

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Vincent C. Carter d/b/a Elite Construction
Co.,

Plaintiff,

vs.

Eagles Landing Restaurants LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A NO: 2016-CP-21-00702

ORDER

RECEIVED

JUN 28 2019

SC Court of Appeals

This is an action arising from an agreement between the Parties whereby the Plaintiff, Vincent C. Carter, d/b/a Elite Construction Co., agreed to provide general contracting services to the Defendant, Eagles Landing Restaurants, LLC. The Plaintiff commenced this action by filing a Summons and Complaint with the Court of Common Pleas for Florence County on March 21, 2016, stating claims for Breach of Contract and Unjust Enrichment/Quantum Meruit. The Defendant accepted service by and through its attorney, Walker H. Willcox, Esquire. The Defendant filed an Answer and Counterclaim on May 2, 2018, asserting multiple defenses and counterclaiming for Breach of Contract, Fraud/Constructive Fraud, Quantum Meruit/Unjust Enrichment, Negligence/Gross Negligence, and Indemnification.

This matter was referred by Consent Order of Reference of the Honorable Michael G. Nettles, dated May 2, 2017, and filed with the Clerk of Court for Florence County on May 2, 2017. The Ordered provided the Special Referee with the authority to take testimony arising under the pleadings and to make findings of fact and conclusions of law, to rule on all matters related to this action and to enter a final judgment. The action was tried on December 20, 2017.

Present at the hearing were the Plaintiff and his attorney Patrick B. Ford and the Defendant and its attorney Walker H. Willcox.

BACKGROUND

On April 9, 2015, the Plaintiff and Defendant entered into a construction contract (the "Contract") in which the Plaintiff agreed to provide construction services to upfit a commercial space located on James Island, South Carolina for use as an IHOP restaurant for the fixed price of \$624,354.00. According to the Contract, the Plaintiff was to be paid by draws from the bank or lending institution directly to the Plaintiff as the work progressed. Based upon the testimony the relationship between the parties began cordially, but became increasingly acrimonious throughout the construction process.

It is undisputed that the Defendant has paid to the Plaintiff the sum of \$229,900.00 due under the Contract. However, the Defendant began paying the various subcontractors and vendors directly rather than paying any draws to the Plaintiff. The Parties acknowledge that at the time of trial the Defendant had paid \$390,888.33 to third-party vendors and subcontractors related to the project. The Plaintiff oversaw the project until receiving the temporary certificate of occupancy at which time the Plaintiff abandoned the project after not being paid despite repeatedly demanding payment.

During the construction process the Plaintiff issued five change orders for work allegedly not included within the scope of the Contract. Of the five change orders issued by the Plaintiff one of the change orders related to the hiring of additional electricians from Carolina Construction Solutions for the project. At the time of trial, Carolina Construction Solutions had not been paid for the labor and materials furnished in conjunction with the construction. Based

on the evidence submitted by the Parties the outstanding balance due to Carolina Construction Solutions at the time of trial was approximately \$61,863.06.

LIABILITY

Both parties brought actions against each other for breach of contract. Based on the evidence presented, I find that the Defendant breached the contract with the Plaintiff. Therefore, I find in favor of the Plaintiff with regard to his claim for breach of contract. I also find in favor of the Plaintiff with regard to his claim for unjust enrichment, as provided herein.

It is clear from the evidence that the Defendant failed to pay the Plaintiff upon demand for various draws. In fact, the payment history provided by the Parties indicates that the Defendant paid many of the vendors directly without paying the Plaintiff. Of the amounts paid directly by the Defendant, and upon review of the evidence, I have concluded that the following amounts were paid by the Defendant directly to third parties on behalf of the Plaintiff for work within the scope of the Contract:

• A+ Restaurant Management	\$46,715.97
• ABC Seal Coating	\$4,000.00
• Atlantic Electric LLC	\$3,414.81
• Bell Electric	\$4,910.00
• City Electric	\$847.75
• City of Charleston	\$2,895.00
• City Lighting Products	\$23,421.00
• Conklin's Construction	\$19,400.00
• Corrow Construction	\$6,660.00
• Design Team	\$3,298.00

• ECK Supply Co.	\$412.30
• Formula Automatic Door	\$1,128.61
• Handyman Plumbing	\$578.00
• Hobart Services	\$302.00
• Johnson Concrete	\$3,500.00
• Kessler Plumbing	\$8,061.00
• Marlite	\$16,744.15
• Mt. Pleasant Winnelson	\$3,267.00
• Multi-tech Safety Products, Inc.	\$26,522.00
• Neal's Flooring	\$2,200.00
• Nelson Sign	\$8,791.23
• New South Specialties	\$5,000.76
• Parterre Flooring	\$1,281.47
• Red Mountain Lighting	\$275.81
• Roll-A-Shade	\$7,428.00
• William Smith	\$2,642.50
• Turner Electric	\$3,500.00
• Waste Services, LLC	\$1,745.33
• Whistler Innovative Tech Solutions LLC	\$3,252.57

TOTAL: \$212,195.26

I have further concluded that the following amounts paid by the Defendants are not obligations of the Plaintiff as they do not fall within the scope of the Contract:

• Assured Neace Lukens	\$9,388.42
• Capital Materials of Savannah	\$4,919.03
• City of Charleston	\$1,895.94
• Digital Niche, LLC	\$6,881.20
• Hilton Displays	\$7,371.27
• Low Country Services	\$2,200.00
• National Restaurant Designers	\$44,344.21
• NBS Media Systems	\$6,161.41
• Neal's Flooring	\$6,600.00
• Prime Cut of Charleston	\$5,745.00
• WRM Management Group	\$2,101.26

TOTAL: \$97,607.74

The Plaintiff issued the following modifications, identified as **Change Orders**, after execution of the Contract:

1. Change Order dated June 12, 2015, for hiring additional electricians at the request of the Defendant in the amount of \$37,397.45;
2. Change Order dated June 12, 2015, for the removal of mold discovered in the amount of \$48,900.00;
3. Change Order dated June 15, 2015, for removal of tile flooring in the back-kitchen area, in the amount of \$54,900.00;

4. Change Order dated June 15, 2015, for installation of the new IHOP image in the amount of \$96,900.00; and
5. Change Order dated July 15, 2015, for installation of new floor tile in the front dining room in lieu of carpet, in the amount of \$26,987.00.

Article 1 of the Contract provides that it includes any Modifications issued after execution of the Contract. Therefore, I find and conclude that the Change Orders issued by the Plaintiff were Modifications within the meaning of the Contract, which included additional work not previously contemplated by the Parties. While the Change Orders were not executed by the Parties, based on the testimony of the parties, I find and conclude that representatives of the Defendants approved the additional work. Notwithstanding the foregoing, I also find and conclude that the Plaintiff performed the work set forth in the Change Orders, which was in excess of work provided for in the Contract. Thus, even if the Change Orders were not a part of the Contract, I find and conclude that the Defendant was unjustly enriched based on the labor and materials furnished by the Plaintiff pursuant to the Change Orders.

With respect to the Change Order #1, the contractor who supplied the electricians, Carolina Construction Solutions, initiated a lawsuit against both the Plaintiff and Defendant, alleging various causes of action, including, without limitation, breach of contract and foreclosure of a mechanic's lien. I have concluded that the Defendant is responsible for the costs of the additional electricians provided by Carolina Construction Solutions. However, I have not determined how to handle that issue given the claims for costs and attorney's fees and reserve judgment with respect to this issue. After further research and consideration, I will issue a supplemental order.

The Plaintiff claims that he is owed for the last four Change Orders the total of \$227,687.00. With respect to the last four Change Orders, and based on the testimony of the witnesses, I have concluded that the sum of \$38,596.85 is due to the Plaintiff for work performed pursuant to said Change Orders. This amount is broken down as follows:

Change Order #2 - Mold removal:	\$13,795.02
Change Order #3 - Tile removal kitchen:	\$10,156.83
Change Order #4 - New HOP/Décor:	\$7,445.00
Change Order #5 - Dining room tile:	\$7,200.00

From the evidence, I also find that the Defendant and Plaintiff agreed that the HVAC system would not be replaced in accordance with the Contract, and thus, I find that the Defendant is entitled to the credit in the amount of \$44,439.00, as provided by the Plaintiff. I also find that the Defendant paid \$11,285.00 to a subcontractor, ARS Rescue Rooter, directly for providing labor and materials in connection with the HVAC system and that this payment by the Defendant was made on behalf of the Plaintiff under the Contract. Based on the foregoing, I further find that the expense incurred by the Defendant for new HVAC units is not an obligation of the Plaintiff under the Contract. Likewise, I find that the Defendant is not entitled to damages for two additional HVAC units.

The Defendant asserts multiple causes of action against the Plaintiff. Based on the evidence, I concluded that the Defendant is not entitled to damages for labor paid to Mohamed Ali and Chris Morris or lost income; the Defendant is not entitled to damages for roof replacement and new sidewalks; and the Defendant is not entitled to damages for expenses incurred from Charleston Sign and Bishop & Son. However, I conclude that the Defendant is entitled to a credit \$5,000.76 in damages for the bathroom partitions.

DAMAGES

The Total due to the Plaintiff under the Contract was \$624,354.00. The Plaintiff has been paid \$229,900.00 to date. Based on the foregoing I calculate the Plaintiff's damages as follows:

Contract Price:	\$624,354.00
- Payments Made:	<u>- \$229,900.00</u>
	\$394,454.00
- Payments Made by Eagles Landing:	<u>- \$212,195.26</u>
	\$182,258.74
+ Value of Services from Charge Orders:	<u>+ 38,596.85</u>
	\$220,855.59
- HVAC Credit:	- \$44,439.00
- ARS Rescue Rooter:	- \$11,285.00
- Bathroom Partitions credit	<u>-5,000.76</u>
Total	\$160,130.83

VERDICT

The Plaintiff is entitled to \$165,131.59, and the Defendant is entitled to \$5,000.76. Therefore, after offsetting these amounts, I find that the Defendant owes to the Plaintiff the sum of One Hundred Sixty Thousand One Hundred Thirty and 83/100 Dollars (\$160,130.83).

The last matter to resolve is costs for the Special Referee. I direct that the cost for the Special Referee be apportioned equally between the Plaintiff and Defendant to include the appearance fee and the costs of the transcript as requested by the Court to provide a thorough review of the facts and figures.

IT IS SO ORDERED.

October 11, 2018

Florence, South Carolina

EUGENE P. WARR, JR.,
SPECIAL REFEREE FOR FLORENCE COUNTY