

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Maite Murphy, Circuit Court Judge

Appellate Case No. 2019-000181
Common Pleas Case No. 2018-CP-18-00928

M.R. Jackson Construction, LLC,

Appellant,

v.

State Farm Insurance Company and Barbara J. Fields,

Respondents.

RECORD ON APPEAL

RECEIVED
DEC 05 2019
SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
M.R. Jackson Construction, LLC,)
)
Plaintiff,)
)
vs.)
)
State Farm Insurance Company and Barbara J.)
Fields,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
Civil Action No. 2018-CP-18-00928

CONSENT ORDER

Whereas, this matter involves M.R. Jackson Construction, LLC's ("Jackson") claim that it is entitled to receive all or a portion of the proceeds from a certain State Farm policy which insured the residence of Barbara J. Fields; and

Whereas, State Farm and Fields disagree that Plaintiff has any right to claim any benefits payable under the policy issued to Fields; and

Whereas, The parties will all benefit by use of a portion of the proceeds from the Fields insurance policy to pay the first mortgage holder on the residence, South State Bank, successor to Park Sterling Bank; and

Whereas, Jackson and Fields agree that the Park Sterling Bank mortgage should be paid in full and satisfied using a portion of the proceeds from the State Farm insurance policy on the residence, subject to the terms of this Consent Order:

NOW, THEREFORE, the parties stipulate and agree as follows:

1. State Farm will pay to South State Bank, successor to Park Sterling Bank the amount of the outstanding principal and interest owed on the mortgage, as provided by South State Bank, successor to Park Sterling pursuant to a request for a payoff submitted by

Consent Order to payoff Mortgage

Fields, provided that the amount of the payoff is less than or equal to the benefit State Farm has determined is payable under the coverage A limit of the policy issued by State Farm to Fields;

2. Fields will secure the satisfaction of mortgage from South State Bank, successor to Park Sterling Bank and either of them will insure it is filed with the Dorchester County RMC Office; and

IT IS SO ORDERED.

Presiding Judge, First Judicial Circuit

Date: _____

(THIS SPACE INTENTIONALLY LEFT BLANK)

Consent Order to payoff Mortgage

WE CONSENT:

s/ Christopher M Ramsey
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Counsel for the Plaintiff

ELECTRONICALLY FILED - 2018 Sep 18 3:37 PM - DORCHESTER - COMMON PLEAS - CASE#2018CP1800928

Consent Order to payoff Mortgage

WE CONSENT:

s/ P Brandt Shelbourne

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Consent Order to payoff Mortgage

WE CONSENT:

s/ Albert A Lacour III
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Dorchester Common Pleas

Case Caption: M R Jackson Construction Llc VS State Farm Insurance Company
Case Number: 2018CP1800928
Type: Order/Consent Order

So Ordered

s/ Maite Murphy 2166

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ELECTRONICALLY FILED - 2018 Sep 18 3:37 PM - DORCHESTER - COMMON PLEAS - CASE#2018CP1800928

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
M.R. Jackson Construction, LLC)
)
Plaintiff,)
vs.)
)
State Farm Insurance and Barbara J. Fields,)
)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2018-CP-18-00928

**ORDER ON DEFENDANT
BARBARA J. FIELDS' MOTION TO
DISMISS**

HEARING DATE: October 15, 2018
PLAINTIFF'S COUNSEL: Christopher Ramsey, Esq.
DEFENDANT'S COUNSEL: P. Brandt Shelbourne, Esq.
CO-DEFENDANT'S COUNSEL: Albert Lacour, III, Esq.
COURT REPORTER: Maryann S. Nevers

This matter came before me pursuant to Defendant Barbara Fields' Motion to Dismiss Plaintiff's claims. Present for the hearing were Fields' counsel P. Brandt Shelbourne, Plaintiff's counsel Christopher Ramsey, and counsel for co-Defendant State Farm Insurance Company Albert Lacour. Plaintiff and Defendant Fields both submitted memoranda of law. Based on the arguments of counsel, the memoranda of law submitted and the law, with good cause the Court grants Defendant Fields' Motion to Dismiss.

The facts relevant to this case to this motion are not in dispute. On or about September 4, 2015, Plaintiff and Defendant Fields entered into a contract for Plaintiff to build a house for Plaintiff on Plaintiff's property. Fields' home is insured by co-Defendant State Farm Insurance through a policy purchased by Fields. Plaintiff is not a named party on the insurance policy. Following the completion of construction, a dispute arose between Plaintiff and Fields as to payment for work on the house. Plaintiff filed a separate and distinct suit in this Court for Breach of Contract and to enforce a Mechanics Lien on the property. That case is still pending. On or about April 22, 2018, a fire started in Fields' home destroying the house. Fields made a claim on her insurance policy for the policy benefits. Prior to State Farm paying for the loss, Plaintiff filed suit claiming an equitable interest in the insurance proceeds.

When a dispute is not to the underlying facts but as to the interpretation of the law, it is proper for the Court to decide these legal issues on a motion to dismiss. *Unisys Corp. v. S.C. Budget & Control Bd., Div. of Gen. Servs. Info. Tech. Mgmt. Office*, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001).

No Reverse Interpleader and/or Equitable Lien

Plaintiff alleges that it should be able to bring a cause of action for impleader or “reverse interpleader,” because it allegedly holds an equitable lien against the State Farm funds under the insurance policy. “For an equitable lien to arise, there must be a debt, specific property to which the debt attaches, and an expressed or implied intent that the property serve as security for payment of the debt.” *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 250, 715 S.E. 2d 348, 353 (2011). “It is well settled that *if the mortgagor is bound by covenant in the mortgage or otherwise to insure the mortgaged premises for the better security of the mortgagee*, the latter will have an equitable lien upon the money due on a policy taken out by the mortgagor to the extent of the mortgagee’s interest in the property damaged or destroyed.” *Blackwell v. State Farm Mutual Automobile Insurance Co.*, 237 S.C. 649, 653, 118 S.E. 2d 701, 704 (1961). While Plaintiff wishes to be treated as a mortgagee for purposes of imposing an equitable lien against the insurance proceeds, unlike a mortgagee, it has not alleged that the Plaintiff and Defendant Fields intended, either expressly or impliedly, that such insurance proceeds would serve as security for monies due allegedly from Defendant Fields to Plaintiff. Furthermore, the issue of whether Defendant Fields actually owes Plaintiff is still in dispute.

Furthermore, “equity is generally only available when a party is without an adequate remedy at law.” *Nutt Corp. d/b/a TNC Engineering v. Howell Road, LLC*, 396 S.C. 323, 327, 741 S.E. 2d 447, 449 (2011). “The basis for granting equitable relief is the impracticability of obtaining full and adequate compensation at law.” *Id.* “A mere breach of contract does not give rise to an equitable lien.” *Carolina Attractions, Inc. v. Courtney, et al.*, 287 S.C. 140, 145, 327 S.E. 244, 247

(1985). In the Complaint, Plaintiff states that it “subsequently filed a mechanic’s lien and lawsuit to foreclose the mechanic’s lien against Fields” Therefore, it can hardly be said that the Plaintiff does not have an adequate remedy at law. For these reasons, Defendant Fields’s Motion to Dismiss is granted with respect to Plaintiff’s cause of action for “Impleader.”

No Constructive Trust

As to Plaintiff’s claim that it has a constructive trust, “[a] constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty.” *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 793-94 (1990). Likewise, “[a] constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title.” *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987). While actual fraud is not required, Plaintiff has failed to allege mistake of fact, constructive fraud, breach of trust, violation of a fiduciary duty or any other reason why Defendant Fields is not entitled to insurance proceeds under *her* insurance policy. On the contrary, Plaintiff argues that the Court should impose a constructive trust on the insurance proceeds solely because Defendant Fields allegedly failed to pay Plaintiff for the entirety of its work. If this was all that was required for a constructive trust, Plaintiff would be able to impose a constructive trust on *any* funds due to Defendant Fields from *any* source.

Lastly, as mentioned above, equitable relief is unavailable when an adequate remedy at law exists. In the Complaint, Plaintiff states that it “subsequently filed a mechanic’s lien and lawsuit to foreclose the mechanic’s lien against Fields,” For these reasons, the Court grants Defendant Fields’s Motion to Dismiss as to the cause of action for Constructive Trust.

IT IS SO ORDERED

HONRABLE MAITE MURPHY
Presiding Judge
First Judicial Circuit

Summerville, South Carolina
December __, 2018

ELECTRONICALLY FILED - 2018 Dec 07 3:14 PM - DORCHESTER - COMMON PLEAS - CASE#2018CP1800928



Dorchester Common Pleas

Case Caption: M R Jackson Construction Llc VS State Farm Insurance Company
Case Number: 2018CP1800928
Type: Order/Dismissal

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2018-12-07 14:07:00 page 5 of 5

ELECTRONICALLY FILED - 2018 Dec 07 3:14 PM - DORCHESTER - COMMON PLEAS - CASE#2018CP1800928

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1800928

M R Jackson Construction Llc
PLAINTIFF(S)

State Farm Insurance Company et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

On December 17, 2018, Plaintiff filed a Motion for Reconsideration of the Court's Order Granting Defendants' Motion to Dismiss pursuant to Rule 59(e), SCRPC. It appearing that, upon careful consideration of the Motion, the Court finds that Plaintiff did not timely provide a copy of the motion to the judge in accordance with Rule 59(g), SCRPC. For this reason, Plaintiff's Motion for Reconsideration is denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/07/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Dorchester Common Pleas

Case Caption: M R Jackson Construction Llc VS State Farm Insurance Company
Case Number: 2018CP1800928
Type: Order/Electronic Form 4

AND THIS ORDER IS RESPECTFULLY
DENIED.

s/Maite Murphy 2166

Electronically signed on 2019-01-07 15:18:11 page 3 of 3

ELECTRONICALLY FILED - 2019 Jan 07 3:25 PM - DORCHESTER - COMMON PLEAS - CASE#2018CP1800928

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 M.R. Jackson Construction, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 State Farm Insurance Company and Barbara J.)
 Fields,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2018-CP-18-928

Complaint

FILED-RECORDED
 2018 MAY 29 PM 3: 04
 CHERIL GIVAN
 CLERK OF COURT
 DORCHESTER COUNTY

NOW COMES M.R. Jackson Construction, LLC ("Jackson"), Plaintiff in the above-captioned action, and submits its Complaint against the Defendants as follows:

Identity of Parties and Jurisdictional Allegations

1. Jackson is a Limited Liability Company licensed and doing business in Dorchester County, South Carolina.
2. Barbara J. Fields ("Fields") is a citizen and resident of Dorchester County, South Carolina and is the owner of real property located at 110 Low Country Lane in Ravenel, South Carolina (the "Property") which is the subject of this litigation.
3. Upon information and belief, State Farm Insurance Company ("State Farm") issued a policy of insurance which indemnifies Fields for any loss to the Property due to fire or other covered event.
4. This Court has jurisdiction over the parties and subject matter of this action.
5. Venue is proper in this Court.

Facts Common to All Counts

6. Fields and Jackson each signed a written agreement in which Fields agreed to pay Jackson the cost of construction of a house on the Property, plus a \$30,000 fee for construction management and supervision services. The pre-construction estimate of costs came to \$335,715.00.

7. Following execution of the contract, Fields directed Jackson to implement a number of upgrades in the construction of the house, including but not limited to an expanded garage at the Property, with a resulting increase in the cost of construction.
8. In addition, several items used in the construction of the house on the Property cost more than had been estimated.
9. Jackson met with Fields and her husband midway through the construction project and alerted them that the project was over budget due to upgrades and higher than anticipated costs. Fields and her husband responded that they would simply borrow more money from the bank to cover the difference.
10. Jackson continued to furnish the requested materials and labor for construction of the house on the Property until work was completed in November 2016.
11. Jackson submitted a final invoice to Fields in the amount of \$119,472.56, which invoice remains unpaid despite repeated demand.
12. Jackson subsequently filed a mechanic's lien and lawsuit to foreclose the mechanic's lien against Fields, which lawsuit is still pending at Civil Action No. 2017-CP-18-00099 (the "First Action").
13. On or about April 21, 2018, the Fields' residence was destroyed by a fire.
14. Jackson is informed and believes that State Farm issued a policy of insurance to Fields which covers all or a portion of the damages sustained to the Property due to the fire.
15. Jackson files this lawsuit in order to make a formal claim to the proceeds of the State Farm insurance policy, consistent with its rights as a lienholder against the Property, pending the outcome of the First Action.

As a First Cause of Action
(Impleader)

16. The prior allegations are incorporated as though restated herein verbatim.
17. Fields owes Jackson an amount equal to \$119,472.56, plus the attorney's fees and costs associated with bringing the First Action and this action.

18. By virtue of its contract of insurance with Fields, State Farm may owe Fields an amount of money equal to the cost to rebuild the house on the Property.
19. To the extent State Farm owes money to Fields, such amount should be applied first to the outstanding mortgage on the Property, then to the amount owed to satisfy Jackson's mechanic's lien, with the balance to Fields.
20. By letter dated April 25, 2018, Jackson placed State Farm on notice of Jackson's lien rights with respect to the Property.
21. Wherefore, Jackson prays that State Farm be required to hold the property damage insurance proceeds in trust pending the determination of Jackson's lien rights.


As a Second Cause of Action
(Constructive Trust)

22. The prior allegations are incorporated as though restated herein verbatim.
23. Jackson conferred a benefit to the Property in the form of labor and materials furnished in the construction of a house on the Property.
24. Jackson is still owed the sum of \$119,472.56 for the labor and materials furnished to the Property, which includes his construction management fee.
25. Jackson filed a mechanic's lien in a timely manner, and its lien rights are second only to those of the mortgage holder on the Property.
26. On or about April 21, 2018, the house on the Property was destroyed by fire, and that asset has been effectively converted into a property damage claim being adjusted by State Farm.
27. The unpaid labor, materials, and expertise Jackson provided in constructing the house on the Property has provided the value upon which the State Farm claim is based.
28. It would be inequitable for Fields to receive a windfall by getting paid the full cost to re-build the house on the Property, when Fields failed to pay the cost of building the house in the first instance.
29. Wherefore, Jackson seeks a declaration that State Farm holds the property damage claim funds for the Fields house in trust for the benefit of Jackson.

WHEREFORE, Jackson prays this Honorable Court for the following:

- a) An injunction restraining State Farm from paying the proceeds of the Fields property damage claim until Jackson's lien rights are determined;
- b) An Order directing State Farm to hold the proceeds of the Fields property damage claim in trust for the benefit of Jackson, after applying the proceeds to the mortgage on the Property;
- c) Attorney's fees and costs of this action, which is a supplemental action filed to protect Jackson's mechanic's lien rights; and
- d) Such other and further relief as the Court deems proper.

THE BOSTIC LAW GROUP, P.A.



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Attorneys for the Plaintiff

May 23, 2018

Charleston, South Carolina

mf

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

2018 JUN -8 PM 12:05

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

M.R. Jackson Construction, LLC

CASE NO.: 2018-CP-18-00928

DORCHESTER COUNTY

Plaintiff,

vs.

State Farm Insurance Company and
Barbara J. Fields,

Defendants.

**ANSWER OF STATE FARM
INSURANCE COMPANY**

(JURY TRIAL DEMANDED)

That the Defendant above named as State Farm Insurance Company, (hereinafter "State Farm"), for its Answer to the Complaint would allege and show unto this Honorable Court:

1. That State Farm admits the allegations of paragraphs 1 and 2.
2. That answering the allegations of paragraph 3, State Farm admits only that it issued a policy of insurance to Barbara J. Fields, and would crave reference to the policy itself for the terms and conditions thereof, and deny each and every allegation of paragraph 3 inconsistent therewith.
3. That answering the allegations of paragraph 4, State Farm denies the court has gained personal jurisdiction over it.
4. That the allegations of paragraph 5 constitute a conclusion of law which State Farm is not required to admit or deny.
5. That State Farm is without sufficient information to form a belief as to the truth of the allegations of paragraphs 6 through 12 and therefore denies same.
6. That State Farm admits the allegations of paragraphs 13 and 14.
7. That State Farm is without sufficient information to form a belief as to the

Plaintiff's motivation in filing this action and denies Plaintiff has any rights as a mechanic's lien holder against the real estate under the insurance policy issued by State Farm and therefore denies the allegations of paragraph 15.

8. That answering the allegations of paragraph 16 State Farm would reallege its answers to the allegations of paragraphs 1 through 15 above as fully as if the same were here set forth verbatim.

9. That State Farm is without sufficient information to form a belief as to the truth of the allegations of paragraph 17 and therefore denies same.

10. That State Farm admits the allegations of paragraph 18 upon information and belief.

11. That State Farm denies so much of paragraph 19 as alleges any amount should be payable to Plaintiffs.

12. That State Farm admits so much of paragraph 20 as alleges Plaintiff provided a written claim of right to the proceeds dated April 25, 2018 but denies the remainder thereof and also denies Plaintiff has any right to make a claim to the proceeds of the subject policy.

13. That State Farm denies allegations of paragraph 21.

14. That answering the allegations of paragraph 22 State Farm would reallege its answers to the allegations of paragraphs 1 through 21 above as fully as if the same were here set forth verbatim.

15. That State Farm is without sufficient information to form a belief as to the truth of the allegations of paragraphs 23, 24 and 25 and therefore denies same.

16. That State Farm admits so much of paragraph 26 as alleges that on or about

April 21, 2018 the house on the property was destroyed by fire, but denies all remaining allegations of paragraph 26 and any implication that Plaintiff has any right to make a claim to the proceeds of the subject policy.

17. That State Farm denies the allegations of paragraphs 27, 28 and 29.

18. That State Farm denies each and every allegation of the Complaint not specifically admitted or qualified above.

FOR A FIRST AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction)

19. That the Court lacks jurisdiction over the person of State Farm because Plaintiff has not served State Farm with the Summons and Complaint and, therefore, all claims should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(2).

FOR A SECOND AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient / Strike Allegations)

20. That the Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6) or else should be struck as insufficient under SCRCP Rule 12(f) because no factual basis is alleged to impose a constructive trust on State Farm.

FOR A THIRD AFFIRMATIVE DEFENSE
(Lack of Privity)

21. That Plaintiff is not a party to the agreement between State Farm and its insured for insurance benefits and Plaintiff is not in privity with either party and is not a named insured or a named lienholder pursuant to the terms thereof, and therefore is not entitled to claim any benefit from such agreement.

FOR A FOURTH AFFIRMATIVE DEFENSE
(No Allegation of Derivative Liability)

22. That there is no allegation in the complaint that any derivative liability exists on the part of State Farm; and there is no Third Party claim stated in the Complaint recognizable as a claim stated pursuant to SCRCF Rule 14(a) or (b); and such constitutes a complete defense to all claims for Impleader.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Contractual Responsibility Limited by Scope of Agreement)

23. That the rights of Plaintiff alleged to exist are not within the terms of the agreement with State Farm, whose responsibility is limited only to those obligations, if any, which are described in the agreement; and such constitutes a complete defense to all claims for benefits under the agreement.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Estoppel by Contract)

24. That the claims of Plaintiff are contrary to the plain language of the agreement, and Plaintiff is therefore estopped by the terms and provisions of the agreement from asserting the claims and matters set forth in its pleadings.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

25. That Plaintiff has failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damage and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(No Alleged Fraud or Participation by State Farm)

26. That there is no allegation that State Farm perpetrated any actual or constructive fraud, or that State Farm participated with others in such activity, and therefore no basis in fact to impose any constructive trust on State Farm; and such constitutes a complete defense to any claims for constructive trust.

FOR A NINTH AFFIRMATIVE DEFENSE
(No Injury Intended)

27. That State Farm acted at all times in keeping with the terms of the agreement between State Farm and it's insured, and never acted at any time with intent to cause injury to anyone and such constitutes a complete defense to any claims for constructive trust.

FOR A TENTH AFFIRMATIVE DEFENSE
(Required Compliance)

28. That State Farm at all times has acted only to comply with the terms and provisions of the agreement with it's insured, and Plaintiff has no right to interfere with the performance thereof; and such constitutes a complete defense to any claims for constructive trust.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(No Acceptance, Use and Enjoyment by Defendant)

29. That the labor and materials furnished by Plaintiff, if any, were not accepted, used and enjoyed by State Farm, but were in fact received, accepted, used and enjoyed by others and such constitutes a complete defense to all claims for constructive trust or *quasi-contractual* recovery.

FOR A TWELFTH AFFIRMATIVE DEFENSE
(No Circumstances Indicating Defendant Expected to Pay)

30. That the labor and materials furnished, if any, were not furnished under circumstances such as reasonably notified State Farm that Plaintiff expected to be paid by State Farm because there were direct negotiations with others concerning the agreement for the work, and approval of others for payment for the services, and bills were sent directly to others after the completion of such services, and such constitutes a defense to all claims for constructive trust or *quasi-contractual* recovery.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(No Benefit Realized or Retained by Defendant)

31. That the labor and materials furnished by Plaintiff if any, was conferred upon, realized and retained by others, and such constitutes a complete defense to all claims for constructive trust or *quasi-contractual* recovery.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Absence of Irreparable Harm)

32. That there are no allegations sufficient to establish the presence of irreparable harm and such constitutes a complete defense to any claim for injunction.

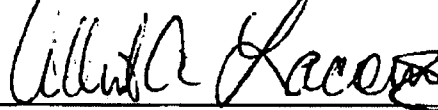
FOR A FIFTEENTH AFFIRMATIVE DEFENSE
(Adequate Remedy at Law)

33. That there exist no allegations to support the absence of an adequate remedy at law and Plaintiff has in fact attempted to utilize the statutory procedures available to it under the mechanic's lien statute, and such constitutes a complete defense to any claim for injunction.

Wherefore, having fully set forth its Answer to the Complaint, State Farm, prays:

1. That the Complaint be dismissed with prejudice and that State Farm be awarded its costs against Plaintiff; or in the alternative,
2. For a trial by jury of all issues joined herein so triable; and
3. For such other and further relief as this Honorable Court shall deem just and equitable.

CLAWSON and STAUBES, LLC



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Attorney for State Farm

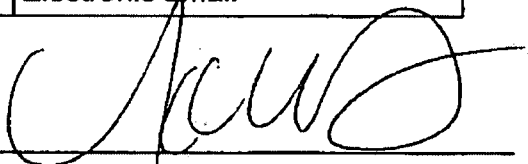
Charleston, South Carolina

June 6, 2018

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading(s) has been served upon opposing counsel on the 6 day of June, 2018 via:

<input type="checkbox"/>	United States Postal Service
<input type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Electronic Email



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO.: 2018-CP-18-00928
)	
M.R. Jackson Construction, LLC)	
	)	DEFENDANT BARBARA J. FIELDS'
Plaintiff,	)	ANSWER AND COUNTERCLAIMS TO
vs.	)	PLAINTIFF'S COMPLAINT
	)	(Jury Trial Demanded)
State Farm Insurance and Barbara J. Fields,)	
)	
Defendants.)	
)	

TO: Plaintiff M.R. Jackson Construction, LLC, and its attorney Chris Ramsey

Defendant Barbara J. Fields (hereinafter "Fields"), answering the Complaint of Plaintiff M.R. Jackson Construction, LLC (hereinafter "Jackson") Complaint herein states and alleges as follows:

**AS AND FOR A FIRST DEFENSE
(General Denial)**

1. Unless otherwise admitted, Defendant Fields denies all of the allegations contained in Plaintiff's Complaint and demands strict proof thereof.
2. Defendant Fields admits those allegations contained in Paragraphs 1 and 2 of Plaintiffs' Complaint.
3. In response to Paragraph 3, Defendant Fields admits there is a fire insurance policy with State Farm, but that the policy and its language speak for itself and so Defendant Fields denies the remainder of Plaintiffs allegations and demands strict proof thereof.
4. Defendant Fields admits those allegations contained in Paragraphs 4 and 5 of Plaintiffs' Complaint.
5. In response to Paragraph 6, Defendant Fields admits she entered into a construction contract with Plaintiff, however as that contract speaks for itself and so Defendant Fields denies the remainder of Plaintiffs allegations and demands strict proof thereof.

6. Defendant Fields denies those allegations contained in Paragraph 7 of Plaintiff's Complaint and demands strict proof thereof.

7. Defendant Fields is without sufficient information to form a belief as to those allegations contained in Paragraph 8 of Plaintiff's Complaint and, therefore, denies same and demands strict proof thereof.

8. Defendant Fields denies those allegations contained in Paragraphs 9 through 11 of Plaintiff's Complaint and demands strict proof thereof.

9. Defendant Fields admits those allegations contained in Paragraphs 12 through 14 of Plaintiffs' Complaint.

10. Defendant Fields denies those allegations contained in Paragraph 15 of Plaintiff's Complaint and demands strict proof thereof.

11. In response to Paragraph 16, Defendant Fields repeats each and every allegation set forth above as if set out fully verbatim herein.

12. Defendant Fields denies those allegations contained in Paragraphs 17 through 19 of Plaintiff's Complaint and demands strict proof thereof.

13. Defendant Fields is without sufficient information to form a belief as to those allegations contained in Paragraph 20 of Plaintiff's Complaint and, therefore, denies same and demands strict proof thereof.

14. Defendant Fields denies those allegations contained in Paragraph 21 of Plaintiff's Complaint and demands strict proof thereof.

15. In response to Paragraph 22, Defendant Fields repeats each and every allegation set forth above as if set out fully verbatim herein.

16. Defendant Fields admits those allegations contained in Paragraph 23 of Plaintiffs' Complaint.

17. Defendant Fields denies those allegations contained in Paragraphs 24 through 29 of Plaintiff's Complaint and demands strict proof thereof.

**AS AND FOR A SECOND DEFENSE
(SCRCP 12 (b)(6) Motion to Dismiss)**

18. Defendant Fields repeats each and every allegation set forth above as if set out fully verbatim herein.

19. Defendant Fields is entitled to have the claims against it dismissed with prejudice pursuant to SCRCP 12(b)(6) on the grounds that the Plaintiff has failed to allege facts upon which relief can be granted.

**AS AND FOR A THIRD DEFENSE
(Unclean Hands)**

20. Defendant Fields repeats each and every allegation set forth above as if set out fully verbatim herein.

21. Plaintiff has unclean hands as a result of its actions and is not entitled to relief.

**AS AND FOR A FOURTH DEFENSE
(Lack of Standing)**

22. Defendant Fields repeats each and every allegation set forth above as if set out fully verbatim herein.

23. Plaintiff is not a party to the policy of insurance, is not a named insured, and has not been adjudicated as a creditor or legitimate lien holder.

24. Because of the Plaintiff above lack of standing to bring this action.

**AS AND FOR A FIFTH DEFENSE
(Failure to name a necessary party)**

25. Defendant Fields repeats each and every allegation set forth above as if set out fully verbatim herein.

26. Defendant Fields' mortgage company is a named insured under the insurance

policy with State farm and is entitled to proceeds of the insurance policy and is therefore a necessary party to this litigation.

**AS AND FOR A SIXTH DEFENSE AND FIRST COUNTERCLAIM
(Tortious interfere with contractual relations)**

27. Defendant Fields repeats each and every allegation set forth above as if set out fully verbatim herein.

28. Defendant Fields has a contractual relationship with Defendant State Farm who by Defendant State Farm is obligated to provide insurance benefits to Defendant fields in the event Defendant Fields' home is destroyed by fire.

29. Defendant State Farm also has a contractual obligation to tender funds to Defendant Fields mortgage company as the mortgage company is a named insured under the policy.

30. Upon information and belief, Plaintiff filed this action versus State Farm in order to interfere with and prevent Defendant State Farm from paying under its contractual obligations and to force Defendant Fields into an economic difficulty, all to Defendant Fields' actual damage in an amount to be determined by the trier of fact.

31. Because Plaintiff's actions are intentional and upon information and belief, designed to force upon Fields economic hardship, Defendant Fields is entitled to punitive damages as allowed by law.

**AS AND FOR A SEVENTH DEFENSE AND SECOND COUNTERCLAIM
(Fivolous Proceedings)**

32. Defendant Fields repeats each and every allegation set forth above as if set out fully verbatim herein.

33. As a direct and proximate result of the frivolous proceedings, Defendant Fields has been damaged in an amount to be determined by the trier of fact and is entitled to sanctions

to include, but not be limited to attorney's fees and costs.

WHEREFORE, Defendant Barbara J. Fields prays unto this Honorable Court for an Order dismissing Plaintiff M.R. Jackson Construction, LLC Complaint, for a Judgment on Defendant's Counterclaim and for attorney's fees and costs and for such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

s/P. Brandt Shelbourne

P. Brandt Shelbourne #5924
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Attorney for Defendant Fields

Summerville, South Carolina
July 18, 2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	Civil Action No. 2018-CP-18-00928
M.R. Jackson Construction, LLC,)	
Plaintiff,)	
vs.	)	Plaintiff's Answer to Fields' Counterclaims
State Farm Insurance Company and Barbara J. Fields,)	
Defendants.)	

NOW COMES Plaintiff and submits its Answer to the Counterclaims of Barbara J. Fields as follows:

1. Paragraphs 1-27 do not state any claims against Plaintiff and thus require no response. To the extent a response is deemed required, Plaintiff denies the allegations in Paragraphs 1-27 and demands strict proof thereof.

Answering the First Counterclaim
(Tortious Interference with Contractual Relations)

2. Upon information and belief, Plaintiff admits Paragraphs 28-29.
3. Plaintiff denies Paragraphs 30-31 and demands strict proof thereof.

Answering the Second Counterclaim
(Frivolous Proceedings)


4. In response to Paragraph 32, Plaintiff incorporates its previous responses as though restated herein verbatim.
5. Plaintiff denies Paragraph 33 and demands strict proof thereof.

Further Answering the Counterclaim
And as an Affirmative Defense Thereto
(Failure to State a Claim)

6. Fields' Counterclaims must be dismissed under Rule 12(b)(6) because they fail to state a claim upon which relief may be granted.

WHEREFORE, having fully answered the Counterclaims, Plaintiff respectfully requests that the Court dismiss Fields' Counterclaims and grant the relief prayed for in Plaintiff's Complaint.

THE BOSTIC LAW GROUP, P.A.



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July 24, 2018

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
M.R. Jackson Construction, LLC)
)
Plaintiff,)
vs.)
)
State Farm Insurance and Barbara J. Fields,)
)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2018-CP-18-00928

**MEMORANUDM IN SUPPORT
OF DEFENDANT BARBARA J. FIELDS'
MOTION TO DISMISS**

Defendant Barbara J. Fields (hereinafter "Fields"), by and through her attorney, submits this Memorandum in Support of her Motion to Dismiss. Defendant Barbara J. Fields is entitled to dismissal of Plaintiff's suit against her and against State Farm Insurance as the Plaintiff has no claim or right to any of the insurance proceeds emanating from Defendant Fields' home owners' insurance policy with State Farm.

BACKGROUND

Defendant Fields and Plaintiff contracted for Plaintiff to construct a house for Fields on Fields' property. Plaintiff built a house for Fields and Fields tendered certain amounts of money to Plaintiff for that construction. A dispute arose between Plaintiff and Fields as to whether Fields owes additional funds for the construction. Plaintiff has asserted in a separate suit that it is entitled to an additional \$119,000.00 approximately and filed a mechanic's lien and suit for breach of contract.

Defendant purchased insurance for her home and its contents from State Farm. Pursuant to a note and mortgage with her lender, Fields listed the lender as a loss payee on the policy. On or about April 22, 2018 a fire in Fields' home destroyed the house and its contents. Fields filed a claim with State Farm for insurance benefits due to Fields' losses from the fire. State Farm was prepared to pay. Prior to payment being tendered, Plaintiff filed this present suit claiming that it was somehow entitled to the insurance proceeds.

ARGUMENT

This Court should grant Defendant's Motion to Dismiss because the allegations contained in the Complaint do not entitle Plaintiff to relief under the theory of the case.

In its complaint, Plaintiff acknowledges that it is not a named insured under the policy. Plaintiff acknowledges that it does not own Fields' property, nor has any ownership interest. Nowhere in the complaint does Plaintiff state any ownership interest in the property destroyed in the fire or in the State Farm insurance policy. At best, Plaintiff has a lien against the property that would prevent Fields from selling or getting rid of the property without first addressing the mechanic's lien. This lien is still in place. Plaintiff can point to no viable cause of action or any legal authority that gives it a right to claim any portion of the insurance proceeds payable by State Farm to Fields.

Simply put, Plaintiff is not entitled to any of the insurance proceeds, nor entitled to stop State Farm from paying these proceeds to Fields. Plaintiff claims that it is entitled to relief are legal conclusions. As such, the Court is not required to accept the allegations as to the legal conclusions as true. See Unisys Corp. v. S.C. Budget & Control Bd., Div. of Gen. Servs. Info. Tech. Mgmt. Office, 346 S.C, 158, 165, 551 S.E.2d 263, 267 (2001) (holding that when a dispute is not as to the underlying facts, but as to the interpretation of the law, it is proper to decide even novel issues on a motion to dismiss); See also Spence v. Spence, 368 S.C. 106, 124, 628 S.E.2d 869, 878 (2006) (approving the assertion of a defense in a motion to dismiss when there is no disputed issue of fact raised by the defense or when the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense). See also Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)). Under the well-pleaded complaint rule the Court, for purposes of the motion, should accept the facts set forth in the Complaint as true, but "determine whether they plausibly give rise to an entitlement to

relief." Id. (emphasis added) In this case, the facts set forth in Plaintiff's Complaint do not give rise to an entitlement to relief. There is no viable cause of action and Plaintiff's Complaint in this action should be dismissed.

No Right to Impleader

Plaintiff's first cause of action is for Impleader. "Rule 14(a), SCRCP sets forth the procedure for impleader or third-party practice." First General Service of Charleston, Inc. v. Miller, 314 S.C. 438, 442, 445 S.E.2d 446, 447 (1994). However, it is a right or option of a defending party to move as a third-party plaintiff. It is only "available to a plaintiff ... when the plaintiff has counterclaims asserted against it." Id. Plaintiff's action in this case is not a third-party action, but rather an attempt to prevent State Farm from fulfilling its contractual obligations to Fields and to prevent Fields from having the funds for which she contracted and paid through her insurance premiums.

No Constructive Trust

Plaintiff's second cause of action is for Constructive Trust. Plaintiff has not alleged facts to establish a constructive trust. "A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust." McNair v. Rainsford, 330 S.C. 332, 356, 499 S.E.2d 488, 501 (Ct. App. 1998). "It is resorted to by equity to vindicate right and justice or frustrate fraud." Id. "A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." Id. "A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty." SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 500, 392 S.E.2d 789, 793-94 (1990).

The burden is on the plaintiff to establish a constructive trust by clear and convincing evidence. McNair, 330 S.C. at 357, 499 S.E.2d at 501; See also Lollis v. Lollis, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987) ("In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal."). Although fraud is generally cited as an element to establish a constructive trust, a party need not show actual fraud. McNair, 330 S.C. at 357, 499 S.E.2d at 501.

In this case, Plaintiff has failed to allege facts or circumstances under which it would be inequitable to permit Fields to receive the State Farm Insurance policy proceeds. See Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 6, 732 S.E.2d 876, 879 (2012). There is no fraud alleged. There is no allegation of bad faith. There is no allegation of abuse of confidence or violation of a fiduciary duty giving rise to an obligation to make restitution. In fact, Plaintiff admits that it does not yet have a legal claim to the funds in question. Its prayer for relief it seeks injunctive relief "until Jackson's lien rights are determined." It admits that its rights have not been determined.

The State Farm Insurance proceeds belong to Fields, not Jackson. Fields paid for the insurance, was the beneficiary of the insurance policy, and suffered the loss of her house. Jackson does not allege that it was a party to the insurance or that its contract with Fields had anything to do with insurance proceeds. Essentially Jackson is using this action to prevent Fields from having the benefit of funds to which she is entitled under her insurance policy with State Farm. Because there are no facts to support a constructive trust, Fields is entitled to the Court dismissing Jackson's action in this case.

CONCLUSION

For all the aforementioned reasons, Defendant's Motion to Dismiss should be granted.

[SIGNATURE ON NEXT PAGE]

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Attorney for Defendant Fields

Summerville, South Carolina
October 11, 2018

Condon, 347 S.C. 227, 233 (Ct.App. 2001). The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief. Id.

Argument and Citation of Authority

South Carolina law provides that "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). In this case, Jackson's improvement to the Property has been destroyed by fire and converted into insurance proceeds. The "interest of the owner of the building or structure" includes the owner's insurable interest in the Property. It is important to note that this insurable interest would not exist but for the labor and materials furnished by Jackson to the Property. Thus, Jackson should hold an equitable lien against the funds issued by State Farm resulting from the total loss of the house located on the Property.

It has long been recognized that a mortgagee holds an equitable lien against fire insurance proceeds where the mortgagor has agreed that the mortgagor would maintain insurance on the property, even where the mortgagee is not a named insured in the insurance policy. Swearingen v. Hartford Ins. Co., 52 S.C. 309 (1898). Similar to 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. It would thwart the purpose and intent of the mechanic's lien statute to allow an owner to liquidate all or a portion of the property through an insurance claim and thereby avoid the lien.

Jackson's first claim is for impleader. A more accurate description of this claim would be reverse interpleader. Jackson claims a right to the funds being held by State Farm by virtue of the labor and materials which Jackson furnished to the Property. Fields disputes this claim and argues the funds should be paid over to Fields. Under these circumstances, State Farm could have filed an interpleader action and paid the funds into the registry of the court. No one would dispute State Farm's right as the stakeholder to

force all claimants to litigate their claims in this manner and thus shield itself from 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." Threlkeld v. Lyman Warehouse, LLC, 2015 WL 4931411 at *1. Jackson simply asks that the State Farm funds be paid into court pending the outcome of the separate mechanic's lien lawsuit, and then State Farm can be dismissed.

Jackson's second claim is that the State Farm insurance funds be placed in a constructive trust pending the outcome of the mechanic's lien lawsuit. As Fields points out, a constructive trust is "resorted to by equity to vindicate right and justice or frustrate fraud." McNair v. Rainsford, 330 S.C. 332, 356 (Ct.App. 1998). If, as Jackson alleges, Jackson provided labor and materials to the Property in the amount of \$119,000 for which it was not paid, and Fields derived a benefit from this in the form of insurance funds based on the replacement value of the house, then it would be unjust for Fields to retain this money without first paying Jackson. At this stage in the proceedings, on a motion to dismiss, the Court must view Jackson's allegation that he was not paid in full in the light most favorable to Jackson.

Conclusion

For the reasons set forth herein, Fields' Motion to Dismiss should be denied.

THE BOSTIC LAW GROUP, P.A.

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Attorneys for the Plaintiff

October 15, 2018

Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER	)	Civil Action No. 2018-CP-18-00928
)	
M.R. Jackson Construction, LLC,)	
)	
Plaintiff,)	
)	
vs.	)	Plaintiff's Motion for Reconsideration of
	)	Order Granting Motion to Dismiss
State Farm Insurance Company and Barbara J.)	
Fields,)	
)	
Defendants.)	
)	

NOW COMES Plaintiff M.R. Jackson Construction, LLC ("Jackson") and hereby submits its Motion for Reconsideration of the Court's Order Granting Defendant Barbara J. Fields' Motion to Dismiss as follows:

In its Order, the Court holds that Plaintiff has an adequate remedy at law to pursue the alleged amount owed by Barbara J. Fields for labor and materials furnished in the construction of her home and therefore cannot hold an equitable lien or constructive trust against the proceeds of Ms. Fields' fire insurance policy. For purposes of a motion to dismiss, the Court must view all facts in the light most favorable to the Plaintiff, and thus assume that Plaintiff would prevail in proving that Ms. Fields owes approximately \$119,000 for the construction of her home. The home that was constructed, and which Plaintiff holds a mechanic's lien against, was destroyed by fire. That value was extinguished and converted into insurance policy proceeds.

The Court is asked to take judicial notice of the fact that in 2016, before the Fields house was built, the Fields property was appraised for tax purposes as being worth \$59,000. If Plaintiff prevails in its mechanic's lien action, and wins a judgment for \$119,000 plus attorney's fees and costs of the action, a foreclosure sale would not produce the funds necessary to satisfy the judgment. Being compensated approximately 50% for a debt is not an adequate remedy at law. Meanwhile, Fields would be allowed to reap the benefit of Plaintiff's labor and materials in the form of insurance funds. If this holds to be true,

which for purposes of a motion to dismiss the Court must assume, then it would be an inequitable result. Any future homeowner in a similar position would have an incentive to do whatever necessary to destroy the property being liened, converting it into an insurance claim, and receiving a cash payout while the contractor receives the value of the real estate only and not the improvements. Equity does that which ought to be done. Fields should not be allowed to keep insurance proceeds for a house she has not paid for.

THE BOSTIC LAW GROUP, P.A.

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December 17, 2018

Charleston, South Carolina

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Proceedings 4

Certificate Page. 15

TRANSCRIPT OF RECORD

1
2 (Whereupon, the proceeding was commenced at 10:27
3 a.m.)

4 DEPUTY CLERK OF COURT: First up we have 2018-CP-18-
5 928, *M.R. Jackson Construction, LLC v. State Farm Insurance*
6 *Company*. This is a motion to dismiss.

7 THE COURT: Good morning, gentlemen.

8 MR. SHELBOURNE: Good morning, Your Honor.

9 MR. RAMSEY: Morning, Your Honor.

10 THE COURT: Whose motion do we have here?

11 MR. SHELBOURNE: Your Honor, Brandt Shelbourne for the
12 defendant, Barbara Fields. It's my motion.

13 THE COURT: All right, sir. I'll be happy to hear
14 from you.

15 MR. SHELBOURNE: Thank you, Your Honor. Your Honor,
16 this is a motion to dismiss pursuant to 12(b)(6) of the
17 plaintiff's claims. The plaintiff, Jackson Construction --
18 M.R. Jackson Construction, sued my client and State Farm,
19 who is represented by Mr. Lacour who's here, over some
20 insurance proceeds.

21 There is an underlying lawsuit brought by Mr. Jackson
22 against Ms. Fields for construction of a house. They
23 contracted together to build a house. They built the
24 house. There was a -- a dispute as to what's owed.

25 There was some additional work done; we contend we

1 didn't authorize it. They contend they are owed about
2 \$120,000. I think it's 119,000 and change.

3 That is a current, pending lawsuit in Dorchester
4 County. Unfortunately, several months ago, the house
5 burned to the ground. And the Fields lost their house.

6 State Farm has the underlying insurance policy paid --
7 and -- and was going to pay the Fields and also pay off the
8 mortgage. Mr. Jackson sued to stop that payment from
9 happening. We've since worked out the portion about paying
10 off the mortgage, because they're a named payee, a loss
11 payee under the insurance policy.

12 But there's still some overage left there that's owed
13 in -- under the policy to pay to the Fields. Jackson --
14 Mr. Jackson has filed for impleader and for constructive
15 trust, saying that he has a claim to some of that money.
16 We contest that. And State Farm hasn't paid the money yet
17 to us.

18 We're the -- hoping that this matter -- this will get
19 resolved and we can get paid, get my clients the money so
20 they -- one, so they can start rebuilding. They can't --
21 they have no money. They -- the mortgage is paid off, but
22 they have no assets, other than the land on the house.
23 They can't even afford to clear the land right now because
24 they haven't gotten the -- the -- the insurance -- the rest
25 of the insurance.

1 The -- the impleader action is essentially -- under
2 Rule 14 is -- is not applicable here. We have not
3 counterclaimed against them that would justify State --
4 them bringing in -- impleading this money. In their
5 memorandum, which -- a copy which I got this morning, they
6 seem to indicate that it is actually a reverse-interpleader
7 action.

8 But again, Your Honor, the -- there is no -- there's
9 no contract between Jackson and Fields for insurance
10 purposes. There's no contract between Jackson and State
11 Farm. Jackson is not a party to the insurance contract
12 that Mrs. Fields had with State Farm; doesn't have any
13 claim.

14 He's got a mechanic's lien. And we would assert that,
15 yeah, if he -- if he's successful on that lien, he can
16 foreclose on the property. Property is still there. Can
17 foreclose on the property.

18 He can -- and he can take the money, the sale of the
19 property, and satisfy any judgment that he does have. And
20 if it's a deficiency, he can continue to go after them for
21 any other funds. But what he can't do, prior to that, is
22 stop them from having their money.

23 There is no -- there -- he -- Mr. Ramsey has cited
24 some case law in here in his brief I referenced earlier --
25 and trying to liken the mechanic's lien to a mortgage lien.

1 And they're not the same, Your Honor. The -- the mortgage
2 lien -- in -- in the case he cited, *Swearingen v. Hartford*,
3 the mortgagor agreed that the mortgagor would maintain an
4 insurance for the property. There's no agreement between
5 Jackson and Fields that he would have -- they would keep
6 the property insured to make sure he was taken care of.
7 There -- that wasn't part of the agreement. It could've
8 been, but it wasn't.

9 And so because it wasn't, I don't think they are the
10 same type of liens. Additionally, the constructive trust
11 -- Your Honor, there is no constructive trust. This money
12 is not being obtained by Mrs. Fields through fraud, through
13 anything unjust or through anything that's inappropriate.

14 She has a contract. She paid for that insurance
15 premiums. She's had a loss. She's entitled to that. And
16 -- and Mr. Jackson and Jackson Construction Company is not
17 entitled to that money.

18 And so we would ask that the Court dismiss this
19 pursuant to the rules. I realize that, under the rules,
20 you're taking the facts in the light most favorable to Mr.
21 Ramsey. But we're not really talking about the facts. The
22 facts really aren't in dispute here. What's in dispute is
23 to whether or not there's a -- a cause of action. And
24 that's a legal issue that I think the Court can take under
25 its consideration.

1 We filed a memorandum last week, Your Honor, which
2 also references that and discusses the -- the right of and
3 the ability of the Court to deal with this in a motion to
4 dismiss at this -- this state. So we would ask, Your
5 Honor, that the Court will dismiss their causes of action.

6 I -- we're not trying to deal with any -- with the
7 underlying cause of action. We're not trying to dismiss
8 the mechanic's lien. We're not trying to stop it. We're
9 just trying to get the Fields their insurance money.

10 THE COURT: All right.

11 MR. SHELBOURNE: Thank you.

12 THE COURT: Thank you, Mr. Shelbourne.

13 Counsel?

14 MR. RAMSEY: Your Honor, good morning. I -- I filed a
15 memorandum, and I'm not sure if Your Honor has it. May I
16 approach?

17 THE COURT: If you have an extra one, that'd be great.
18 Thank you.

19 MR. RAMSEY: Your Honor, I -- I would take issue with
20 one thing that Mr. Shelbourne said. He said that all the
21 -- that there are really no facts in dispute. However, we
22 -- it would -- taking the facts most favorable toward my
23 client, he does claim that he was -- is still owed \$119,000
24 on this property.

25 If this was a \$10,000 or a \$20,000 lien, frankly, we

1 wouldn't be here. Because the -- the property itself would
2 still have plenty of value to satisfy any -- any judgment
3 that -- that Mr. Jackson might obtain. Unfortunately, the
4 reason we're here is because the -- the mechanic's lien is
5 in the amount of \$119,000.

6 And -- and again, for -- for purposes of why we're
7 here, we would submit that Your Honor is required to -- to
8 treat that as -- as though if we go through all this, then
9 Jackson would be able to prove that he is owed the 119,000.

10 Your Honor, we used the -- you know, the example of a
11 mortgage as an example of a situation where it would
12 inequitable for the owner to get that money and then leave
13 the -- the lienholder high and dry on the -- on the
14 property itself. Your Honor, if -- if this motion to
15 dismiss is granted, you can imagine the next case will be
16 someone goes and builds a million-dollar house and the --
17 the contractor files a lien for the million dollars. While
18 that mechanic's lien is still sitting there and the
19 contractor has done everything he is required to do with
20 filing the lawsuit, the house is either accidentally or
21 intentionally burned to the ground. You could have a
22 situation where it gives a -- a homeowner incentive
23 actually to -- to do something like this to their own
24 property.

25 We're not saying that -- that the Fields did that in

1 this instance. But -- but a rule that doesn't allow --
2 that doesn't protect the contractor who -- who actually
3 built the house, did all the work, and then files a
4 mechanic's lien, a rule that doesn't protect that person to
5 the proceeds of the fire-insurance policy, would lead to
6 this -- this -- this bad result in the future.

7 Your -- Your Honor, on the -- on the constructive-
8 trust claim, Mr. Shelbourne argues that you have to have
9 some finding of fraud. Your Honor, all we would -- all we
10 would submit, all you have to find is that there is some --
11 something inequitable about the fact that -- that this
12 money is being transferred over to the Fields without --
13 without first protecting Jackson's lien.

14 Your Honor, we would submit that it is very
15 inequitable for -- for the contractor who has gone out and
16 done all this work is really the basis for why -- you know,
17 if you think about it, the -- the fire-insurance policy is
18 worthless. There's nothing that can be -- it -- it would
19 have no value whatsoever had Jackson not gone out there and
20 done the work, completed the house. Of course, now we have
21 a dispute about how much was paid -- or how much should've
22 been paid at -- at the end of the project.

23 So, Your Honor, we submit that something in the nature
24 of a constructive trust would be appropriate. Again, we
25 may have inartfully said impleader and, really, it's --

1 it's actually more of an interpleader type of action.

2 State Farm is the fire-insurance company. I don't
3 think anyone would argue that if they saw that there were
4 two competing claims to these funds, State Farm would have
5 every right to come in here and say, "You know, look, we're
6 -- we're -- we don't have -- we're the stakeholder, but
7 we're not really -- this can go either way, so we're just
8 going to have the Court determine what the rights of the
9 respective parties are. Court, here's the money. And
10 we're going to get -- we're going to get out of this."

11 No one's saying that State Farm could not have done
12 this. We just respectfully beat them to the punch in -- in
13 making sure that this was filed so that -- so that
14 Jackson's interests were protected.

15 Your -- Your Honor, again, the -- the motion-to-
16 dismiss standard is -- is a very high one, a high bar that
17 Mr. Shelbourne has to meet. He has to show that we would
18 not -- that under these facts, taken in the light most
19 favorable to the plaintiff, there's no viable claim --
20 claim or cause of action that we could -- that we could
21 show.

22 Your Honor, to the extent that you're inclined to
23 grant the motion as to a interpleader or as to a
24 constructive-trust type of claim, we would submit that this
25 -- in many way, this is much like a prejudgment attachment

1 of -- of assets. Really, in a -- in a -- in a sense,
2 that's what a mechanic's lien is, with respect to real
3 estate. We're just trying to do it with respect to the
4 funds that were generated from that real estate when it --
5 when it, unfortunately, burned to the ground.

6 So, Your Honor, with -- with all that in mind, we
7 would submit that the plaintiff has not met -- or the --
8 Mr. Shelbourne has not met the high bar or the high
9 standard required for a motion to dismiss and -- and would
10 ask that you allow this to continue.

11 THE COURT: Thank you ---

12 MR. RAMSEY: Thank you.

13 THE COURT: --- Mr. Ramsey.

14 Any response?

15 MR. SHELBOURNE: Thank you, Your Honor, briefly. The
16 inequitable -- when you -- if the Court is going to weigh
17 the equities of this, Your Honor, is Mrs. Fields is left
18 with -- basically stuck with being unable to move forward
19 one way or the other. The equity that she had in her
20 house, which would've been covered by this insurance, is
21 basically being held hostage by this claim -- not the
22 underlying claim, not the underlying mechanic's lien, but
23 by this claim.

24 She -- if -- if this is allowed to occur, the lawsuit
25 that's filed saying, "I -- we've got a claim; we may have a

1 claim. We have a -- we have a -- a right to this money" --
2 they don't have a right to the money. They have a claim
3 pending in state -- in -- in this Court for -- for a
4 judgment. And they have a mechanic's lien that they filed.

5 They filed the mechanic's lien on the property. They
6 could've required that -- that Ms. Fields have insurance.
7 They could've required that they be a loss payee under the
8 insurance policy on the house. They did not do that.

9 They have a -- they -- it -- they have a right to ask
10 for certain things. But they don't have a right to come in
11 on a third party -- as a third party to a contract that
12 they're not a party to and make a claim, saying, "Hey, that
13 money gets to be held up."

14 Because inequitably, the Fields are stuck. They can't
15 move forward and build on the property. They can't -- as
16 Mr. Ramsey pointed out, he said, "Well, the -- there's the
17 argument that -- that the -- the property is not worth so
18 much."

19 That hasn't been pled. That's not a -- that's not
20 part of the pleadings. There's no -- there's -- what the
21 value of the property is, is not -- is not even in the --
22 in this case.

23 So whether they have a right -- whether the property
24 itself, the land, would sell for more than the lien, that's
25 not before the Court. That's not been pled by anybody, I

1 don't believe.

2 But saying that, Your Honor, the -- the equities fall
3 on Ms. Fields' side to allow them to have the money. If
4 Mr. Jackson gets a judgment, he can foreclose. He can then
5 -- if it's a deficiency, he can then go forward and pursue
6 and assets that they have.

7 But that's not ripe yet to stop them from having the
8 money that -- that they contracted for.

9 THE COURT: Thank ---

10 MR. SHELBOURNE: Thank you, Your Honor.

11 THE COURT: Thank you, gentlemen. I'll take the
12 matter under advisement and notify you of an opinion.

13 MR. SHELBOURNE: Thank you.

14 MR. RAMSEY: Thank you, Your Honor.

15 (Whereupon, the proceeding was concluded at 10:40
16 a.m.)

17 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR DORCHESTER SOUTH CAROLINA, ON THE 15TH DAY
OF OCTOBER, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



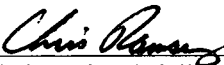
MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MAY 18, 2019

Certificate of Counsel

I hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Christopher M. Ramsey

November 27, 2019

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