

MCNAIR

ATTORNEYS

James K. Gilliam

January 3, 2013

jgilliam@mcnair.net

T (843) 444-1107
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The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

JAN 04 2013

SC Court of Appeals

RE: *Williams Carpet Contractors, Inc. v. Ruonala and Company, LLC, et al.*
Case Track #: 2012-213575
Civil Action No. 2007-CP-26-0265
Our Client Matter No. 048962.00001

Dear Ms. Kitchings:

With regard to the above matter, enclosed for filing with the Court, please find the following:

- Original and seven copies of Respondent's Motion to Dismiss, Exhibits 1-7; and
- Proof of Service.

Also enclosed is our firm check in the amount of \$25.00 as the filing fee. By copy of this letter to parties of record, and as shown on the Proof of Service, I hereby serve a copy of the Motion and Proof of Service.

Please return to me a clocked copy of the enclosed documents in the enclosed self-addressed envelope.

With kindest regards, I am

Sincerely,



James K. Gilliam
JKG/dmb

cc: G. Michael Smith, Esquire
Rick Ruonala
Clients

McNair Law Firm, P. A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
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66792

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John
Circuit Court Judge

RECEIVED
JAN 04 2013

Case No.: 2007-CP-26-0265
Appellate No.: 2012-213575

SC COURT OF APPEALS

Williams Carpet Contractors, Inc., Respondent,

v.

Ruonala and Company, LLC, Mark Skelly and
M.S. Industries, Inc., Defendants,

Of Whom Mark Skelly is, Appellant.

MOTION TO DISMISS

Williams Carpet Contractors, Inc. (hereafter "Williams Carpet") moves to dismiss the Notice of Appeal filed by Mark Skelly (hereafter "Skelly") on December 10, 2012 pursuant to Rules 240, 260, and 269, SCACR. Williams Carpet hereby moves to dismiss this appeal as untimely and for lack of subject matter jurisdiction.

PROCEDUREAL HISTORY

This case was tried before a jury in Horry County on April 21 and 22, 2010 before the Honorable Steven H. John. (**Exhibit #1: Trial Court Order Granting JNOV**). The jury returned a verdict in favor of Williams Carpet on April 22, 2010. (**Exhibit #2: Verdict Form**). Skelly then moved for a Judgment Notwithstanding the Verdict ("JNOV"). (**Exhibit #1: Trial Court Order Granting JNOV p. 4-10**). On May 19,

2010, the trial court granted Skelly's JNOV motion. (**Exhibit #1: Trial Court Order Granting JNOV**). Williams Carpet filed a Motion for Reconsideration with the trial court on June 3, 2010, which the trial court denied on October 4, 2010. (**Exhibit #3: Order Denying Motion for Reconsideration**). Thereafter, Williams Carpet timely filed a Notice of Appeal to the South Carolina Court of Appeals. (**Exhibit 4: Original Notice of Appeal**).

On October 24, 2012, the South Carolina Court of Appeals reversed the trial court's grant of JNOV to Skelly. (**Exhibit 5: Opinion No. 5040**). Skelly did not file a Petition for Rehearing or Reinstatement to the Court of Appeals and did not file a petition for Writ of Certiorari to the Supreme Court. The Remittitur was filed in this case on November 9, 2012. (**Exhibit 6: Remittitur**). On December 10, 2012, Skelly filed this Notice of Appeal to the Court of Appeals. (**Exhibit 7: Skelly's Notice of Appeal**). In this Notice of Appeal, Skelly seeks to "appeal[] the jury verdict dated April 22, 2010 and entered as a matter of law as a result of the Remittitur dated November 9, 2012" (**Exhibit 7: Skelly's Notice of Appeal**).

Williams Carpet hereby moves to dismiss this appeal as untimely and for lack of subject matter jurisdiction.

ARGUMENT

I. SKELLY'S NOTICE OF APPEAL IS UNTIMELY

In appeals from the court of common pleas, a notice of appeal must be served on all Respondents within 30 days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCACR.

In this Notice of Appeal, filed on December 10, 2012, Skelly seeks to appeal the jury verdict entered on April 22, 2010. (**Exhibit 2: Verdict Form; Exhibit 7: Skelly's Notice of Appeal**). It is apparent on its face that this Notice of Appeal is untimely and should therefore be dismissed.

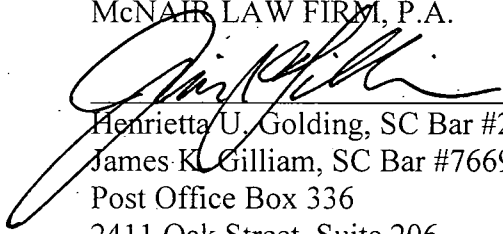
II. LACK OF SUBJECT MATTER JURISDICTION

From a procedural perspective, Skelly, by virtue of filing this Notice of Appeal, is attempting to appeal the decision of the Court of Appeals to the Court of Appeals. (Skelly's Notice of Appeal). As set forth above, the jury returned a verdict in favor of Williams Carpet. (**Exhibit 2: Verdict Form**). Skelly, then moved for JNOV, which the trial court granted. (**Exhibit 1: Trial Court Order Granting JNOV**). Thereafter, Williams Carpet appealed the trial court's grant of JNOV to the Court of Appeals, which reversed the trial court by published opinion on October 24, 2012. (**Exhibit 4: Opinion No. 5040**). Williams Carpet took no action to file a petition for rehearing with the Court of Appeals or to file a petition for writ of certiorari to the Supreme Court. Instead, Williams Carpet on December 10, 2012, some forty-seven (47) days after the Court of Appeals published its decision, filed a Notice of Appeal with the Court of Appeals, seeking to "appeal the jury verdict." (**Exhibit 7: Skelly's Notice of Appeal**). Under this procedural posture, the Court of Appeals lacks subject matter jurisdiction to grant Skelly the relief sought.

CONCLUSION

For the aforementioned reasons, this Court should dismiss Skelly's Notice of Appeal as untimely and for lack of subject matter jurisdiction and grant such other relief as it deems necessary under the circumstances.

McNAIR LAW FIRM, P.A.



Henrietta U. Golding, SC Bar #2173

James K. Gilliam, SC Bar #76695

Post Office Box 336

2411 Oak Street, Suite 206

Myrtle Beach, SC 29578

(843) 444-1107

Attorneys for Williams Carpet

Williams Carpet Contractors, Inc.

Myrtle Beach, South Carolina

January 3, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE No: 2007-CP-26-0265

WILLIAMS CARPET)
CONTRACTORS, INC.,)
)
Plaintiff,)

vs.)

RUONALA AND COMPANY, LLC,)
MARK SKELLY AND M.S.)
INDUSTRIES, INC.,)
)
Defendants.)

**ORDER GRANTING JUDGMENT
NOTWITHSTANDING THE VERDICT**

COPY

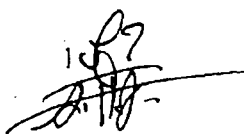
10 MAY 19 PM 3:20

TRIAL JUDGE: Honorable Steven H. John
DATE OF TRIAL: April 21 and 22, 2010
PLAINTIFF'S ATTORNEY: Henrietta U. Golding, Esquire
DEFENDANTS' ATTORNEY: G. Michael Smith, Esquire
COURT REPORTER: Dixie Eubanks

On Thursday, April 22, 2010, the jury in the above captioned matter returned a verdict in favor of the Plaintiff on the quantum meruit cause of action in the amount of \$168,000.00.

PROCEDURAL HISTORY

This case was commenced by the Plaintiff, an experienced carpet and tile sub-contractor, against the general contractor, Ruonala and Company, LLC, the developer, M.S. Industries, Inc., and Mark Skelly, individually and as agent for M.S. Industries, Inc. The Complaint pled four causes of action: breach of contract, quantum meruit, negligent misrepresentation and unfair



trade practices. The Plaintiff abandoned the contract action and this Court dismissed the Unfair Trade Practices Act cause of action at the directed verdict stage. In addition, the Plaintiff dismissed its claims against Ruonala and Company, LLC and M.S. Industries, Inc. Thus, the case went to the jury against Defendant Mark Skelly on the quantum meruit cause of action and the negligent misrepresentation cause of action.

The jury returned a verdict in favor of Mr. Skelly on the negligent entrustment cause of action and against Mr. Skelly on the quantum meruit cause of action. After the verdict, Mark Skelly moved for a judgment notwithstanding the verdict (JNOV). Multiple arguments were made by defense counsel in favor of the motion and by Plaintiff's counsel opposing the motion.

After reviewing the applicable law and evidence, this Court makes the following findings of fact and conclusions of law.

STANDARD OF REVIEW

When a Court is asked to rule on a motion for judgment notwithstanding the verdict (JNOV), the court must consider the evidence in a light most favorable to the party opposing the motion. Stanley Smith & Sons vs. Limestone College, 283 S.C. 430, 322 S.E. 2d 474 (Ct. App. 1984). If more than one reasonable inference can be drawn from the evidence, the motion

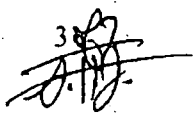
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will not be granted. However, if there is no evidence to support an essential element of the Plaintiff's cause of action, a verdict in the Plaintiff's favor cannot be permitted to stand. *Id.*

DISCUSSION

Quantum meruit has been recognized in South Carolina as an equitable doctrine to allow recovery for unjust enrichment. The South Carolina Supreme Court established that in order to prevail under a quantum meruit cause of action, the Plaintiff must prove: (1) a benefit conferred by the Plaintiff upon the Defendant; (2) realization of that benefit by the Defendant; and (3) retention of the benefit by the Defendant under circumstances that make it inequitable for him to retain it without paying its value. Myrtle Beach Hospital, Inc. vs. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000); Columbia Wholesale Co. v. Scudder May, N.V., 312 S.C. 259, 440 S.E.2d 129 (1994).

An analysis of the exhibits and testimony reveals that the Plaintiff did not prove the third element necessary to prevail on their quantum meruit claim, that is: retention of the benefit by the Defendant under circumstances that make it inequitable for him to retain it without paying its value.

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Here, the evidence proved that the Defendant's corporation, M.S. Industries, Inc., paid for the value of the materials provided by the Plaintiff for the project when it paid in excess of the full construction contract price to Ruonala and Company, LLC.

Mark Skelly is a shareholder of M.S. Industries, Inc., the developer of the project. The testimony established that the money he personally received from the project was reimbursement for monies spent on developing the project or dividends owed to him as a shareholder. Payments by M.S. Industries, Inc. to the general contractor ipso facto reduced the money paid to the shareholders. Equity does not require Mr. Skelly to pay twice for the materials and services provided by the Plaintiff.

Mark Skelly presented a copy of all six contracts between M.S. Industries, Inc. and Ruonala and Company, LLC for the construction of condominiums known as Greenhaven. The contract price for each of the six buildings was \$650,000.00. The total sums due to Ruonala and Company, LLC for all six contracts was \$3,900,000.00.

Both the Plaintiff and Defendant presented evidence that the principal/corporation of Mr. Skelly paid in excess of the contract amounts. Exhibits produced by the parties reflect the

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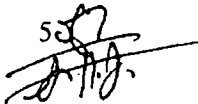
following payments:

Building 8	\$ 659,541.80
Building 9	\$ 632,982.05
Building 10	\$ 655,124.00
Building 11	\$ 589,893.91
Building 12	\$ 698,878.12
Building 13	\$ 677,048.53
Total	\$3,913,468.30

Thus, the evidence presented by both the Plaintiff and Defendant is uncontroverted that the general contractor was paid in full. It is also undisputed that the contract price included the materials and labor supplied by the Plaintiff for the project.

The Court of Appeals recently analyzed the quantum meruit theory in the case of Shirley's Iron Works, Inc. v. City of Union, ___ S.C. ___, ___ S.E.2d ___ (2010 WL 530195). In that case, sub-contractors filed an action against the owner and the general contractor alleging quantum meruit. The sub-contractor stated that its claims arose from the general contractor's failure to pay all monies owed to them. The Court did not feel that the owner had been unjustly enriched because it paid the full price of the construction contract.

In Scudder May, supra, the Court held that a quantum meruit/unjust enrichment claim by a sub-contractor against a property owner is typically denied where the owner paid its

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contract with the general contractor. The Court cited cases from Delaware, Iowa, Texas and Arizona supporting that view.

The Plaintiff presented the Massachusetts case of Mike Glynn & Company v. Hy-Brasil Restaurants, Inc. et al., 75 Mass. App. Ct. 322, 914 N.E.2d 103 (2009) in support of its position. That case is easily distinguished by one very important fact: the evidence confirmed the general contractor had not been paid in full. 914 N.E.2d at 105 ff (At the time of trial, the owners were disputing a \$69,164.00 balance on their contract in an independent action). The Defendant submitted for consideration those cases cited in 62 ALR 3d 288 (citing Scudder May) regarding the denial of recovery under quantum meruit when the evidence reflects the general contractor was paid in full. 62 ALR 3d 288 §4. Based upon South Carolina case law and that annotation, it appears the more solid reasoning is to deny recovery when the contractor has been paid in full. In the cases granting recovery, full payment to the contractor was generally not made.

CONCLUSION

Since the evidence is clear and uncontroverted that M.S. Industries, Inc. paid in excess of the total contract price, there is no unjust enrichment and, therefore, the third element

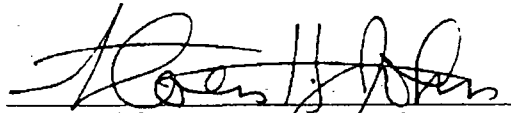
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of quantum meruit has not been proven by the Plaintiff.

Accordingly, it is

ORDERED that the Defendant's motion for-judgment not withstanding the verdict is granted. It is further

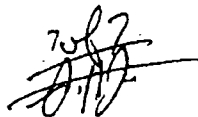
ORDERED that the jury verdict against Mark Skelly on the quantum meruit cause of action is vacated and judgment shall be entered in favor of the Defendant.



Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

May 19, 2010

Conway, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
2007-CP-26-00265

WILLIAM CARPET
CONTRACTORS INC.,
Plaintiff,

v.

MARK SKELLY,
Defendant.

VERDICT FORM

I. ON THE CLAIM OF NEGLIGENT MISREPRESENTATION, WE, THE JURY, BY UNANIMOUS CONSENT,

FIND FOR THE PLAINTIFF

OR

FIND FOR THE DEFENDANT

FILED
HORRY COUNTY
2010 MAY 19 PM 4:56
MELANIE HUGGINS-WARD
CLERK OF COURT

II. ON THE CLAIM OF QUANTUM MERUIT, WE, THE JURY, BY UNANIMOUS CONSENT,

FIND FOR THE PLAINTIFF

OR

FIND FOR THE DEFENDANT

IF YOU HAVE FOUND FOR THE PLAINTIFF ON EITHER I. OR II, GO TO THE NEXT QUESTION,

III. WE, THE JURY, BY UNANIMOUS CONSENT, FIND FOR THE PLAINTIFF ACTUAL DAMAGES IN THE AMOUNT

OF One Hundred and sixty-eight Thousand Dollars ¹⁴/₁₀₀
(Write out amount in words)
(\$168,000)


FOREPERSON'S SIGNATURE

April 22, 2010
Conway, South Carolina.

RECEIVED

MAY 24 2010

McNAIR LAW FIRM, P.A.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 WILLIAMS CARPET)
 CONTRACTORS, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 RUONALA AND COMPANY, LLC,))
 MARK SKELLY AND M.S.)
 INDUSTRIES, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE No: 2007-CP-26-0265

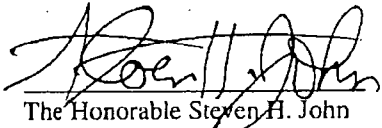
**ORDER DENYING MOTION
 FOR RECONSIDERATION**

HORRY COUNTY
 10 OCT 11 PM 3:18
 CLERK OF COURT

HEARING JUDGE: Honorable Steven H. John
DATE OF HEARING: July 27, 2010
PLAINTIFF'S ATTORNEY: Henrietta U. Golding, Esquire
DEFENDANTS' ATTORNEY: G. Michael Smith, Esquire
COURT REPORTER: Dixie Eubanks

This matter came before me pursuant to a Motion for Reconsideration filed by the Plaintiff's attorneys on June 3, 2010. The motion raised multiple grounds in their request to have this Court reconsider the findings, conclusions and holding in the Order Granting Judgment Notwithstanding the Verdict dated and filed May 19, 2010. After reviewing the transcript of record of the complete testimony of Mark Skelly, considering the arguments of counsel and reviewing and analyzing all the case law submitting by the parties, I find and conclude that the Plaintiff's Motion for Reconsideration should be denied. Therefore, it is

ORDERED that the Plaintiff's Motion for Reconsideration is denied.


 The Honorable Steven H. John
 Resident Judge
 Fifteenth Judicial Circuit

Conway, South Carolina
 October 4, 2010

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OCT 27 2010

McNAIR LAW FIRM, P.A.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Judicial Circuit

Case No.: 2007-CP-26-0265

RECEIVED
NOV 02 2010
SC Court of Appeals

Williams Carpet Contractors, Inc. Plaintiff,
vs.

Ruonala and Company, LLC, Mark Skelly and M.S.
Industries, Inc., Defendants,

OF WHOM Williams Carpet Contractors, Inc. is Appellant,

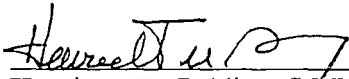
AND

Ruonala and Company, LLC, Mark Skelly and M.S.
Industries, Inc., are Respondents.

NOTICE OF APPEAL

Williams Carpet Contractors, Inc. appeal from the Order of the Honorable Steven H. John, dated October 4, 2010 denying Plaintiff's Motion for Reconsideration. Written notice of the Order was received on October 27, 2010. A copy of the Order is attached hereto.

November 1, 2010


Henrietta U. Golding, SC Bar #2173
James K. Gilliam, SC Bar #76695
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, South Carolina 29578
(843) 444-1107
Attorneys for Appellant

Other Counsel of Record:

G. Michael Smith, Esq.
Thompson & Henry, P.A.
1300 Second Avenue
P.O. Box 1740
Conway, SC 29528
Email: msmith@thompsonlaw.com

(Attorney Respondent/Defendants for Mark Skelly and M.S. Industries, Inc.)

Rick Ruonala
Ruonala and Company, LLC
423 Maison Dr
Myrtle Beach, SC 29577
(*Pro Se* Respondent/Defendant)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

WILLIAMS CARPET)
CONTRACTORS, INC.,)
)
Plaintiff,)
)
vs.)
)
RUONALA AND COMPANY, LLC,)
MARK SKELLY AND M.S.)
INDUSTRIES, INC.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE No: 2007-CP-26-0265

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NOV 02 2010

SC Court of Appeals

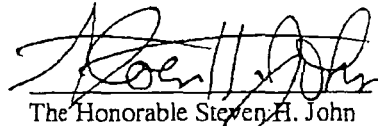
ORDER DENYING MOTION
FOR RECONSIDERATION

Horry County
10 OCT 11 PM 3:18
CLERK OF COURT

HEARING JUDGE: Honorable Steven H. John
DATE OF HEARING: July 27, 2010
PLAINTIFF'S ATTORNEY: Henrietta U. Golding, Esquire
DEFENDANTS' ATTORNEY: G. Michael Smith, Esquire
COURT REPORTER: Dixie Eubanks

This matter came before me pursuant to a Motion for Reconsideration filed by the Plaintiff's attorneys on June 3, 2010. The motion raised multiple grounds in their request to have this Court reconsider the findings, conclusions and holding in the Order Granting Judgment Notwithstanding the Verdict dated and filed May 19, 2010. After reviewing the transcript of record of the complete testimony of Mark Skelly, considering the arguments of counsel and reviewing and analyzing all the case law submitting by the parties, I find and conclude that the Plaintiff's Motion for Reconsideration should be denied. Therefore, it is

ORDERED that the Plaintiff's Motion for Reconsideration is denied.



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

Conway, South Carolina
October 4, 2010

RECEIVED

OCT 27 2010

McNAIR LAW FIRM, P.A.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Judicial Circuit

Case No.: 2007-CP-26-0265

Williams Carpet Contractors, Inc. Plaintiff,
vs.

Ruonala and Company, LLC, Mark Skelly and M.S.
Industries, Inc., Defendants,

OF WHOM Williams Carpet Contractors, Inc. is Appellant,

AND

Ruonala and Company, LLC, Mark Skelly and M.S.
Industries, Inc., are Respondents.

PROOF OF SERVICE

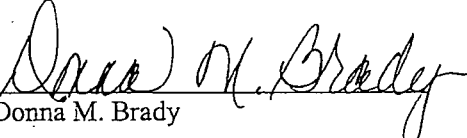
I, Donna M. Brady, an employee of McNair Law Firm, P.A., attorneys for Williams Carpet Contractors, Inc. in the above-entitled action, certify that I have served the Appellant's Notice of Appeal and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 1st day of November, 2010.

Other Counsel of Record:

G. Michael Smith, Esq.
Thompson & Henry, P.A.
1300 Second Avenue
P.O. Box 1740
Conway, SC 29528
Email: msmith@thompsonlaw.com

(Attorney Respondent/Defendants for Mark Skelly and M.S. Industries, Inc.)

Rick Ruonala
Ruonala and Company, LLC
423 Maison Dr
Myrtle Beach, SC 29577
(Pro Se Respondent/Defendant)


Donna M. Brady

Myrtle Beach, South Carolina

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Williams Carpet Contractors,
Inc., Appellant,

v.

Mark Skelly, Respondent.

Appeal From Horry County
Steven H. John, Circuit Court Judge

Opinion No. 5040
Heard June 7, 2012 - Filed October 24, 2012

REVERSED

Henrietta U. Golding and James K. Gilliam, of
Myrtle Beach, for Appellant.

G. Michael Smith, of Conway, for Respondent.

KONDUROS, J.: Williams Carpet Contractors, Inc. appeals the circuit court's granting of Mark Skelly's motion for judgment notwithstanding the verdict (JNOV). Williams Carpet argues the court improperly weighed the evidence in making its determination. We reverse.

FACTS/PROCEDURAL HISTORY

Williams Carpet provides and installs floor coverings, including carpet, tile, and hardwood floors, in the Myrtle Beach area. Skelly is a builder and developer in Horry County. Around 1982, Williams Carpet and Skelly began doing business together. Over the years, Williams Carpet provided materials to projects Skelly developed and built through various corporations. Williams Carpet dealt directly with Skelly for those projects, and Skelly paid each time. The parties never entered into a written contract but had oral agreements sealed with a handshake.

In 2003, M.S. Industries acquired a parcel of property known as Green Haven on which to develop and build condominiums. Skelly was the president of M.S. Industries, and he and John L. Martini, Jr. were shareholders. Skelly selected carpet and tile from Williams Carpet by himself on his initial visit, and he and his wife made the final selections. Skelly negotiated the price and verbally agreed to pay with a handshake for the items. Skelly did not inform Williams Carpet that anyone was involved in building or developing the project other than himself.

Before construction of Green Haven began in 2005, M.S. Industries hired Baldwin Construction Company as the general contractor for the project; it built the first three buildings. M.S. Industries then replaced Baldwin with Rick Ruonola, a former employee of Baldwin, and his new LLC, Ruonala and Company, for the remaining six buildings, all without Williams Carpet's knowledge. On April 18, 2005, Skelly, through M.S. Industries, and Ruonala and Company entered into a contract to construct six buildings at Green Haven for \$650,000 per building. Williams Carpet began installing carpet and tile at Green Haven in 2005, and Skelly requested it send all invoices to Ruonala and Company, which alarmed Williams Carpet. Skelly told Williams Carpet "don't worry about it, you bill it and I will pay for it" and "I'll make sure you get paid for it," and Williams Carpet agreed to send all invoices to Ruonala and Company.

Because Williams Carpet had not been paid after it installed carpet and tile in five of the six buildings, it informed Skelly it would not do any of the

remaining work until it was paid and threatened to file a mechanic's lien if it did not receive payment. Skelly asked it to refrain from filing a mechanic's lien and promised it would receive full payment once it completed the job. Skelly requested Williams Carpet send all invoices directly to him, and it completed the final building. Skelly, through M.S. Industries, paid Williams Carpet \$45,272.33 and Williams Carpet received a total of \$78,781.52 with a balance of \$188,851.40 remaining. Skelly and Martini each received one million three thousand dollars for the project.

Williams Carpet brought suit against Ruonala and Company, Skelly, and M.S. Industries for breach of contract, quantum meruit, negligent misrepresentation, and violations of the Unfair Trade Practices Act. At trial, just after the selection of the jury, Williams Carpet dismissed its breach of contract claim, without objection. The owners of Williams Carpet testified that it would have never agreed to do business with Ruonala and Company because the owner had no money and had previously worked at Baldwin Construction, which failed to pay Williams Carpet for prior jobs. Beverly Causey, one of the owners of Williams Carpet, testified Skelly asked it not to file a mechanic's lien, requesting "please get this last building done and I will pay you all your money."

Prior to the case being submitted to the jury, Williams Carpet dismissed M.S. Industries and Ruonala and Company from the suit. At the conclusion of Williams Carpet's case, Skelly moved for a directed verdict on all of the causes of action. The trial court denied the motion as to the quantum meruit and negligent misrepresentation actions and granted the motion as to the Unfair Trade Practices action. The jury found in favor of Skelly on the negligent misrepresentation action and Williams Carpet for the quantum meruit cause of action and awarded it \$168,000 in damages. Skelly moved for a JNOV, arguing awarding quantum meruit to Williams Carpet would result in Skelly paying for its products and services twice because M.S. Industries had paid Ruonala and Company the full contract price of \$650,000 per building. Williams Carpet argued it had presented evidence M.S. Industries did not pay Ruonala and Company in full.

The trial court gave the parties seven days to submit further research on the matter. The trial court ultimately granted Skelly's JNOV motion, finding,

"the evidence proved that [Skelly's] corporation, M.S. Industries, Inc., paid for the value of the materials provided by [Williams Carpet] for the project when it paid in excess of the full construction contract price to Ruonala and Company, LLC." Williams Carpet filed a motion for reconsideration pursuant to Rules 59 and 60, SCRCP, which the trial court denied. This appeal followed.

STANDARD OF REVIEW

A motion for JNOV, under Rule 50(b), SCRCP, is a renewal of the directed verdict motion. Glover v. N.C. Mut. Life Ins. Co., 295 S.C. 251, 256, 368 S.E.2d 68, 72 (Ct. App. 1988). When ruling on a JNOV motion, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). This court must follow the same standard. Welch v. Epstein, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). "If more than one reasonable inference can be drawn or if the inferences to be drawn from the evidence are in doubt, the case should be submitted to the jury." Chaney v. Burgess, 246 S.C. 261, 266, 143 S.E.2d 521, 523 (1965).

LAW/ANALYSIS

I. Quantum Meruit

Williams Carpet argues the trial court erred in granting Skelly's JNOV motion because it presented evidence demonstrating M.S. Industries paid less than the full contract price to Ruonala and Company. We agree.

"[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy." QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004) (citations and internal quotation marks omitted) (alteration by court). "The terms 'restitution' and 'unjust enrichment' are modern designations for the older doctrine of quasi-contracts." Ellis v. Smith Grading & Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988). To prevail on a quantum meruit claim, a plaintiff must establish (1) he conferred a benefit

upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value. Swanson v. Stratos, 350 S.C. 116, 121, 564 S.E.2d 117, 119 (Ct. App. 2002); see also Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010) (providing the same requirements).

"Courts addressing a claim of unjust enrichment by a subcontractor against a property owner have typically denied recovery where the owner in fact paid on its contract with the general contractor." Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 262-63, 440 S.E.2d 129, 131 (1994) (citing Cohen v. Delmar Drive-in Theatre, Inc., 84 A.2d 597 (Del. Super. Ct. 1951); Guldborg v. Greenfield, 146 N.W.2d 298 (Iowa 1966); Crockett v. Brady, 455 S.W.2d 807 (Tex. Civ. App. 1970)) (comparing Costanzo v. Stewart, 453 P.2d 526 (Ariz. Ct. App. 1969) (allowing recovery for unjust enrichment when owner assured subcontractor money was escrowed to pay for job and owner did not pay general contractor)).

The trial court erred in granting Skelly's JNOV motion because Williams Carpet presented evidence Ruonala and Company was not paid in full for the project. That evidence included a spreadsheet showing M.S. Industries paid less than full contract price for four of the buildings constructed and the exact contract price for the other two buildings. Additionally, Skelly testified M.S. Industries paid less than the full contract price per building. Williams Carpet also submitted evidence that M.S. Industries included money paid for services like landscaping as part of the contract price even though those services were not part of the agreement. The trial court stated that Ruonala and Company came in under contract for two buildings.

Skelly testified that he believed Ruonala and Company was paid less than the contract price because he "imagine[d] that went to subcontractors directly, or jointly." Skelly argues that M.S. Industries paid over the contract price to Ruonala and Company and the subcontractors. The evidence conflicts as to whether Ruonala and Company was fully paid under the contract. Therefore, because some evidence supports that Ruonala and

Company was not fully paid, the trial court erred in granting Skelly's motion for JNOV.

II. Additional Sustaining Grounds

Skelly argues as additional sustaining grounds that Williams Carpet should be barred from recovering under the theory of quantum meruit because it did not pursue a mechanic's lien and because it had a contract with Skelly. We disagree.

[A] respondent . . . may raise . . . any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review. It also could violate the principle that a court usually should refrain from deciding unnecessary questions.

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). However, "an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court." Id. at 421, 526 S.E.2d at 724.

A. Mechanic's Lien

"Some courts addressing quasi-contractual claims have held a subcontractor's failure to pursue the statutory remedy of a mechanic's lien precludes a finding the enrichment is unjust." Columbia Wholesale Co., 312 S.C. at 263, 440 S.E.2d at 131 (citing Lynn v. Miller Lumber Co., 246 S.E.2d 137 (Ga. Ct. App. 1978); Pay-N-Taket, Inc. v. Crooks, 145 N.W.2d 621 (Iowa 1966); Crockett, 455 S.W.2d at 810). "Other courts have allowed recovery in quantum meruit even where a mechanic's lien was not pursued." Id. (citing United States v. Ins. Co. of N. Am., 695 F.2d 455 (10th Cir. 1982) (applying New Mexico law); G & G Langenbrunner, Inc. v. Davis Constr. Co., 488

N.E.2d 506 (Ohio Munic. Ct. 1984)). The South Carolina Supreme Court has determined, "Failure to pursue a mechanic's lien, however, will not bar an action for quantum meruit recovery as a matter of law if a plaintiff can otherwise prove circumstances establishing unjust enrichment." *Id.* at 263, 440 S.E.2d at 131-32 (citing Gee v. Eberle, 420 A.2d 1050 (Pa. Super. Ct. 1980); Costanzo, 453 P.2d at 529 (finding the failure to file mechanic's lien did not bar recovery for unjust enrichment when owner paid no one)).

The South Carolina Supreme Court has found failure to pursue a mechanic's lien will not bar an action for quantum meruit recovery as a matter of law if a plaintiff can otherwise prove circumstances establishing unjust enrichment. Here, when Williams Carpet was threatening to obtain a mechanic's lien, Skelly convinced it not to do so. Accordingly, its failure to obtain a mechanic's lien in this situation does not bar it from recovering under the quantum meruit action.

B. Express Contract v. Quantum Meruit

"A breach of contract claim and quantum meruit claim can be alternative rather than inconsistent remedies." JASDIP Props. SC, LLC v. Estate of Richardson, 395 S.C. 633, 639, 720 S.E.2d 485, 488 (Ct. App. 2011) (citing Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988)). In Earthscapes Unlimited, Inc., 390 S.C. at 617, 703 S.E.2d at 225, the supreme court affirmed the circuit court's decision to award damages under the theory of quantum meruit even though the circuit court had found a contract between the parties. The supreme court found, "While the circuit court did find there was a contract between the two parties in this action, it never awarded damages because of a breach of that contract. Rather, the circuit court chose the theory of quantum meruit as an alternate remedy." *Id.* at 617 n.4, 703 S.E.2d at 225 n.4.

However, "[i]f the tasks the plaintiff is seeking compensation for under a quantum meruit theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under quantum meruit." Swanson, 350 S.C. at 122, 564 S.E.2d at 120 (citing 66 Am. Jur. 2d Restitution and Implied Contracts § 81 (2001) ("[I]t is a defense to an action in quantum meruit that there is an express

contract covering the issue of compensation for services or materials furnished.")) (comparing Strickland v. Coastal Design Assocs., 294 S.C. 421, 424, 365 S.E.2d 226, 228 (Ct. App. 1987) ("The law is well settled in this nation that where an express contract has been rescinded or abandoned, one furnishing labor or materials in part performance may recover in quantum meruit unless the original contract remains in force."); Johnston v. Brown, 290 S.C. 141, 148, 348 S.E.2d 391, 395 (Ct. App. 1986), rev'd on other grounds, 292 S.C. 478, 357 S.E.2d 450 (1987) ("While a recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid for the services." (footnote omitted))).

Case law bars recovering under both theories. Here, Williams Carpet abandoned its breach of contract claim without any objection from Skelly and instead proceeded only under the quantum meruit theory. The jury never considered whether Skelly and Williams Carpet formed a contract. Because a finding was never made on whether there was an express contract, Williams Carpet could pursue recovery under quantum meruit. Further, Skelly never raised this issue at trial. Although an additional sustaining ground does not have to be raised at trial, it does make it less likely that this court would rely on it. Accordingly, the alleged contract does not bar Williams Carpet's recovery under the theory of quantum meruit.

CONCLUSION

As some evidence supports that Ruonala and Company was not fully paid, the trial court erred in granting Skelly's motion for JNOV. Further, we do not find Skelly's arguments as to his additional sustaining grounds merit affirming. Therefore, the trial court's order granting Skelly's JNOV motion is

REVERSED.

WILLIAMS and PIEPER, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 09, 2012

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: Williams Carpet v. Skelly, Mark
Lower Court Case No. 2007CP2600265
Appellate Case No. 2010-176606

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: G. Michael Smith, Sr.
Henrietta U. Golding
James Keith Gilliam
Steven H. John

EXHIBIT 6

THOMPSON & HENRY, P.A.

ATTORNEYS AT LAW

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G. MICHAEL SMITH
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December 10, 2012

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, SC 29211

RE: Williams Carpet Contractors, Inc. v. Ruonala and Company,
LLC, Mark Skelly and M.S. Industries, Inc.
Civil Action No.: 2007-CP-26-0265
Our File No.: 15156

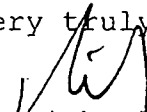
Dear Ms. Kitchings:

I am enclosing for filing with the court in connection with the above captioned matter the following:

- Original and 3 copies of Notice of Appeal of Appellant Mark Skelly;
- Filing Fee of \$100.00,
- Proof of Service.

By copy of this letter, I am serving a copy of the aforementioned documents on other counsel of record and the Honorable Melanie Huggins-Ward, the Clerk of Court for Horry County. Please return to me a clocked copy of the filed documents in the enclosed self-addressed envelope.

Very truly yours,


G. Michael Smith

GMS/gtw

Enclosures

cc: Henrietta U. Golding, Esquire
James K. Gilliam, Esquire
Mr. Mark Skelly
Honorable Melanie Huggins-Ward

RECEIVED

DEC 11 2012

McNAIR LAW FIRM, P.A.

EXHIBIT 7

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Circuit Court Judge

Case No.: 2007-CP-26-00265

Williams Carpet Contractors, Inc.,.....Respondent,

v.

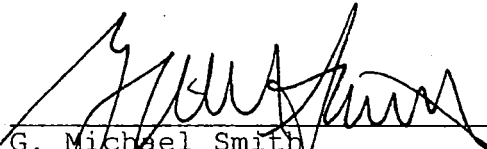
Ruonala and Company, LLC, Mark Skelly and
M.S. Industries, Inc.,.....Defendants,

Of Whom Mark Skelly is.....Appellant.

NOTICE OF APPEAL

Mark Skelly appeals the jury verdict dated April 22, 2010 and entered as a matter of law as a result of the Remittitur dated November 9, 2012, received by the Appellant and filed with the Horry County Clerk of Court on November 13, 2012.

December 10, 2012



G. Michael Smith
Thompson & Henry, PA
Post Office Box 1740
Conway, SC 29528
(843)248-5741
Attorneys for the Appellant

Other Counsel of Record

Henrietta U. Golding
James K. Gilliam
McNair Law Firm, PA
P. O. Box 336
Myrtle Beach, SC 29577
(843)444-1107
Attorneys for the Respondent



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 09, 2012

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: Williams Carpet v. Skelly, Mark
Lower Court Case No. 2007CP2600265
Appellate Case No. 2010-176606

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: G. Michael Smith, Sr.
Henrietta U. Golding
James Keith Gilliam
Steven H. John

HORRY COUNTY
12 NOV 13 PM 3:53
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF Horry

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
2007-CP-26-00265

WILLIAM CARPET
CONTRACTORS INC.,
Plaintiff,
v.
MARK SKELLY,
Defendant.

VERDICT FORM

I. ON THE CLAIM OF NEGLIGENT MISREPRESENTATION, WE, THE JURY, BY UNANIMOUS CONSENT,

FIND FOR THE PLAINTIFF

OR

FIND FOR THE DEFENDANT

FILED
Horry COUNTY
2010 MAY 19 PM 4:56
HELANIE HUGGINS-WARD
CLERK OF COURT

II. ON THE CLAIM OF QUANTUM MERUIT, WE, THE JURY, BY UNANIMOUS CONSENT,

FIND FOR THE PLAINTIFF

OR

FIND FOR THE DEFENDANT

IF YOU HAVE FOUND FOR THE PLAINTIFF ON EITHER I. OR II, GO TO THE NEXT QUESTION.

III. WE, THE JURY, BY UNANIMOUS CONSENT, FIND FOR THE PLAINTIFF ACTUAL DAMAGES IN THE AMOUNT

OF One Hundred and sixty-eight Thousand Dollars ¹⁰⁰/₁₀₀
(Write out amount in words)
(\$168,000)

[Signature]
FOREPERSON'S SIGNATURE

April 23, 2010
Conway, South Carolina.

RECEIVED

MAY 24 2010

McNAIR LAW FIRM, P.A.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Circuit Court Judge

Case No.: 2007-CP-26-00265

Williams Carpet Contractors, Inc.,.....Respondent,

v.

Ruonala and Company, LLC, Mark Skelly and
M.S. Industries, Inc.,.....Defendants,

Of Whom Mark Skelly is.....Appellant.

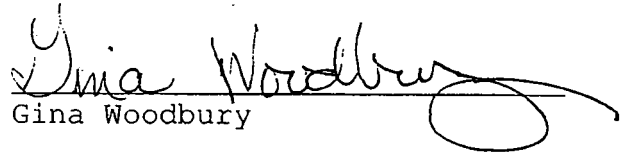
PROOF OF SERVICE

I, Gina Woodbury, an employee for Thompson & Henry, P.A.,
attorneys for the Appellant Mark Skelly, in the above-captioned
action and/or actions, certify that I have this 10 day of
December, 2012 mailed a copy and/or copies of the following:

1. Notice of Intent to Appeal,
2. Proof of Service, and
3. Filing Fee

to the undersigned at his/her/their address(es) of record, with
sufficient postage attached thereto, as follows:

Henrietta U. Golding, Esquire
James K. Gilliam, Esquire
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, SC 29578
Attorneys for Williams Carpet


Gina Woodbury

Conway, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Judicial Circuit

Case No.: 2007-CP-26-0265
Appellate No.: 2012-213575

Williams Carpet Contractors, Inc., Respondent,

v.

Ruonala and Company, LLC, Mark Skelly and
M.S. Industries, Inc., Respondents.

Of Whom Mark Skelly is, Appellant.

PROOF OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., attorneys for Respondent Williams Carpet Contractors, Inc. in the above-entitled action, certify that I have served the Respondent's Motion to Dismiss, Exhibits and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 3rd day of January, 2013.

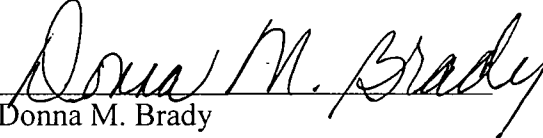
Other Counsel of Record:

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Thompson & Henry, P.A.
1300 Second Avenue
P.O. Box 1740
Conway, SC 29528

Email: msmith@thompsonlaw.com

(Attorney Appellant/Defendants for Mark Skelly and M.S. Industries, Inc.)

Rick Ruonala
Ruonala and Company, LLC
423 Maison Dr
Myrtle Beach, SC 29577
(*Pro Se* Respondent/Defendant)


Donna M. Brady

Myrtle Beach, South Carolina