

<p>STATE OF SOUTH CAROLINA COUNTY OF FLORENCE</p>	<p>IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT C/A NO: 2016-CP-21-702</p>
<p>Vincent C. Carter d/b/a Elite Construction Co., Plaintiff, vs. Eagles Landing Restaurants, LLC, Defendant.</p>	<p>RECEIVED JUN 28 2019 SC Court of Appeals SUPPLEMENTAL ORDER 2019 MAY 28 12:14 DOANIS POUSSIN CLOCK IN CANCELLED NOT RECORDED FLORENCE FILED</p>

This matter was tried before me, and after reviewing the arguments of counsel, the witness testimony, all exhibits submitted into evidence, and the notes taken during the trial, this Court issued an Order, which was filed on October 25, 2018, awarding judgment for the Plaintiff in the amount of \$160,130.83. At the time that the decision was rendered, the Court had not considered how to handle the issues related to the labor and materials furnished by Carolina Construction Solutions, for which the Plaintiff issued Change Order #1.

Subsequently, on October 30, 2018, the Defendant submitted a Motion to Amend this Court's Order filed on October 25, 2018. On November 5, 2018, the Plaintiff also submitted a Motion to Reconsider the Order filed on October 25, 2018. A hearing was held on the parties Motions on December 12, 2018.

This Court has reviewed the pleadings and arguments submitted by the attorneys, and the testimony and exhibits submitted into evidence. As a result, the Court hereby supplements its Order filed on October 25, 2018, with respect to Change Order #1, as

provided herein. This Court further denies both the Defendant's Motion to Amend and the Plaintiff's Motion to Reconsider.

BACKGROUND

The facts in the background of this Court's Order filed October 25, 2018, are incorporated by reference herein. Carolina Construction Solutions initiated legal proceedings on March 17, 2016, in the County of Charleston, Case Number 2016-CP-10-01355, in order to collect on the labor and materials it furnished on the upfit for the IHOP restaurant. The Defendant settled with Carolina Construction Solutions by remitting \$50,000.00 to Carolina Construction Solutions. Of the \$50,000.00 paid by the Defendant, \$20,000.00 was applied to the principal balance alleged due to Carolina Construction Solutions and \$30,000.00 was allocated towards attorney fees. To completely resolve the matter between all parties, the Plaintiff and Vincent Carter confessed judgment to the balance alleged due, in the amount of \$16,664.16, along with interest at the rate provided in the contract between the Plaintiff, Vincent Carter and Carolina Construction Solutions (the "Confession of Judgment").

DISCUSSION

Based on this Court's review of the evidence and testimony of the witnesses, and in accordance with its findings in the Order filed on October 25, 2018, this Court finds that the Plaintiff is entitled to further damages equal to the amount of the judgment confessed to by the Plaintiff in the action initiated by Carolina Construction Solutions in the County of Charleston. Furthermore, after reconsidering the evidence, witness testimony, and the notes taken at the trial, this Court finds no reason to alter or amend its previous Order filed on October 25, 2018. Therefore, this Court denies both the Plaintiff's

and Defendant's Rule 59(e) Motions.

- **This Court finds that the Plaintiff is entitled to damages in the amount of \$16,664.16 and interest thereon in accordance with the Confession of Judgment.**

As provided in the previous Order, based on the testimony of the witnesses and the exhibits admitted into evidence at the trial, this Court found and concluded that the Defendant was responsible for the cost of the additional electricians provided by Carolina Construction Solutions. Based upon the resolution of the Carolina Construction Solutions action, the Plaintiff is entitled to damages in the amount of the judgment it confessed, \$16,664.16, along with any interest due thereon. While the Defendant paid \$50,000.00 towards the resolution of the action of Carolina Construction Solutions, this Court finds that those damages are also the responsibility of the Defendant, pursuant to Change Order #1.

- **The Court denies both the Defendant's Motion to Amend and the Plaintiff's Motion to Reconsider.**

Although the law of South Carolina does not address the standard of review applicable to such a Motion, the first sentence in the notes to Rule 59(e), SCRPC, states that South Carolina's Rule 59(e) "is substantially the Federal Rule." Rule 59, SCRPC (Notes). South Carolina courts look to federal law to interpret state rules of civil procedure that track the language of a corresponding federal rule. *Gardner v. Newsome Chevrolet-Buick*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991). The purpose of a Rule 59(e) motion is to allow the court to reevaluate the basis for its previous decision. Because of interests of finality and conservation of judicial resources, Rule 59(e) motions should be granted sparingly.

The Fourth Circuit has similarly said of Rule 59(e) motions that “[i]n general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” *Pacific Ins. Co. v. American Nat’l Fire Assoc.*, 148 F.3d 396, 403 (4th Cir. 1998) (citations omitted). The Fourth Circuit, applying South Carolina law, established three grounds for revisiting a settled matter under Rule 59(e): (1) to accommodate an intervening change in the law; (2) to account for new evidence not previously available; and (3) to correct a clear error of law or prevent manifest injustice. *Dockins v. Benchmark Commc’ns*, 180 F.R.D. 294, 295 (D.S.C. 1998), *aff’d*, 176 F.3d 745 (4th Cir. 1999); *see also E.E.O.C. v. Lockheed Martin Corp., Aero & Naval Sys.*, 116 F.3d 110, 112 (4th Cir. 1997). A Rule 59(e) motion may not be used to relitigate old matters. *Pacific Ins. Co.*, 148 F.3d at 403.

The Defendant has set forth seven grounds for reconsideration:

- The evidence presented at trial does not support the findings that Defendant agreed to the change orders;
- The evidence presented a trial does not support the finding that the amounts expended by Defendant were not within the scope of the contract and not recoverable by Defendant;
- The evidence presented at trial does not support a finding that Plaintiff performed the work set forth in the contract and was entitled to the credits received in the Order;
- The evidence presented at trial demonstrated that Plaintiff is liable for lost income or other delay damages to Defendant;

- The change orders should not have been admitted as evidence;
- The Defendant is entitled to a credit for the amount paid to Carolina Construction;
and
- The evidence presented at trial does not support the award to Plaintiff.

The Plaintiff has set forth three grounds for reconsideration:

- The evidence presented at the trial does not support the findings that all third parties directly paid by the Defendant performed work within the scope of the Contract for which the Defendant receives credit for paying;
- The evidence presented at the trial demonstrated that the Plaintiff was entitled to greater damages as a result for the work provided in the Change Orders, which was performed in addition to the contract; and
- The evidence presented at trial does not support the findings that the Defendant is entitled to damages for the bathroom partitions.

After considering the grounds raised in the motions of the Plaintiff and Defendant, and after reviewing the transcript of the trial, including the testimony of the witnesses and the exhibits that were admitted into evidence, as well as the notes from the trial, this Court denies both the Plaintiff's Motion to Reconsider and the Defendant's Motion to Amend. The testimony and exhibits admitted into evidence at trial support the Court's findings and conclusions.


BASED ON THE FOREGOING, IT IS ORDERED THAT the Court's previous Order filed October 25, 2019, is hereby supplemented and the total judgment

due to the Plaintiff is increased from \$160,130.83, to \$176,794.99, plus additional interest due by the Plaintiff to Carolina Construction Solutions in accordance with the Confession of Judgment. **AND IT IS**

FURTHER ORDERED that the Plaintiff's Motion to Reconsider and the Defendant's Motion to Amend are hereby denied.

AND IT IS SO ORDERED.

May 22, 2019
Florence, South Carolina



Eugene P. Warr, Jr.
Special Referee for Florence County