

RECEIVED**Jun 17 2020****SC Court of Appeals**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Hon. Robert E. Hood, Circuit Court Judge

Appellate Case No. 2019-001967

Marsh Waterproofing, Inc.

Respondent,

v.

Steeple Main Columbia Ltd.,
and Hamilton Management
Services Company, Inc

Appellants.

MOTION TO CONSOLIDATE

Appellants, Steeple Main Columbia Ltd., and Hamilton Management Services Company, Inc., by and through the undersigned counsel, pursuant to Rule 214 of the South Carolina Appellate Court Rules, hereby serves its Motion to Consolidate as to the instant appeal with the following two (2) pending appeals:

1. Marsh Waterproofing, Inc., Respondent v. Steeple Two Notch Ltd., and Hamilton Management Services Company, Inc., Appellants

Richland County Circuit Court Case No. 2018-CP-40-00527
Appellate Case No. 2019-001966

2. Marsh Waterproofing, Inc., Respondent v. Steeple West Shockley Ferry Ltd., and Hamilton Management Services Company, Inc., Appellants

Anderson County Circuit Court Case No. 2018-CP-04-00135
Appellate Case No. 2019-001761

The Appellants move for consolidation of the instant appeal and aforementioned appeals from the Anderson and Richland County Circuit Court orders ("Orders"). The grounds for this Motion are as follows:

1. All three (3) pending appeals surround the granting of the Plaintiff's/Respondent's Motions for Summary Judgment dismissing Defendants'/Appellants' counterclaim for intentional interference with contractual relations.
2. The Motions for Summary Judgment in the Richland County Circuit Court were argued simultaneously before the Honorable Robert E. Hood, and the Anderson County Appeal surrounds an identical Motion for Summary Judgment argued before the Honorable R. Lawton McIntosh as described in the paragraph above.
3. The Richland County Summary Judgment Orders dismissing Defendant/Respondent's counterclaim were supported by identical findings of fact and likewise nearly identical conclusions of law as the Summary Judgment Order dismissing Defendant/Appellants' counterclaim in the Anderson Circuit Court Action. See Appellants' Exhibit No. 1.
4. All aforementioned appeals involve the same Plaintiff/Respondent, the same counsel for both Appellants and Respondent, the same events giving rising to the Plaintiff's/Respondent's initial claims and Defendants'/Appellants' counterclaim, and the same issues. See Rule 214, SCACR ("Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated."); see also Crawford v. Central Mortg. Co., 404 S.C. 39, 44, 744 S.E.2d 538, 540 (2013) (consolidating appeals is appropriate when orders involve same legal issues).
5. Judicial economy and efficiency require aforementioned appeals be consolidated as the Orders to which each appeal arises out of involve the same issues, factual findings, and practically identical conclusions of law.

WHEREFORE, Appellants respectfully request this Court grant its Motion in consolidating the instant appeal with the aforementioned virtually identical and companion appeals shown above in an effort to achieve further judicial efficiency.

June 17, 2020

Respectively submitted,



C. Clay Olson, SC Bar No. 17007
Harper Little, PLLC
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Charleston, SC 29401
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Attorney for Appellants

cc: Albert A. Lacour, III., Esq.
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Hon. Robert E. Hood, Circuit Court Judge

Case No. 2019-001967

Marsh Waterproofing, Inc.,

Respondent,

v.

Steeple Main Columbia Ltd.,
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Services Company, Inc.

Appellants.

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SC Court of Appeals

PROOF OF SERVICE

I, C. Clay Olson, on behalf of Appellants, hereby certify that a copy of *Appellants' Motion to Consolidate* was sent to all counsel of record on June 16, 2020, via E-mail and United States Mail, postage pre-paid and addressed as follows:

CLAWSON and STAUBES, LLC
Albert A. Lacour, III
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
alacour@clawsonandstaubes.com
Attorney for Respondent



C. Clay Olson

Charleston, South Carolina
June 17, 2020

Appellants' Motion for Consolidation - Ex. No. 1

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Marsh Waterproofing, Inc.,

CASE NO.: 2018-CP-40-00579

Plaintiff

vs.

Steeple Main Columbia Ltd. and
Hamilton Management Services
Company, Inc.

Defendant(s).

**ORDER ON MOTION FOR SUMMARY
JUDGMENT DISMISSING COUNTERCLAIM
(CASE NOT ENDED)**

This matter came before me for a hearing on Thursday, September 12, 2019 at 9:50 AM on the Motion for Summary Judgment of the Plaintiff seeking dismissal of the counterclaim for intentional interference with contractual relations. This Motion is identical to the motion in the companion case 2018-CP-40-00527, and both were argued simultaneously by counsel. Present and participating in the argument were Albert A. Lacour, III, Esquire of Clawson and Staubes, LLC for the Plaintiff, and C. Clay Olson, Esquire of Harper Little, PLLC for the Defendants.

The Plaintiff, Marsh Waterproofing, Inc. is a contractor that performed work upon seven Church's Chicken restaurants operated by the Defendants. Plaintiff was not paid for six locations at the conclusion of the work and filed six mechanics liens against the leasehold interests of Defendants to secure its right to payment, this being one such case. The landlord, ARC CAFÉUSA001, LLC, is not presently a party to the litigation. Upon consideration of the arguments of counsel and review of the pleadings, the Motion and Memorandum in Opposition, the deposition testimony of the Defendants' Rule 30(b)(6) witness and the applicable law, I make the following:

FINDINGS OF FACT**RECEIVED**

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SC Court of Appeals

 ELECTRONICALLY FILED - 2019 Sep 18 2:29 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000579
 ELECTRONICALLY FILED - 2019 Oct 21 2:46 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000579

1. The Defendants were deemed by their landlord to be in breach of the lease agreement and the forbearance agreement between themselves and their landlord when they allowed mechanics liens to be filed against the leased property.

2. No facts have been submitted by Defendants to show that the landlord was in breach of any term of the lease agreement, but rather it appears that the landlord insisted on performance of the terms of the agreements requiring that the property be kept free of any liens.

3. The Plaintiff claims it performed work at the request of the Defendants and provided labor and materials for the improvement of the properties for which it was not paid. In an effort to secure its right to payment the Plaintiff filed and served a mechanics lien pursuant to South Carolina Code §29-5-10, et. seq. I therefore make the following:

CONCLUSIONS OF LAW

1. A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; see Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998) (quoting Tupper v. Dorchester Cnty., 326 S.C. 318, 487 S.E.2d 187 (1997)).

"Once the moving party meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent may not simply rest on the mere allegations contained in the pleadings." Grant v. Mount Vernon Mills, 370 S.C. 138, 150, 634 S.E.2d 15, 17 (Ct. App. 2006). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 151. Unsupported

allegations or denials that simply create an inference are insufficient to withstand summary judgment. Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Hedgepath v. AT&T, 348 S.C. 340, 354, 559 S.E.2d 327 (Ct. App. 2001).

2. “To establish a cause of action for tortious interference with contractual relations, a claimant must show: 1) the existence of a contract; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages. The third essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract’s breach.” Eldeco, Inc. v. Charleston County School District 372 SC 470, 642 SE2d 726, 731 (2007), citing Kinard v. Crosby 315 SC 237, 433 SE2d 835, 837 (1993). “Where there is no breach of contract, there can be no recovery. Eldeco 642 SE2d at 732, citing First Union Mort. Corp. v. Thomas 317 SC 63, 451 SE2d 907, 913 (Ct. App. 1994). I conclude that on the record before me, there is no showing by the Defendants that the Plaintiff has procured the breach of the lease agreement or forbearance agreement by the landlord, but rather the Defendants themselves breached the agreements by not preventing the filing of the liens. The third required element of the cause of action is missing on the facts before me.

3. An unpaid contractor, having furnished labor and materials for the improvement of real property, may secure his right to payment by filing and serving a Statement For Mechanics Lien under SC Code §29-5-10, et. seq. “[T]he exercise in good faith of a legal right by a party to a contract affords no basis for an action by the second party for intentional interference with a contract even though the consequence of the exercise of

the legal right by the first party is to cause a third-party not to perform another contract with the second party.” Southern Contracting, Inc. v. H. C. Brown Construction Co. 317 SC 95, 99, 450 SE2d 602, 604 (Ct. App. 1994), citing Webb v. Elrod 308 SC 445, 418 SE2d 559 (Ct. App. 1992). Any alleged ill will or improper motive does not change the outcome. “[A]n act done in the exercise of a legal right cannot be treated as wrongful and actionable merely because a malicious motive prompted the exercise of that right.” *Id.* I conclude that under the foregoing authorities, Plaintiff’s filing of its mechanics lien cannot form the basis for the cause of action alleged because the filing was justified. The fourth required element of “absence of justification” cannot be met.

4. In Pond Place Partners Inc. v. Poole 351 SC 1, 567 SE2d 881 (Ct. App. 2002), the Court of Appeals held that the filing of a lis pendens, pursuant to the statute that authorizes such filing, enjoys the absolute privilege accorded to judicial proceedings because the recording of a lis pendens is specifically authorized by statute and has no existence separate and apart from the litigation of which it gives notice. “When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published, i.e., an action will not lie even if the report is made with malice... The absolute privilege covers anything that may be said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court... The law gives to all who take part in judicial proceedings, judge, attorney, counsel, printer, witness, litigant, a right to speak and to write, subject only to one limitation, that what is said or written bears upon the subject of litigation, that is, is pertinent, relevant, germane thereto... South Carolina has long recognized that relevant pleadings, even if defamatory, are absolutely privileged.” (*Citations omitted*). Pond Place 351 SC at 22-23, 567 SE2d at 892. The court also reviewed prior case law which adopted and quoted extensively from

the Restatement (Second) of Torts § 587 (1977): "A party to a private litigation... is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding... The common law rule protecting statements of judges, parties and witnesses offered in the course of judicial proceedings from a cause of action in defamation is well recognized in this jurisdiction... *That is, an absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relationship to it.*" (emphasis added). Pond Place 351 SC 1, 24-25, 567 SE2d 881, 893 (Ct. App. 2002), citing: Crowell v. Herring 301SC 424, 429, 392 SE2d 464, 467 (Ct. App. 1990). I conclude that the filing of the mechanics lien by the Plaintiff enjoys the absolute privilege accorded other judicial proceedings for the same reason that a lis pendens enjoys such privilege. Both are filed in advance of the action to which they relate, both are statutorily authorized, and both bear a reasonable relationship to the judicial proceeding that follows, and therefore cannot be the basis of a claim for intentional interference with contractual relations. It is therefore

ORDERED that the counterclaim of the Defendants for intentional interference with contractual relations be, and the same is hereby **DISMISSED**.

AND IT IS SO ORDERED this _____ day of _____,
2019, at Columbia, South Carolina.

Robert E. Hood, Presiding Judge
Fifth Judicial Circuit



Richland Common Pleas

Case Caption: Marsh Waterproofing Inc vs ARC CAFEUSA001 LLC ,defendant,
et al
Case Number: 2018CP4000579
Type: Order/Summary Judgment

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2019-09-16 15:52:27 page 6 of 6

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Marsh Waterproofing, Inc.,

Plaintiff,

vs.

Steeple Two Notch Ltd. and Hamilton
Management Services Company, Inc.

Defendant(s).

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-40-00527

**ORDER ON MOTION FOR SUMMARY
JUDGMENT DISMISSING COUNTERCLAIM
(CASE NOT ENDED)****RECEIVED**

NOV 18 2019

SC Court of Appeals

This matter came before me for a hearing on Thursday, September 12, 2019 at 9:50 AM on the Motion for Summary Judgment of the Plaintiff seeking dismissal of the counterclaim for intentional interference with contractual relations. This Motion is identical to the motion in the companion case 2018-CP-40-00579, and both were argued simultaneously by counsel. Present and participating in the argument were Albert A. Lacour, III, Esquire of Clawson and Staubes, LLC for the Plaintiff, and C. Clay Olson, Esquire of Harper Little, PLLC for the Defendants.

The Plaintiff, Marsh Waterproofing, Inc. is a contractor that performed work upon seven Church's Chicken restaurants operated by the Defendants. Plaintiff was not paid for six locations at the conclusion of the work and filed six mechanics liens against the leasehold interests of Defendants to secure its right to payment, this being one such case. The landlord, ARC CAFÉUSA001, LLC, is not presently a party to the litigation. Upon consideration of the arguments of counsel and review of the pleadings, the Motion and Memorandum in Opposition, the deposition testimony of the Defendants' Rule 30(b)(6) witness and the applicable law, I make the following:

FINDINGS OF FACT

1. The Defendants were deemed by their landlord to be in breach of the lease agreement and the forbearance agreement between themselves and their landlord when they allowed mechanics liens to be filed against the leased property.
2. No facts have been submitted by Defendants to show that the landlord was in breach of any term of the lease agreement, but rather it appears that the landlord insisted on performance of the terms of the agreements requiring that the property be kept free of any liens.
3. The Plaintiff claims it performed work at the request of the Defendants and provided labor and materials for the improvement of the properties for which it was not paid. In an effort to secure its right to payment the Plaintiff filed and served a mechanics lien pursuant to South Carolina Code §29-5-10, et. seq. I therefore make the following:

CONCLUSIONS OF LAW

1. A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC; see Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998) (quoting Tupper v. Dorchester Cnty., 326 S.C. 318, 487 S.E.2d 187 (1997)).

"Once the moving party meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent may not simply rest on the mere allegations contained in the pleadings." Grant v. Mount Vernon Mills, 370 S.C. 138, 150, 634 S.E.2d 15, 17 (Ct. App. 2006). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 151. Unsupported

allegations or denials that simply create an inference are insufficient to withstand summary judgment. Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Hedgepath v. AT&T, 348 S.C. 340, 354, 559 S.E.2d 327 (Ct. App. 2001).

2. "To establish a cause of action for tortious interference with contractual relations, a claimant must show: 1) the existence of a contract; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages. The third essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach." Eldeco, Inc. v. Charleston County School District 372 SC 470, 642 SE2d 726, 731 (2007), citing Kinard v. Crosby 315 SC 237, 433 SE2d 835, 837 (1993). "Where there is no breach of contract, there can be no recovery. Eldeco 642 SE2d at 732, citing First Union Mort. Corp. v. Thomas 317 SC 63, 451 SE2d 907, 913 (Ct. App. 1994). I conclude that on the record before me, there is no showing by the Defendants that the Plaintiff has procured the breach of the lease agreement or forbearance agreement by the landlord, but rather the Defendants themselves breached the agreements by not preventing the filing of the liens. The third required element of the cause of action is missing on the facts before me.

3. An unpaid contractor, having furnished labor and materials for the improvement of real property, may secure his right to payment by filing and serving a Statement For Mechanics Lien under SC Code §29-5-10, et. seq. "[T]he exercise in good faith of a legal right by a party to a contract affords no basis for an action by the second party for intentional interference with a contract even though the consequence of the exercise of

the legal right by the first party is to cause a third-party not to perform another contract with the second party.” Southern Contracting, Inc. v. H. C. Brown Construction Co. 317 SC 95, 99, 450 SE2d 602, 604 (Ct. App. 1994), citing Webb v. Elrod 308 SC 445, 418 SE2d 559 (Ct. App. 1992). Any alleged ill will or improper motive does not change the outcome. “[A]n act done in the exercise of a legal right cannot be treated as wrongful and actionable merely because a malicious motive prompted the exercise of that right.” *Id.* I conclude that under the foregoing authorities, Plaintiff’s filing of its mechanics lien cannot form the basis for the cause of action alleged because the filing was justified. The fourth required element of “absence of justification” cannot be met.

4. In Pond Place Partners Inc. v. Poole 351 SC 1, 567 SE2d 881 (Ct. App. 2002), the Court of Appeals held that the filing of a lis pendens, pursuant to the statute that authorizes such filing, enjoys the absolute privilege accorded to judicial proceedings because the recording of a lis pendens is specifically authorized by statute and has no existence separate and apart from the litigation of which it gives notice. “When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published, i.e., an action will not lie even if the report is made with malice... The absolute privilege covers anything that may be said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court... The law gives to all who take part in judicial proceedings, judge, attorney, counsel, printer, witness, litigant, a right to speak and to write, subject only to one limitation, that what is said or written bears upon the subject of litigation, that is, is pertinent, relevant, germane thereto... South Carolina has long recognized that relevant pleadings, even if defamatory, are absolutely privileged.” (*Citations omitted*). Pond Place 351 SC at 22-23, 567 SE2d at 892. The court also reviewed prior case law which adopted and quoted extensively from

the Restatement (Second) of Torts § 587 (1977): "A party to a private litigation... is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding... The common law rule protecting statements of judges, parties and witnesses offered in the course of judicial proceedings from a cause of action in defamation is well recognized in this jurisdiction... *That is, an absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relationship to it.*" (emphasis added). Pond Place 351 SC 1, 24-25, 567 SE2d 881, 893 (Ct. App. 2002), citing: Crowell v. Herring 301SC 424, 429, 392 SE2d 464, 467 (Ct. App. 1990). I conclude that the filing of the mechanics lien by the Plaintiff enjoys the absolute privilege accorded other judicial proceedings for the same reason that a lis pendens enjoys such privilege. Both are filed in advance of the action to which they relate, both are statutorily authorized, and both bear a reasonable relationship to the judicial proceeding that follows, and therefore cannot be the basis of a claim for intentional interference with contractual relations. It is therefore

ORDERED that the counterclaim of the Defendants for intentional interference with contractual relations be, and the same is hereby DISMISSED.

AND IT IS SO ORDERED this _____ day of _____,
2019, at Columbia, South Carolina.

Robert E. Hood, Presiding Judge
Fifth Judicial Circuit



Richland Common Pleas

Case Caption: Marsh Waterproofing Inc vs L W Smith Jr Trust , defendant, et al
Case Number: 2018CP4000527
Type: Order/Summary Judgment

So Ordered

s/ R.E. Hood #2164

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

FOR THE TENTH JUDICIAL CIRCUIT

Marsh Waterproofing, Inc.,

CASE NO.: 2018-CP-04-00135

vs.

Plaintiff,
 Steeple West Shockley Ferry Ltd. and
 Hamilton Management Services
 Company, Inc.

Defendant(s).

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 SC Court of Appeals

**ORDER ON MOTION FOR SUMMARY
 JUDGMENT DISMISSING COUNTERCLAIM
 (CASE NOT ENDED)**

This matter came before me on Wednesday, July 31, 2019 at 3:00 PM on the Motion for Summary Judgment of the Plaintiff seeking dismissal of the counterclaim for intentional interference with contractual relations. Present and participating in the argument were Albert A. Lacour, III, Esquire of Clawson and Staubes LLC for the Plaintiff and C. Clay Olson, Esquire of Harper Little, PLLC for the Defendants.

The Plaintiff, Marsh Waterproofing, Inc. is a contractor that performed work upon seven Church's Chicken restaurants operated by the Defendants. Plaintiff was not paid for six locations at the conclusion of the work and filed six mechanics liens against the leasehold interests of Defendants to secure its right to payment, this being one such case. The landlord, ARC CAFÉUSA001, LLC, is not presently a party to the litigation. Upon consideration of the arguments of counsel and review of the pleadings, the Motion and Memorandum in Opposition, the deposition testimony of the Defendants' Rule 30(b)(6) witness and the applicable law, I make the following:

FINDINGS OF FACT

1. The Defendants were deemed by their landlord to be in breach of the lease agreement and the forbearance agreement between themselves and their landlord when they allowed mechanics liens to be filed against the leased property.

2. No facts have been submitted by Defendants to show that the landlord was in breach of any term of the lease agreement, but rather it appears that the landlord insisted on performance of the terms of the agreements requiring that the property be kept free of any liens.

3. The Plaintiff claims it performed work at the request of the Defendants and provided labor and materials for the improvement of the properties for which it was not paid. In an effort to secure its right to payment the Plaintiff filed and served a mechanics lien pursuant to South Carolina Code §29-5-10, et. seq. I therefore make the following:

CONCLUSIONS OF LAW

1. A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; see Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998) (quoting Tupper v. Dorchester Cnty., 326 S.C. 318, 487 S.E.2d 187 (1997)).

"Once the moving party meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent may not simply rest on the mere allegations contained in the pleadings." Grant v. Mount Vernon Mills, 370 S.C. 138, 150, 634 S.E.2d 15, 17 (Ct. App. 2006). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 151. Unsupported allegations or denials that simply create an inference are insufficient to withstand summary judgment. Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary

judgment should be granted.” Hedgepath v. AT&T, 348 S.C. 340, 354, 559 S.E.2d 327 (Ct. App. 2001).

2. “To establish a cause of action for tortious interference with contractual relations, a claimant must show: 1) the existence of a contract; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages. The third essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach.” Eldeco, Inc. v. Charleston County School District 372 SC 470, 642 SE2d 726, 731 (2007), citing Kinard v. Crosby 315 SC 237, 433 SE2d 835, 837 (1993). “Where there is no breach of contract, there can be no recovery. Eldeco 642 SE2d at 732, citing First Union Mort. Corp. v. Thomas 317 SC 63, 451 SE2d 907, 913 (Ct. App. 1994). I conclude that on the record before me, there is no showing by the Defendants that the Plaintiff has procured the breach of the lease agreement or forbearance agreement by the landlord, but rather the Defendants themselves breached the agreements by not preventing the filing of the liens. The third required element of the cause of action is missing on the facts before me.

3. An unpaid contractor, having furnished labor and materials for the improvement of real property, may secure his right to payment by filing and serving a Statement For Mechanics Lien under SC Code §29-5-10, et. seq. “[T]he exercise in good faith of a legal right by a party to a contract affords no basis for an action by the second party for intentional interference with a contract even though the consequence of the exercise of the legal right by the first party is to cause a third-party not to perform another contract with the second party.” Southern Contracting, Inc. v. H. C. Brown Construction Co. 317 SC 95, 99, 450 SE2d 602, 604 (Ct. App. 1994), citing Webb v. Elrod 308 SC 445, 418

SE2d 559 (Ct. App. 1992). Any alleged ill will or improper motive does not change the outcome. "[A]n act done in the exercise of a legal right cannot be treated as wrongful and actionable merely because a malicious motive prompted the exercise of that right." I conclude that under the foregoing authorities, Plaintiff's filing of its mechanics lien cannot form the basis for the cause of action alleged because the filing was justified. The fourth required element of "absence of justification" cannot be met.

4. In Pond Place Partners Inc. v. Poole 351 SC 1, 567 SE2d 881 (Ct. App. 2002), the Court of Appeals held that the filing of a lis pendens, pursuant to the statute that authorizes such filing, enjoys the absolute privilege accorded to judicial proceedings because the recording of a lis pendens is specifically authorized by statute and has no existence separate and apart from the litigation of which it gives notice. "When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published, i.e., an action will not lie even if the report is made with malice... The absolute privilege covers anything that may be said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court... The law gives to all who take part in judicial proceedings, judge, attorney, counsel, printer, witness, litigant, a right to speak and to write, subject only to one limitation, that what is said or written bears upon the subject of litigation, that is, is pertinent, relevant, germane thereto... South Carolina has long recognized that relevant pleadings, even if defamatory, are absolutely privileged." (*Citations omitted*). Pond Place 351 SC at 22-23, 567 SE2d at 892. The court also reviewed prior case law which adopted and quoted extensively from the Restatement (Second) of Torts § 587 (1977): "A party to a private litigation... is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course

and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding... The common law rule protecting statements of judges, parties and witnesses offered in the course of judicial proceedings from a cause of action in defamation is well recognized in this jurisdiction... That is, an absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relationship to it." Pond Place 351 SC 1, 24-25, 567 SE2d 881, 893 (Ct. App. 2002), citing: Crowell v. Herring 301SC 424, 429, 392 SE2d 464, 467 (Ct. App. 1990). I conclude that the filing of the mechanics lien by the Plaintiff enjoys the absolute privilege accorded other judicial proceedings for the same reason that a lis pendens enjoys such privilege. Both are filed in advance of the action to which they relate, both are statutorily authorized, and both bear a reasonable relationship to the judicial proceeding that follows, and therefore cannot be the basis of a claim for intentional interference with contractual relations. It is therefore

ORDERED that the counterclaim of the Defendants for intentional interference with contractual relations be, and the same is hereby DISMISSED.

AND IT IS SO ORDERED this _____ day of _____,
2019, at Anderson, South Carolina.

R. Lawton McIntosh, Presiding Judge
Tenth Judicial Circuit



Anderson Common Pleas

Case Caption: Marsh Waterproofing, Inc. VS ARC CAFEUSA001, LLC ,
defendant, et al
Case Number: 2018CP0400135
Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2019-08-20 11:49:27 page 6 of 6

ELECTRONICALLY FILED - 2019 Aug 20 12:01 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0400135



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James D. Harper*
Terry Little
C. Clay Olson***
James W. Saxton, Jr.***

*Also licensed in Alabama and Tennessee
*** Licensed in South Carolina

June 17, 2020

Jenny Abbott Kitchings
SC Appellate Court Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201

RE: Marsh Waterproofing, Inc., v. Steeple Main Columbia, LTD., et al.
South Carolina Court of Appeals Case No. 2019-001967

RECEIVED

Jun 17 2020

Dear Ms. Kitchings,

SC Court of Appeals

On behalf of Appellants, Steeple Main Columbia, Ltd., and Hamilton Management Services Company, Inc., please see the following enclosed for your review:

1. Appellants' *Motion to Consolidate* and attached Exhibit;
2. Proof of Service of Appellants' *Motion to Consolidate* on Opposing Counsel; and
3. Check #5784 in the amount of \$50.00 in reflection of the filing fee associated with the *Motion to Consolidate*.

Thank you for your attention to this matter. Should you have any questions or concerns, please contact our office.

Sincerely,

C. Clay Olson

CCO/md
Attachments

cc: Albert A. Lacour, III, Esq.
South Carolina Court of Administration

Fax

RECEIVED

Jun 17 2020

SC Court of Appeals

Date: 6/17/2020

To: 8037341839

From:

Subject: Marsh Waterproofing, Inc., v. Steeple Main Columbia, LTD., etal. C. No. 2019-CP-001967

Ms. Kitchings,

Original to follow in the mail with a check for payment.

<<https://www.harperlittlaw.com/>>

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