Statutes and Regulations

Court Rules

STATEMENT OF ISSUES ON APPEAL

I. The trial court erred in failing to dismiss the claim for a mechanic's lien for failure to comply with the statutory requirements.

II. The trial court erred in law and in fact by finding Appellant Linda McGee Weddle was a party to the contract.

III. The trial court erred in qualifying an expert after the conclusion of the trial.

IV. The trial court erred by finding the failure to provide an extended warranty was not properly pled by the Appellants.

STATEMENT OF THE CASE

This appeal arises from a dispute over Respondent's installation of a heating and air conditioning system at Appellant Linda McGee Weddle's rental property. Respondent filed a mechanic's lien in the RMC office for Berkeley County on May 2, 2012. (R. pp. 27-32). The Notice and Certificate of Mechanic's Lien was served on Appellant Derrik L. Weddle on May 2, 2012. (R. pp. 33-34).

Shortly thereafter on June 26, 2012, Respondent filed a Lis Pendens and Summons and Complaint alleging breach of contract, foreclosure of mechanic's lien, and implied contract/quantum meruit causes of action against the Appellants. (R. pp. 15-26). Appellants filed an Answer and Counterclaim on July 30, 2012. (R. pp. 35-40). Appellants raised numerous affirmative defenses such as breach of contract, estoppel, waiver, and unclean hands. *Id.* Further, Appellants raised several counterclaims against Respondent, including breach of contract, breach of implied warranty of workmanlike service, and negligence. *Id.*

A Consent Order of Reference was filed on April 5, 2013 referring the case to the Master-In-Equity Court for Berkeley County for a Final Hearing. (R. p. 14). This matter came to a Final Hearing, without a jury, on September 23, 2015. (R. pp. 51-188). The matter continued on two additional half-days, November 9, 2015, and April 4, 2016. (R. pp. 189-442 & 443-557). Testimony ended on April 4, 2016. *Id.*

On May 24, 2016, the trial court issued an order finding for Respondent on the causes of action for breach of contract and foreclosure of the mechanic's lien. (R. pp. 3-13). The trial court also found for Respondent on the Appellants' counterclaims, and awarded Respondent attorneys' fees and costs pursuant to the mechanics' lien statutes. *Id.*

Appellants received written notice of the entry of judgment on June 7, 2016. (R. p. 43). The Berkley County Courthouse was closed early on June 17, 2016 due to inclement weather. On June 20, 2016 Appellants filed their notice and motion pursuant to Rule 59 SCRCP. *Id.*

The trial court heard the Rule 59 motion on September 15, 2016, and denied the motion by order dated October 13, 2016. (R. pp. 1-2). Appellants received written notice of the entry of judgment on October 14, 2016.

On November 11, 2016, Appellants timely served and filed their notice of appeal of the Order granting judgment for Respondent Carolina Comfort Specialists, LLC and the Order denying Appellants' Rule 59 Motion. (R. pp. 678-693).

FACTS

Respondent is engaged in the business of repairing and installing heating and air conditioning systems ("HVAC"). (R. p. 20, ¶ 1). Respondent is owned and operated entirely by Clint A. Sires ("Sires"). (R. p. 60, line 21 – p. 61, line 24). Appellant Linda McGee Weddle ("Wife") owns rental property at 155 Foxborough Road, Goose Creek, SC 29445 (the "Property"). (R. p. 20, ¶ 2). Appellant Derrik L. Weddle ("Husband") is married to Appellant Linda McGee Weddle. (R. p. 199, lines 19-20). Wife owned the Property prior to the parties' marriage and has used it as a rental property since 1980. (R. p. 240, line 14 – p. 241, line 8).

On or about December 6, 2011, Sires came to the Property to inspect the HVAC system for possible replacement. (R. p. 248, line 12 – p. 249, line 25). Sires met with Husband and Wife to discuss the current HVAC system and ductwork. (R. p. 248, line 12 – p. 249, line 25; R. p. 201, line 13 – p. 202, line 4). Wife was present at this initial meeting,

but had no further interaction with Sires. (R. p. 248, line 12 – p. 249, line 25; R. p. 104, lines 16-20).

After the initial meeting, Husband had additional email correspondence with Sires regarding the HVAC system, unbeknownst to Wife. (R. pp. 174-178). As part of the negotiations between Husband and Respondent, Respondent agreed to provide an extended 10-year warranty on the HVAC system for an additional charge of $800. (*Id.*; R. p. 111, lines 9-19; R. p. 228, lines 19-23).

From those discussions with Husband, a contract was developed by Sires and signed by Husband. (R. p. 179). Husband also forged Wife's name on the contract in the presence of Sires. (R. p. 89, lines 11-22; R. p. 205, lines 6-9). Sires testified that he was aware that Husband was signing Wife's name. *Id.* Husband testified that Sires told him to sign for Wife in order to obtain the warranty, despite Wife's lack of knowledge of any contract. (R. p. 205, line 25 – p. 206, line 23) While it is disputed why Husband signed Wife's name, it is uncontradicted that Husband did not have Wife's permission to sign the contract. (R. p. 205, line 25 – p. 206, line 23; R. p. 253, lines 20-25).

Sires designed and installed the HVAC system and ductwork on or about March 5, 2012. (R. p. 227, lines 16-25). Wife was out of town during the HVAC installation, and had no knowledge any contract had allegedly been formed or work was being performed on her property. (R. p. 251, line 9 – p. 253, line 25). Upon her return, Wife was furious to find a contract had been signed and work done to her property without her knowledge. *Id.* Additionally, Wife found substantial deficiencies in the HVAC work. (R. p. 255, line 24 – p. 265, line 16).

Wife immediately wrote Respondent a letter on March 8, 2012 making it clear that she had not agreed to any contract and was not responsible for the work. (R. p. 556). Further, on March 17, 2012, Wife sent Respondent another letter denying any agreement with Respondent and making it clear that Husband did not have authority to enter into any agreement on her behalf. (R. p. 557).

The deficiencies discovered by Wife included, incorrect HVAC size, incorrect duct location, improperly sealed duct boots, improperly insulated ducts, improperly located air handler, improperly located condenser stand, cutting of support beams, and generally poor workmanship. (R. p. 255, line 24 – p. 265, line 16). Husband requested that the deficiencies be corrected; however, Sires refused to do anything other than calk some large gaps in the duct work. (R. pp. 180-181; R. pp. 184-185; R. p. 76, lines 17-20).

On top of the poor workmanship detailed above, Respondent failed to install the properly sized HVAC unit. (R. p. 418, line 18 – p. 420, line 8; R. p. 460, lines 6-9). Respondent installed a 2.5 ton HVAC unit when a 3.0 ton HVAC unit was needed. *Id.* The need for a 3.0 ton system was confirmed by experts for the Appellants during trial. *Id.* Appellants presented expert evidence showing the HVAC was improperly sized and the duct system was improperly installed. *Id.* (R. p. 150, line 16 – p. 152, line 4).

Appellants refused to pay for the HVAC system as Wife, the owner of the Property, had never entered into any contract with the Respondent and because of the deficiencies in the installation. Respondent filed a mechanic's lien in the RMC office for Berkeley County on May 2, 2012. (R. pp. 27-32). The Notice and Certificate of Mechanic's Lien was served on Husband on May 2, 2012. (R. pp. 33-34). Respondent also attempted to serve Wife by

substitute service on Husband. *Id.* Service was never attempted on the tenant of the Property. *Id.*

Shortly thereafter on June 26, 2012, Respondent filed a Lis Pendens and Summons and Complaint alleging breach of contract, foreclosure of mechanic's lien, and implied contract/quantum meruit causes of action against the Appellants. (R. pp. 15-26). Appellants filed an Answer and Counterclaim on July 30, 2012. (R. pp. 35-40). Appellants raised numerous affirmative defenses such as breach of contract, estoppel, waiver, and unclean hands. *Id.* Further, Appellants raised several counterclaims against Respondent, including breach of contract, breach of implied warranty of workmanlike service, and negligence. *Id.*

Wife resides at 5883 Ryans Bluff Rd., North Charleston, SC 29418. (R. p. 268, lines 1-12). The Property in question is a rental and not the residence of Wife. (R. p. 240, lines 14-24). Wife never received any notice regarding the work being performed. (R. p. 271, line 25 – p. 272, line 8). Additionally, Wife was never personally served with any notice of mechanic's lien. *Id.* (R. pp. 33-34).

During the trial, Respondent called Mr. Gene Pardee. Mr. Pardee gave opinion testimony over the objection of the Appellants. (R. p. 122, line 19 – p. 124, line 11). However, Mr. Pardee was never offered as an expert or qualified as an expert during the trial. *Id.* It was only after trial, during the Rule 59 motion, that the trial court qualified Mr. Pardee as an expert. (R. p. 2).

STANDARD OF REVIEW

The foreclosure of a mechanics' lien is an action at law. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 127, 631 S.E.2d 252, 256 (2006). In an action at law, tried without a jury, an appellate court will not disturb the trial court's findings of fact

unless they are wholly unsupported by the evidence or unless it clearly appears the findings are controlled by an error of law. *Id.* (*citing Townes Assocs. Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)).

ARGUMENT

I. The trial court erred in failing to dismiss the claim for a mechanic's lien for failure to comply with the statutory requirements.

Because Wife, as owner of the Property, was never served with notice of the mechanic's lien, was never provided notice of the work being performed, and the Respondent claimed more than was due, the mechanic's lien should have been dissolved.

A. Appellant was never served with the notice of mechanic's lien.

Because the Respondent never properly served the notice of the mechanic's lien, the mechanic's lien must be dissolved. Additionally, Appellants should be granted their attorneys' fees and costs as the prevailing party.

In order to perfect a mechanic's lien against a property, the person claiming it must serve and record a certificate of lien within ninety days after he ceases to furnish labor or materials. *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24,27, 336 S.E.2d 488, 490 (Ct. App. 1985); S.C. Code Ann. § 29-5-90 (2007). "As a mechanic's lien is purely statutory, the requirements of the statute must be strictly followed." *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 140, 399 S.E.2d 430, 432 (Ct. App. 1990), *overruled* on other grounds by *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000)(emphasis added).

If the person claiming the mechanic's lien fails to properly perfect the lien, the lien must be dissolved. *Shelley Constr. Co.*, 287 S.C. at 27, 336 S.E.2d at 490; S.C. Code Ann.

§ 29-5-90 (2007). Section 29–5–90 of the South Carolina codes provides three express and clear methods to serve a notice of lien: (1) the claimant can serve the lien "upon the owner," (2) in the event the owner cannot be found, the claimant can serve "the person in possession" of the property that the lien is being filed against, (3) "in the event neither the owner nor the person in possession can be located after diligent search, and this fact is verified by affidavit of the sheriff or his deputy, the lien may be preserved by filing the statement together with the affidavit."

In this case, the Respondent attempted to serve the owner of the Property, Wife. There is no allegation that the Respondent served the person in possession of the Property, or obtained an affidavit of non-service from the Sherriff.

Responded attempted to serve Wife by serving her husband at their residence pursuant to SCRCP 4(d)(1). (R. p. 33-34; R. p. 579, lines 1-13). However, this type of service it ineffective under Section 29–5–90, and SCRCP 4(d)(1) deals only with the service of a summons and complaint. The respondent cannot ask this court to add additional methods of service under the statute. "[Courts] are not at liberty, under the guise of construction, to alter the plain language of [a] statute by adding words which the Legislature saw fit not to include." *Shelley Constr. Co.*, 287 S.C. at 28, 336 S.E.2d at 491.

"A mechanic's lien is purely statutory. Therefore, the requirements of the statute must be strictly followed." *Butler Contracting, Inc.*, 369 S.C. at 126, 631 S.E.2d at 257. Respondent failed to serve the notice of lien pursuant to the requirements of Section 29-5-90. Because these requirements must be "strictly" followed, the mechanic's lien was never perfected.

The trial court improperly relied on a response in the Appellants' answer to the complaint to find that they had admitted service of the lien. Paragraph 8 of the Respondents' complaint states:

> That thereafter, the Plaintiff had the Notice and Mechanic's Lien served on the Defendants, Derick Loyal Weddle and Linda McGree [sic] Weddle on, as more particularly shown by the Affidavit of Service, which are attached hereto as Exhibit "D", and incorporated herein by express reference.

(R. p. 21, ¶ 8).

The Affidavits of Service attached to the complaint simply show service upon Husband, and attempted service upon Wife by way of her husband. (R. p. 33-34). Wife never admitted that she, as the owner of the Property, was ever personally served with the notice of lien or that the attempted service upon her was effective.

The interpretation of pleadings is a question of law for the Court, and the Court is free to review such questions in the same manner as the trial court. *Muller*, 303 S.C. at 141, 399 S.E.2d at 433. "Uncertain admissions are not binding on anyone." *Id.*

The trial court erred in finding that Wife had admitted that service upon her was effective. The allegation on the complaint is uncertain at best, and simply refers to the affidavits of service which were defective. This attempted service was not effective pursuant to the mechanics' lien statute, and thus did not perfect the lien.

Further, Wife testified at trial that prior to being served with the summons and complaint, she had no knowledge a lien had been filed on her property. (R. p. 271, line 25 – p. 272, line 8). Accordingly, the trial court erred in finding that Wife, as owner of the Property, had been properly served and the lien perfected. Thus, the mechanic's lien should be dissolved, and the award of attorneys' fees, costs, and interest reversed.

Wife should also be granted her attorneys' fees and costs as the new prevailing party. This Court in *Utilities Const. Co., Inc. v. Wilson*, upheld an award of attorneys' fees to a party who prevailed in dissolving a mechanic's lien for failure to properly serve the notice of lien, despite losing on the non-mechanic's lien causes of action. 468 S.E.2d 1, 321 S.C. 244 (S.C. App. 1996). "A fair interpretation of the text of the statute convinces us that it is the enforcement of the lien which confers the right to attorney fees, and not the joinder of an attempted enforcement with another non-statutory cause of action on which the lienor prevails." *Id.* at 247-8.

Because Wife, as owner of the Property, was never served with the notice of mechanic's lien, the cause of action for foreclosure of the mechanic's lien must be dismissed. Accordingly, the Respondent would not be entitled to any attorney's fees, costs, or interest as provided in the trial court's order, and Wife should be awarded her attorneys' fees and costs as the prevailing party.

B. Appellant Linda McGee Weddle never received notice of the work.

Wife was never provided notice of furnishing of labor or material by Respondent. Pursuant to the statute, the mechanic's lien must be dissolved.

As discussed above, in order to perfect a mechanic's lien, the lien must be served. "Moreover, if the person furnishing the labor or materials was employed by someone *other* than the owner (such as a contractor), for the lien to attach the person must meet the *additional* requirement of giving written notice to the owner of the furnishing of the labor or material. *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.*, 409 S.C. 331, 341, 762 S.E.2d 561, 566 (2014) (*citing Butler Contracting, Inc.*, 369 S.C. at 128, 631 S.E.2d at 256).

The Property is owned by Appellant Linda McGee Weddle, not her husband Derrik L. Weddle. (R. p. 6, ¶ 2). The contract with the Respondent was signed by Husband, not Wife. (R. p. 179). As discussed more fully below, Husband did not have express or apparent authority to enter into the contract with Respondent.

Accordingly, Respondent entered into a contract with someone other than the owner, and was required to provide notice of furnishing of labor or materials to Wife to perfect and enforce a mechanic's lien. S.C. Code Ann. § 29-5-40 (2007). This notice of furnishing was never provided to Wife, and there is no evidence in the record that a notice of furnishing was ever provided. (R. p. 271, line 25 – p. 272, line 8).

Thus, Respondent failed to comply with the statutory requirements of Section 29-5-40 and the mechanic's lien should be dissolved, the award of attorneys' fees, costs, and interest reversed, and attorneys' fees and costs awarded to Wife as the prevailing party.

C. Respondent claimed more than he was statutorily allowed.

Respondent claimed more than he was rightfully due in the statement of account filed with the mechanic's lien. Accordingly, the lien must be dissolved.

As part of the requirements to file a perfect the mechanic's lien, the person claiming the lien must file and serve "a statement of a just and true account of the amount due him, with all just credits given . . . ." S.C. Code Ann. § 29-5-90 (2007). Further, the mechanic's lien should be dissolved if the person filing the statement of account "willfully and knowingly claimed more than is his due." S.C. Code Ann. § 29-5-100 (2007).

In this case, the Respondent filed a statement of account in the amount of Nine-Thousand and 00/100 Dollars ($9,000). (R. p. 26). This amount is for the full contract price allegedly entered into by the Appellants. (R. p. 179). However, it is undisputed that Eight-

Hundred and 00/100 Dollars ($800) of the contract price was for an extended warranty. (R. p. 174-178; R. p. 111, lines 9-19; R. p. 228, lines 19-23). As part of the contract, Respondent was required to purchase an extended 10-year warranty from the HVAC manufacturer, which Respondent charged the Appellants $800. *Id.*

It is undisputed that Respondent never purchased the extended warranty or registered the HVAC with the manufacturer. *Id.* At trial, Sires testified:

> Q. Is it true you did not properly register the warranty on the system?
> A. I did not register a piece of equipment I haven't been paid a dollar for. The warranty costs $600 or 400, whatever it costs.
> Q. It wasn't registered?
> A. That's exactly correct.
> Q. The warranty you quoted $800; is that correct?
> A. That's correct. There is mark-up in anything you do.

(R. p. 111, lines 9-19).

From the testimony, it is clear that Respondent knew he had failed to provide the warranty per the terms of the contract, yet still charged the Appellants for the warranty in the statement of account. A credit for the value of the warranty should have been provided in the statement of account.

This knowing and willful overstatement of the statement of account renders the statement of account defective, and perfection of the mechanic's lien ineffective. Accordingly, this Court should dissolve the mechanic's lien, reverse the award of attorneys' fees, costs, and interest, and award attorneys' fees and costs to Wife as the prevailing party.

II. The trial court erred in law and in fact by finding Appellant Linda McGee Weddle was a party to the contract.

The trial court incorrectly found that Husband had actual and apparent authority to act on behalf of his wife when entering into the contract with Respondent. Because the

evidence is clear that Wife never gave any actual authority or did anything to convey apparent authority, this Court should find she was not a party to the contract.

A. There is no evidence of any actual authority given by Appellant Linda McGee Weddle.

The trial court found, "Derrick Weddle was acting with the apparent if not express authority to bind Linda Weddle regarding the installation of an HVAC unit with the [Respondent]." (R. p. 9). However, there is no evidence to support the conclusion that Husband had actual or express authority to act on behalf of Wife.

"An agency relationship may be established by evidence of actual or apparent authority." *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). Actual authority is expressly conferred upon the agent by the principal. *Id.* "Contract actions are actions at law. In actions at law tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Hofer v. St. Clair*, 381 S.E.2d 736, 739, 298 S.C. 503, 508 (1989).

There is no evidence that supports a finding of actual authority. Both Husband and Wife testified at length that Wife never expressly conferred any agency upon Husband. (R. p. 205, line 25 – p. 206, line 23; R. p. 253, lines 20-25). Husband never had actual authority to contract on behalf of Wife. There was no evidence presented to the contrary.

Husband testified:

Q. Okay. Did your wife know that you were signing that?
A. No, she did not.
Q. Okay. All right. Did your wife authorize you to sign that contract?
A. No, she did not.
Q. Okay. And that contract was concerning your wife's property in Goose Creek. Correct?
A. Yes, sir.

Q. Okay. Now, how did your wife's signature come about on that, on that contract?
A. Well, Clint asked me to go ahead and sign my wife's name because of the fact there was a warranty -- for the 10-year warranty. And said he had to have both signatures on it to initiate the 10-year warranty.
Q. Okay. And then, prior to signing your wife's name, did you call her?
A. No, I did not.
Q. Did she have any knowledge -- prior to you signing that, was there any discussions that, hey, we're going to have Carolina Comfort replace this system?
A. No, we did not.

(R. p. 205, line 25 – p. 206, line 23).

Further, Wife testified:

Q. Okay. Did you authorize your husband to sign your signature?
A. No, I did not.
Q. Okay. Did you have any intention of contracting with Carolina Comfort to replace the HVAC or ducting system in your house?
A. Absolutely not. I wasn't using them. He has subcontractors, anyway.

(R. p. 253, line 23 – p. 254, line 5).

The only evidence in the record is that Wife never gave Husband the express authority to act on her behalf. Accordingly, this Court should reverse the finding of the lower court that Husband had actual authority to enter into the contract with Respondent.

B. Appellant Derrik Loyal Weddle did not have apparent authority to bind Appellant Linda McGee Weddle.

The trial court found that Husband had apparent authority to act on behalf of Wife when entering into the contract with Respondent. However, the trial court fails to elaborate on any facts that would give rise to such apparent authority. There is insufficient evidence in the record to support the trial court's finding that Husband had authority to bind Wife.

"The doctrine of apparent authority provides that the principal is bound by acts of his agent when he has placed the agent in such a position that a person of ordinary prudence, reasonably familiar with business usages and customs, is led to believe the agent has certain

authority and in turn deals with the agent based on that assumption." *Muller*, 303 S.C. at 142, 399 S.E.2d at 433 (*citing Fernander v. Thigpen*, 278 S.C. 140, 293 S.E.2d 424 (1982); *Watkins v. Mobil Oil Corp.*, 291 S.C. 62, 352 S.E.2d 284 (Ct. App. 1986)).

"The elements which must be proven to establish apparent agency are: (1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was a reliance upon the representation; and (3) that there was a change of position to the relying party's detriment." *Graves v. Serbin Farms, Inc.*, 306 S.C. 60, 63, 409 S.E.2d 769, 771 (1991).

There is no evidence that Wife consciously or impliedly represented Husband as her agent. The record indicates that Wife only met with Respondent on one occasion for about 15 or 20 minutes. (R. p. 249, lines 5-17). Wife had no further contact with Respondent until she discovered that her husband had entered into a contract with Respondent and signed her name to a contract. (R. p. 205, line 6 – p. 206, line 23; R. p. 248, line 12 – p. 249, line 25; R. p. 104, lines16-20).

Respondent presented no evidence at trial that Wife had done anything consciously or impliedly to indicate Husband was her agent. Respondent admitted that Wife did not sign the contract, and that Husband signed her name in front of the Respondent. (R. p. 89, lines 11-22; R. p. 205, lines 6-9). Most importantly, Sires testified that he did not know what agency relationship existed between Husband and Wife:

> Q. When you said entered into a contract, entered into a contract with Mr. Weddle; correct?
> A. I don't know if he has power of attorney over her or what they have. I didn't need – I didn't have to have both names on there. He did that. I didn't tell him to do that.

(R. p. 89, lines 16-21).

This statement by Sires makes it clear that none of the elements of apparent authority have been met. First, Sires admits he does not know what authority Husband has over Wife. Clearly Wife did not represent Husband as her agent if the Respondent is unsure of their agency relationship.

Second, Sires admits that he did not rely on any representations from Wife. He states that he didn't even need Wife's signature on the contract. Third, Sires admits that he did not change his position based on any alleged representations by Wife. Sires testified that he did not need Wife's signature on the contract, and thus he could not have changed his position based on the alleged apparent authority.

Because there is no evidence in the record to support the elements needed to prove apparent authority, this Court should reverse the finding of the trial court that Husband had the authority to contract on behalf of Wife, and vacate the judgment against Wife.

C. Appellant Linda McGee Weddle did not admit she entered into a contract with the Respondent in her answer.

The trial court relied on an admission in Wife's answer to the complaint to find that she was a party to the contract with Respondent. The trial court found, "[i]n addition, the Defendants admitted in their answer that they entered into an agreement with the Plaintiff for the Plaintiff to install a heating and air conditioning system in the property located at 155 Foxborough Drive, Goose Creek, S.C." (R. p. 1). The evidence is clear that Wife did not admit she was a party to the contract.

On or about, December 6, 2011, Husband and Wife met with Respondent to look at the existing HVAC system. (R. p. 248, line 12 – p. 249, line 25). Wife had no further contact with Respondent until March 8, 2012. (R. p. 556). On that day, Wife discovered that her husband had entered into a contract for the installation of an HVAC system, and

Respondent had installed the system while she was out of town. (R. p. 253, lines 2-22). This was on or about the time Respondent finished installing the HVAC system.

Wife immediately wrote Respondent a letter on March 8, 2012 making it clear that she had not agreed to any contract and was not responsible for the work. (R. p. 556). From day one, Wife vehemently denied any involvement or knowledge of the contract with Respondent.

Further, on March 17, 2012, Wife sent Respondent another letter denying any agreement with Respondent and making it clear that her husband did not have authority to enter into any agreement on her behalf. (R. p. 557).

Paragraph 5 of Respondent's complaint states:

> That heretofore about March 7, 2012, the Plaintiff entered into an agreement with the Defendants, whereby the Plaintiff agreed to install a heating and air conditioning system in the property located at 155 Foxborough Drive, Goose Creek, SC. Said property is owned by the Defendant, Linda McGree [sic] Weddle and is more particularly described on the attached Exhibit "A".

(R. p. 21, ¶ 5).

As part of her answer, the attorneys for Wife admitted this paragraph. However, Wife did not agree with this statement nor was she able to review the answer before it was submitted. (R. p. 589).

Regardless, the written evidence and testimony is clear the Wife immediately denied any contract with Respondent and has maintained that denial since she discovered the alleged contract. An ambiguous admission in an answer not prepared by Wife cannot undue all of the evidence denying the existence of the contract between Wife and Respondent.

The Appellants have never denied that there is a valid and binding contract between Husband and Respondent. But any inadvertent admittance that Wife was also bound by that contract cannot be the entire basis for finding she is responsible for that contract.

As discussed above, this Court is free to review interpretations of pleadings in the same manner as the trial court and uncertain admissions are not binding on anyone. *Muller*, 303 S.C. at 141, 399 S.E.2d at 433. Any admission that Wife was a party to the contract with Respondent was clearly an error and does not conform to the evidence.

Because Wife did not admit to a contract with Respondent, this Court should reverse the trial court's finding that Wife was not a party to the contract. Accordingly, any judgment rendered against Wife should be vacated.

III. The trial court erred in qualifying an expert after the conclusion of the trial.

The trial court relied on the testimony of a witness that was not qualified as an expert until after the conclusion of the trial. This retroactive qualification was inappropriate and severely prejudiced the Appellants. Accordingly, this Court should disqualify the witness as an expert and remand the case for a new trial.

The trial court's decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion. *State v. Myers*, 359 S.C. 40, 596 S.E.2d 488 (2004); see also *Jenkins v. E. L. Long Motor Lines, Inc.*, 233 S.C. 87, 94, 103 S.E.2d 523, 527 (1958) ("It was for the trial [c]ourt to say whether the inquiry was one upon which expert testimony was proper, and its ruling thereon will not be disturbed unless its [sic] appears that there has been an abuse of discretion.").

An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support. *Fields v. Regional Medical Ctr.*

Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005). "[E]rror at law' exists: (1) when the circuit judge, in issuing [the order], was controlled by some error of law . . . or (2) where the order, based upon factual, as distinguished from legal, considerations, is without adequate evidentiary support." *Simon v. Flowers*, 231 S.C. 545, 550, 99 S.E.2d 391, 393-94 (1957). A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair. *Fields*, 363 S.C. at 26, 609 S.E.2d at 509.

During the trial, the Respondent called Gene Pardee as a witness. Mr. Pardee gave several expert opinions despite never being offered or qualified as an expert. Counsel for Appellants objected to the opinions, but the trial court overruled the objection as not contemporaneous with the opinions. (R. p. 122, line 19 – p. 124, line 11).

Despite the objection, Mr. Pardee was still never offered or qualified as a witness during the trial. *Id.* However, in the trial court's order, the trial court erroneously relied on the testimony of Mr. Pardee as an expert. (R. p. 8)

During the Rule 59 motion, Appellants again raised the issue of Mr. Pardee not being qualified as an expert. In response, the trial court found in its order denying the Rule 59 motion, that "[a]s to the testimony of Mr. Pardee, I find that based upon his experience that he was qualified to testify as an expert." (R. p. 2)

"For a court to find a witness competent to testify as an expert, the witness must be better qualified than the fact finder to form an opinion on the particular subject of the testimony." *Ellis v. Davidson*, 595 S.E.2d 817, 825 358 S.C. 509, 525 (Ct. App. 2004). "Further, the party offering the expert has the burden of showing the witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion

testimony." *State v. Von Dohlen*, 322 S.C. 234, 248, 471 S.E.2d 689, 697 (1996). Respondent admitted that Mr. Pardee was simply an "air conditioning salesman" similar to a car salesman. (R. p. 109, lines 5-9). Respondent never offered Mr. Pardee as an expert during the trial and it was an error of law to qualify him as an expert after trial.

Appellants have been severely prejudiced by the inappropriate qualification of Mr. Pardee because they were never given the chance to question his qualifications or opinions during the trial. Further, the trial court erroneously relied on the opinions of Mr. Pardee as an expert in its order.

Because the trial court errored in retroactively qualifying Mr. Pardee as an expert, this Court should reverse the expert qualification and remand the case for a new trial.

IV. The trial court erred by finding the failure to provide an extended warranty was not properly pled by the Appellants.

As part of the contract signed by Appellant Derrik Loyal Weddle, Respondent was required to provide a 10-year extended warranty on the HVAC system. (R. p. 174-178; R. p. 111, lines 9-19; R. p. 228, lines 19-23). It is undisputed that this extended warranty was never provided by Respondent. *Id.* Accordingly, the value of the extended warranty should be deducted from the amount allegedly owed by Appellants.

The trial court ruled that the Appellants had not properly pled any claim for a warranty and thus were barred from claiming any credit for it. (R. p. 2). However, the Appellant Derrik L. Weddle properly included this claim under his counterclaim for breach of contract. (R. pp. 36-37).

The trial court incorrectly held that this claim for a warranty was a separate action that required separate pleadings. Husband simply sought to receive a credit or offset for the extended warranty that was never provided to him as negotiated in the contract.

Respondent admitted that part of the contract was an extended warranty for which he charged $800. (R. p. 111, lines 9-19). Respondent also admitted that he never bought or registered the extended warranty. *Id.* Accordingly, Respondent is not entitled to the contractual amount of $800 which was negotiated for the extended warranty.

Rule 8(e)(1), SCRCP states that "[e]ach averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required." Moreover, "[a]ll pleadings shall be so construed as to do substantial justice to all parties." Rule 8(f), SCRCP. In the answer and counterclaims filed by Husband, he pled breach of contract as a defense, and filed counterclaims for breach of contract, breach of implied warranty of workmanlike services, and negligence. (R. p. 36-39).

Under the broad pleading requirements of the South Carolina Rules of Civil Procedure, the claim that Respondent had breached the contract by failing to provide the extended warranty was properly pled. Accordingly, Husband was entitled to a reduction in the amount owed under the contract of $800.

The trial court's finding that the claim for breach of contract for failure to provide an extended warranty was not properly pled should be reversed, and the Appellants given a credit to the amount owed of $800.

CONCLUSION

The trial court erred by failing to strictly enforce the requirements of the South Carolina mechanics' lien statutes. The Respondent failed to serve the notice of lien and the notice of furnishing labor. Further, the Respondent knowingly and willfully demanded more than he was due in the statement of account. All of these actions are fatal to a

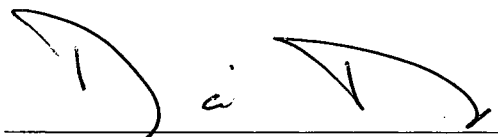
mechanic's lien, and this Court should dissolve the lien. Further, the Court should award Appellants' attorneys' fees and costs as the prevailing party.

There is no evidence in the record that Appellant Linda McGee Weddle gave actual or apparent authority to her husband. This Court should reverse the trial court's judgment against Appellant Linda McGee Weddle on the breach of contract action.

Witness Gene Pardee was improperly qualified as a witness after the conclusion of the trial. Because this caused Appellants severe prejudice, this Court should reverse his qualification as an expert and grant Appellants a new trial.

Appellants properly pled the failure of Respondent to provide an extended warranty as part of the breach of contract. Respondent admitted the extended warranty was part of the contract, and that it was not provided. This Court should reverse the trial courts finding that the warranty was not properly pled, and provide a credit to the Appellants.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale Edward Van Slambrook, Master-in-Equity

Appellate Case No. 2016-002323
Docket No. 2012-CP-08-1869

Carolina Comfort Specialists, LLC.....Respondent.

v.

Linda McGee Weddle and
Derrik L. Weddle.....Appellants,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Appellants complies with Rule 211(b).

September 16, 2017

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