

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Maite Murphy, Circuit Court Judge

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Case No. 2018-CP-18-00928  
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RECEIVED  
JUL 24 2019  
SC Court of Appeals

M.R. Jackson Construction, LLC,

Appellant,

v.

State Farm Insurance and Barbara J. Fields,

Respondents.

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INITIAL BRIEF OF APPELLANT  
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July 19, 2019

Other Counsel of Record:

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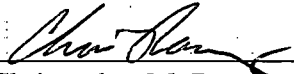
  
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TABLE OF AUTHORITIES

CASES

First Union Nat. Bank of SC v. FCVS Comms., 469 S.E.2d 613, 321 S.C. 496 (Ct.App. 1996)...3

McNair v. Rainsford, 330 S.C. 332, 356, 499 S.E.2d 488 (Ct.App. 1998).....4

Plyler v. Burns, 647 S.E.2d 188, 373 S.C. 637 (2007).....2

Swearingen v. Hartford Ins. Co., 29 S.E. 722, 52 S.C. 309 (1898).....5

STATUTES

S.C. Code § 29-5-10(a).....

## STATEMENT OF ISSUES ON APPEAL

1. Whether the Circuit Court erred in holding that Jackson Construction could not state an impleader claim against State Farm Insurance for proceeds of a fire insurance policy, where Jackson Construction alleged it was owed money for labor and materials provided to the insured property and timely filed a mechanic's lien and suit to foreclose the mechanic's lien.
2. Whether the Circuit Court erred in holding that Jackson Construction could not state a constructive trust claim against State Farm Insurance for proceeds of a fire insurance policy, where Jackson Construction alleged it was owed money for labor and materials provided to the insured property and timely filed a mechanic's lien and suit to foreclose the mechanic's lien.
3. Whether the Circuit Court erred in holding that as a matter of law, Jackson Construction could not state any claim for relief against State Farm Insurance for proceeds of a fire insurance policy, where Jackson Construction alleged it was owed money for labor and materials provided to the insured property and timely filed a mechanic's lien and suit to foreclose the mechanic's lien.

## STATEMENT OF THE CASE

Jackson Construction filed the instant lawsuit against Fields and her insurer on May 29, 2018 claiming an interest in proceeds of Fields' fire insurance policy. Jackson had previously filed and served a mechanic's lien on Fields, and then filed suit to foreclose on the mechanic's lien. While that lawsuit was pending, the house at issue burned to the ground. By consent order, the parties agreed that State Farm could pay off the first mortgage. On September 17, 2018, Fields filed a Motion to Dismiss Jackson's claims. A hearing was held on Fields' motion on October 15,

2018. Judge Murphy granted the Motion to Dismiss on December 7, 2018, holding that Jackson could not prevail as a matter of law on its stated claims of impleader, constructive trust, or any theory of recovery. Jackson filed a timely Motion for Reconsideration, which was denied by Order dated January 7, 2019. This appeal followed.

#### STANDARD OF REVIEW

The Court of Appeals reviews the lower court's grant of a motion to dismiss *de novo*. The Court should consider only the allegations set forth on the face of the plaintiff's complaint. Plyler v. Burns, 647 S.E.2d 188, 192 (2007). The motion should not be granted if the facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Id. The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Id. The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Id.

#### FACTS

Respondent Barbara J. Fields ("Fields") is the owner of a parcel of property located at 110 Low Country Lane in Ravenel, South Carolina (the "Property"). Fields entered into a contract with Jackson Construction to construct a house on the Property. When construction had been completed, Jackson presented Fields with a final invoice in the amount of \$119,472.56, which Fields refused to pay. Jackson timely filed a mechanic's lien and thereafter filed a lawsuit to foreclose the mechanic's lien.

While the mechanic's lien foreclosure lawsuit was pending, a fire destroyed the Property. Jackson has asserted an interest in the proceeds of the fire insurance policy. Fields has taken the position that she is entitled to immediate payment of the fire insurance policy proceeds without first resolving the mechanic's lien foreclosure lawsuit.

## ARGUMENTS

Like many states, South Carolina has afforded special protection to contractors and suppliers who furnish labor and materials to a project but who are not paid. “A person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate...by virtue of an agreement with, or by consent of, the owner of the building or structure...shall have a lien upon the building or structure and upon the interest of the owner of the building or structure in the lot of land upon which it is situated to secure the payment of the debt due to him.” S.C. Code § 29-5-10(a). Unfortunately, the improvements which Jackson Construction made to the Property in this case were destroyed by a fire. The mechanic’s lien statute provides that the contractor has a lien upon “the interest of the owner” to secure the payment of the debt. As the owner of the Property, Fields held an insurable interest in the Property which she secured through a fire insurance policy with State Farm. Thus, regardless of the specific theory of recovery, it follows that Jackson has an equitable lien against the funds held by State Farm resulting from the total loss of the house on the Property.

### **1. The Trial Court Erred in Holding that Jackson Could Not State an Impleader Claim**

As Jackson clarified in its Memo in Opposition to the Motion to Dismiss, its impleader claim may be better stated as a pre-emptive effort to force State Farm to place the proceeds of the fire insurance policy in the registry of the court, because there are competing claims to the funds. As the stakeholder, State Farm had the absolute right to file an interpleader action in order to shield itself from potential liability. “There need not be actual competing claims against the stakeholder for him to be entitled to interpleader, as long as there is the potential for multiple claims.” First Union Nat. Bank of SC v. FCVS Comms., 321 S.C. 496, 469 S.E.2d 613, 616 (Ct.App. 1996).

The remedy Jackson seeks is for the State Farm funds to be paid into court pending the outcome of the separate mechanic's lien foreclosure lawsuit. Upon payment of the funds into court, State Farm may be dismissed from the case.

**2. The Trial Court Erred in Holding that Jackson Could Not State a Claim for Constructive Trust**

As an alternative remedy, Jackson has asked that the State Farm insurance funds be placed in a constructive trust pending the outcome of the mechanic's lien foreclosure lawsuit. A constructive trust is "resorted to by equity to vindicate right and justice or frustrate fraud." McNair v. Rainsford, 330 S.C. 332, 356, 499 S.E.2d 488 (Ct.App. 1998). Taking the facts in the light most favorable to the plaintiff, Jackson furnished labor and materials worth over \$100,000 for which it has not been paid. Fields derived a benefit from Jackson's labor and materials in the form of the insurance proceeds following the destruction of the house. It would be unjust for Fields to retain the insurance proceeds without first paying Jackson. Just as the mechanic's lien statute protects a contractor from the prospect of a property owner selling the property while the litigation is pending, a constructive trust would perform the same function in protecting the insurance proceeds from being disbursed and spent prior to resolution of Jackson's claim.

**3. The Trial Court Erred in Holding that Jackson Could Not Prevail on any Theory of Recovery**

In dismissing Jackson's case, the trial court found as a matter of law that Jackson could not prevail on any theory of recovery against the State Farm insurance proceeds from the destruction of the Fields house. This appears to be a novel issue under South Carolina law, and arguably Jackson may not have artfully stated the correct theory of recovery. However, in a similar situation, the state supreme court has held that a mortgagee holds an equitable lien against fire insurance proceeds where the mortgagor has agreed to maintain insurance on the property, and this

is true even when the mortgagee was not a named insured on the insurance policy. Swearingen v. Hartford Ins. Co., 29 S.E. 722, 52 S.C. 309 (1898).

In much the same way as a mortgage holder, a mechanic's lien claimant holds a claim against the real property which is a matter of record and prevents the owner from selling or borrowing against the subject property without first resolving the lien. Were it not for the labor and materials furnished by Jackson to the Property, there would be little or nothing to insure and thus no insurance proceeds at all. It would thwart the purpose and intent of the statute to allow a property owner to collect the insurance proceeds and leave the contractor with only a charred lot of land against which to foreclose his lien.

#### CONCLUSION

For the foregoing reasons, the trial court's decision to grant Fields' motion to dismiss Jackson's claims should be reversed.

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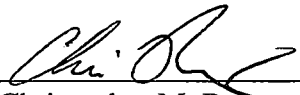
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PROOF OF SERVICE  
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I hereby certify that on July 19, 2019, I served all counsel with the Initial Brief of Appellant and Designation of Matter to Be Included in the Record on Appeal by causing a copy of same to be placed in the United States Mail, proper postage attached, and addressed as follows:

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July 19, 2019  
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*Via facsimile no. (803) 734-1839 and U.S. Mail*  
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P.O. Box 11629  
Columbia, SC 29211

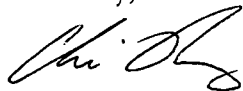
**Re: M.R. Jackson Construction, LLC v. State Farm Insurance et al.**  
**Civil Action No. 2018-CP-18-00928**

Dear Clerk:

Please find enclosed an original and one copy of Appellant's Initial Brief, Designation of Matter to Be Included in Record on Appeal, and a Proof of Service. Kindly file the originals and return the file stamped copies in the self-addressed stamped envelope provided. Should you need anything further or have any questions, please do not hesitate to call me.

With best regards, I remain

Sincerely,



Christopher M. Ramsey

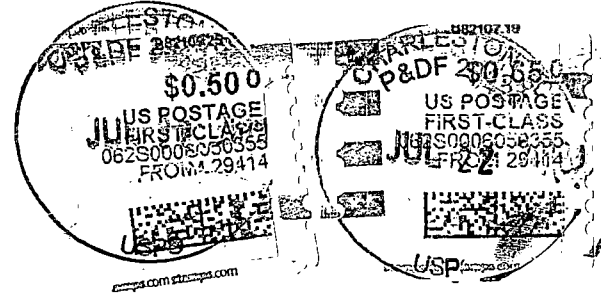
Encls.

CC: P. Brandt Shelbourne  
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