

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

The Honorable Dale Edward Van Slambrook
Berkeley County
Appellate Case Number 2016-002323

Case No.: 2012-CP-08-1869

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

v.

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

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This case arises from the failure of the Appellants to pay the Respondent for the installation of a heating and air conditioning system at the Appellant, Linda Weddle's rental property. Respondent filed a mechanic's lien in the RMC Office for Berkeley County on May 2, 2012. (Complaint, Ex. C, R.p.27). The Notice and Certificate of Mechanic's Lien was served on the Appellant, Derick L. Weddle, individually and for his wife, on May 2, 2012. (Complaint, Ex. D, R.pp.33-34).

The Respondent commenced this action on June 26, 2012 by filing a Lis Pendens, Summons and Complaint alleging breach of contract, foreclosure of mechanic's lien, and implied contract/quantum meruit cases of action against the Appellants. (Complaint, R.p. 20). The Appellants filed an Answer and Counterclaim on July 30, 2012. (Answer and Counterclaim, R.p.35). The Appellants admitted in their Answer that they entered into an agreement with the Respondent whereby the Respondent agreed to install a heating and air conditioning system in the property located at 155 Foxbrough Drive, Goose Creek, S.C.; admitted that the Respondent filed a mechanic's lien against the subject real estate owned by the Appellant, Linda McGee Weddle; and admitted that the mechanic's lien was served on the Appellants. The Appellants also asserted a Counterclaim for breach of contract, breach of implied warranty of workmanlike service, and negligence alleging that the Respondent had failed to properly install the heating and air conditioning system and that it was defective. The Respondent filed its Reply on August 6, 2012, raising numerous defenses, including the defense that the Appellants breached the subject contract and therefore were barred from recovery. (Answer and Counterclaim, R.p.35).

This case was referred to the Master-in-Equity for Berkeley County for a final hearing

pursuant to a Consent Order of Reference which was filed on April 5, 2013. (Consent Order of Reference,R.p.14). The trial commenced before the Master on September 23, 2015. (R.p.51) and continued on two (2) additional half days, November 9, 2015 and April 4, 2016. (R.p.189; R.p.443). The trial ended on April 4, 2016.

By Order dated May 24, 2016, the Master found for the Respondent on the causes of action for breach of contract and foreclosure of mechanic's lien and granted Respondent judgment against the Appellants for \$9,000.00, prejudgment interest, and attorney's fees and costs in the amount of \$9,000.00. The Master also found for Respondent on Appellants' Counterclaims. (Order of Judgment filed May 26, 2016,R.p.5).

The Appellants filed a motion pursuant to Rule 59, SCRPC on June 20, 2016. (Motion pursuant to Rule 59,R.p.41). The trial court heard the Rule 59 motion on September 15, 2016, and denied the motion by Order dated October 13, 2016. (R.p.558; Order dated October 13, 2016,R.p.1).

On November 11, 2016, Appellants served and filed their Notice of Appeal of the Order of Judgment and the Order Denying Appellants Rule 59 Motion. (Notice of Appeal dated November 11, 2016).

STATEMENT OF THE FACTS

The Appellants admitted in their Answer and Counterclaim the allegations contained in paragraphs 1, 2, 4, 5, 7 and 8 of the Respondent's Complaint, and more particularly, the Appellants admitted that the Respondent was engaged in the business of repairing and installing heating and air conditioning systems; the Appellants were residents of Berkeley County; that the Appellant, Linda McGee Weddle, owned a residence located at 155 Foxborough Road, Goose

Creek, S.C.; that the Respondent entered into an agreement with the Appellants whereby the Respondent agreed to install a heating and air conditioning system in the property located at 155 Foxborough Road, Goose Creek, S.C.; that the Respondent filed a mechanic's lien against the property; and that the Respondent had the mechanic's lien served on the Appellants.

(Complaint,R.pp.20-21;Answer and Counterclaim,R.p.35)

The Respondent is owned and operated by Clint A. Sires ("Sires") (R. p.60,L.21-p.61,L.24). Appellant, Derrik L. Weddle, (Husband) had been married to the Appellant, Linda McGee Weddle,(Wife) for forty (40) years (R., p.199,lines19-22). Sires met with the Appellants at the home to look at the existing HVAC system on December 6, 2011. (R.p.201,lines13:16-p.202l.1; p.248, L.10-p.249, L.4). Sires continued to negotiate with the Appellants by email. As shown by the email stream, the Husband advised Sires that his Wife liked his style and appreciates honesty and professional feedback with a good demeanor. Husband advised Sires that he and his Wife would discuss the proposals. By email dated December 26, 2011, Husband advised Sires that he and his Wife were still dragging their heels somewhat on the HVAC change out but Sires was still at the top of the list. (Email stream, Plaintiff's Exhibit 1,R.pp.174-178; R. p.64,L.14-p.65, L.7). The Respondent entered into a written contract with the Appellants on March 7, 2012 to install a new HVAC system in the home at 155 Foxborough Road. (R.p.65,L.8 to p.67,L.4; Plaintiff's Exhibit No.2, R.p.179). The Husband signed the contract and also signed the Wife's name to the contract. (R.p.89,lines9-21). Sires supervised the installation of the HVAC over a five (5) day period. The Husband was present everyday watching the installation. The work was completed on March 30, 2012, which was the same day the work was inspected by Goose Creek. (R.p.68,L.2 to p.69,L.12). After the installation of the HVAC system was

complete, Sires met with the Appellants at the home to discuss a punch list. Sires explained that there was nothing wrong with the work performed but offered to seal some boots from inside the residence and the Appellants refused to allow him to perform that work. Sires testified that the system was installed in a good workmanlike manner and in accordance with industry standards. (R.p.69,L.13 to p.79,L.23).

During the trial the Respondent offered the testimony of Gene Pardee. Gene Pardee had been involved in the heating and air conditioning business for twenty-plus years. He had been involved in selling residential heating and cooling systems for eighteen (18) years. After Respondent had completed the work, Mr. Pardee was contacted by the Appellants to come out and look at the HVAC system at the residence located at 155 Foxborough Road, Goose Creek, S.C. Mr. Pardee performed a visual inspection of the system and testified that it was a very good install and that everything he saw looked good. Mr. Pardee saw no problems with the system. The system appeared to be installed in a good workmanlike fashion and in accordance with industry standards. Although he gave the Husband a quote, he told him that the work did not need to be done. (R.p.115, L.22-p.119, L.24).

The Respondent also offered the testimony of Preston Knight, who was qualified as an expert in the field of HVAC systems, without objection. (R.p.472, L.16 to p.474, L.6). Mr. Knight inspected the HVAC system in September of 2015.(R.p.474, L.20 to p.475, L.3). When Mr. Knight inspected the Appellants were present as well as their tenant. (R.p.476., lines 2-10). Mr. Knight also testified that according to his calculations that a 2 ½ ton unit was the proper size for the home. Mr. Knight did not feel good about the situation as it was the first time he had someone try to get rid of or want a 2012 unit and new duct system removed from their home.

(R.p.479, lines4-21).

Sires also testified that an oversize unit causes problems and that he properly sized the unit. (R.p.511, L.15 to p.512, L.4).

According to the testimony of the Husband, the home has been occupied by tenants since January and February of 2012 until the time of his testimony on November 9, 2015. In addition, the Husband testified that the Appellants had not paid any HVAC contractor to fix or repair any problems with the system that they had testified to at trial. (R.p.222, L.6 to p.225, L.25).

During the trial, the Appellants failed to present any evidence that the HVAC system was not properly heating and cooling.

STANDARD OF REVIEW

“A proceeding for the enforcement of a statutory lien, such as a mechanic’s lien is legal in nature”. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 127 631 S.E.2d 252, 255 (2006). “An action for breach of contract seeking money damages is an action at law. On appeal of an action at law tried without a jury, the findings of fact of the trial court will not be disturbed unless found to be without evidence which reasonably supports the trial court’s findings. Stated another way, the trial court’s findings of fact will not be disturbed on appeal unless wholly unsupported by the evidence or unless it clearly appears the findings were influenced or controlled by an error of law. In such a case, the trial court’s findings are equivalent to a jury’s findings in a law action. Further, questions concerning credibility and the weight to be accorded evidence are exclusively for the trial court.” (Citations omitted). *McCall v. IKON* 380 S.C. 649, 658; 670 S.E.2d 695, 700 (Ct. App. 2008).

ARGUMENT

A. THE TRIAL COURT DID NOT ERR IN FAILING TO DISMISS THE CLAIM FOR A MECHANIC'S LIEN FOR FAILURE TO COMPLY WITH THE STATUTORY REQUIREMENTS.

The Respondents contend that the Wife was never served with the notice of mechanic's lien. The Respondents' contention is not correct. As shown by the Affidavit of Service attached to the Complaint, the Wife was served with the mechanic's lien by delivering a copy to her Husband at their home located at 5883 Ryans Bluff Road, North Charleston, S.C. Substituted service is allowed pursuant to Rule 4(d)(1)SCRPC. The Husband was a responsible person living in the residence with his Wife. Although a case could not be found on point, in *Stovall Building Supplies, Inc. v. Mottet*, the Court of Appeals found that service of a mechanic's lien on a security guard at the entrance of the subdivision was not a responsible person living in the home. In this case, the Husband was a responsible person living in the residence with his Wife. *Stovall Building Supplies, Inc. v. Mottet*, 305 S.C. 28, 33; 406S.E.2d 176, p. 179.

In addition, Appellants admitted in their Answer the allegations contained in paragraph 8 of the Respondent's Complaint which state that the mechanic's lien was served on the Appellants (Complaint, R.p.21; Answer and Counterclaim, R.p.35).

"It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action." *Postal v.*

Mann, 308 S.C. 385, p.387; 418 S.E2d 322, p.323.

At the commencement of the trial, counsel for the Respondent pointed out to the Court that a number of the allegations by the Respondent were admitted in the Appellants' Answer, including that the mechanic's lien was properly served. Counsel for the Appellants responded by stating "I would probably think that my client is bound by the Answer that was previously filed." (R.p.56, L.11 to p.57, L.17.

B. THE RESPONDENT DID NOT CLAIM MORE THAN IT WAS
STATUTORILY ALLOWED.

The Respondent's failure to register the equipment with the manufacturer does not void its mechanic's lien. As found by the trial judge, the warranty claim was not adequately pled or explained during trial. There was no testimony at trial as to the scope of the warranty or any damages suffered by the Appellants relative to the warranty. The Appellants did not meet their burden of proof.

C. THE TRIAL COURT DID NOT ERR IN FINDING THAT THE APPELLANT,
LINDA MCGEE WEDDLE, WAS A PARTY TO THE CONTRACT.

The Respondent alleged in paragraph 5 of its Complaint that the Plaintiff entered into an agreement with the Defendants, whereby the Plaintiff agreed to install a heating and air conditioning system at the property located at 155 Foxborough Road, Goose Creek, S.C. The Appellants in their Answer and Counterclaim admitted the allegations contained in paragraph 5 of the Plaintiff's Complaint. (Complaint, R.p.21; Answer and Counterclaim, R.p.35 The Appellants are bound by their pleadings.

D. THE TRIAL COURT DID NOT ERR IN RELYING ON THE TESTIMONY OF

GENE PARDEE.

Gene Pardee was called as a witness by the Respondent. At the time he testified he had been selling residential heating and cooling systems for eighteen (18) years. He had been in the heating and air conditioning business for twenty plus years. Before he began selling HVAC systems he installed heating and air systems. (R.p.115, L.16 to p.116, L.21). Mr. Pardee was contacted by the Appellants to look at the HVAC system at the residence at 155 Foxborough Road to give a quote. (R.p.117, lines 6-23). Mr. Pardee testified that it was a very good looking install and that he did not see any problems with the system. (R.p.118, lines4 to L.21).

At the conclusion of Mr. Pardee's direct examination, Appellants counsel moved to strike Mr. Pardee's testimony as he was not qualified as an expert. The trial court held that there was not a contemporaneous objection and that he would give Mr. Pardee's testimony appropriate weight taking into consideration the testimony as to his experience in the field. (R.p.122, L.15 to p.124, L.11).

"In absence of a contemporaneous objection, a motion to strike may be denied." *Parr v. Gaines*, 309 S.C. 477, p.481;424 S.E.2d 515, p.518.

The Trial Judge gave Mr. Pardee's testimony the appropriate weight and considered the testimony as to his experience in the field of HVAC systems. Mr. Pardee had been involved in the heating and air conditioning business for twenty plus years. It was not error by the trial court to find that Mr. Pardee was an expert.

E. THE TRIAL COURT DID NOT ERR BY FINDING THE FAILURE TO PROVIDE AN EXTENDED WARRANTY WAS NOT PROPERLY PLED BY THE APPELLANTS.

The Appellants contend that they properly pled an allegation that the Respondent failed to provided an extended warranty in their breach of contract cause of action. The Appellants alleged, however, in their breach of contract cause of action that the Respondent failed to properly install the heating and air conditioning system and that it was incomplete. (Answer and Counterclaim, R.pp.36-37).

The trial judge ruled that the Appellants contention concerning the warranty was not adequately explained during the trial as to the existence or the scope of the warranty. (Order Denying Defendants Rule 59 motion, R.p.2). The Appellants did not offer any testimony as to any damages they sustained by the failure to supply the warranty.

CONCLUSION

Based upon the foregoing it is respectfully submitted that the trial courts findings are reasonably supported by the evidence and that the trial court's Order of Judgment should be affirmed.

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This ^{20th} day of September, 2017
Mt. Pleasant, SC

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SC Court of Appeals

Case No.: 2012-CP-08-1869


Linda McGee Weddle and Derick Loyal

Weddle.....Appellants

Carolina Comfort Specialists, LLC.....Respondent

CERTIFICATION OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b) SCACR.



Frank M. Cisa

September ²⁴~~20~~, 2017
Mt. Pleasant, SC