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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2018-CP-10-00262
Appellate Case No.: 2020-000921

Marsh Waterproofing, Inc., Respondent

v.

Steeple Dorchester Ltd. and Hamilton Management Services Company, Inc., Appellants

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BRIEF OF RESPONDENT

Albert A. Lacour, III
Bar No.: 3099
CLAWSON and STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: alacour@clawsonandstaubes.com
Attorney for Marsh Waterproofing, Inc.

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II.

Whether any evidence exists in the trial record that supports the findings of fact and conclusions of law reached by the trial judge in determining to enter judgment against Hamilton Management Services Company, Inc. on the contract for the debt?

III.

Whether any evidence exists in the trial record that supports the findings of fact and conclusions of law reached by the trial judge in determining to enter judgment against Steeple Dorchester, Ltd. on the mechanics lien for the debt, costs and attorney's fees?

COUNTER STATEMENT OF THE CASE AND FACTS

Marsh Waterproofing, Inc. is a contractor in its home state of Texas. Marsh was hired to perform work on Church's Chicken Restaurants in Texas following a terrible accident involving collapse of the concrete floor slab in a restaurant. The work, which was designed by an engineering firm, involved the installation of foam material in the open crawlspace beneath the slab to provide supplemental support for the slab in the event of a future failure of the slab. Marsh acquired the equipment necessary to install the foam in Texas, and thereafter installed the foam for similar purposes in projects in Louisiana, Mississippi, Alabama, Georgia, South Carolina, and Tennessee. (R. p. 359, line 2 – p. 360, line 14).

Here in South Carolina, Marsh was engaged by the defendant, Hamilton Management, to work on eight restaurants. One restaurant was removed from the list by Hamilton. Marsh received payment for one restaurant. Marsh was never paid for the other six restaurants and filed six identical mechanics lien actions in the five counties where those restaurants are located.

Marsh filed and served its mechanics liens after obtaining the necessary title information from the various counties. For reasons unknown to Marsh, Defendants never recorded their lease assignments in the real property records offices of the respective counties where the restaurants were located. It was only after filing and serving its foreclosure action that information was volunteered by the former leasee and the current lessor/owner as to the identity of the Steeple entities. This action was filed January 22, 2018. (R. p. 33 – p. 48). The Second Amended Lis Pendens, Amended

Summons and Amended Complaint were filed March 12, 2018. (R. p. 49 – p. 62). The failure of the Steeple Defendants to comply with the general recording statute was the cause of the initial misjoinder of parties, and the Defendants are therefore the authors of their own injuries, if any are claimed to arise from the misjoinder.

The Steeple entities held the leaseholds and were managed by Hamilton. The Steeple entities and Hamilton were under the common control of Alexander Burns. The Steeple Defendants filed a counterclaim for intentional interference with contractual relations. The Defendants' theory is that Marsh filed and served these actions initially against the record owner and the record leasee intentionally, and with the motive to injure the Defendant's business relationship with the owner/lessor. The leases were terminated by the landlord according to the lease provisions when the mechanics liens were filed. The failure of the Defendants to pay for the services rendered is the root cause of the problem and the Defendants are, for a second reason, the authors of their own injuries.

Defendants attempt to defeat the claims of Marsh by showing that Marsh is not a licensed general contractor in the state of South Carolina. Marsh contends that it is not required to be licensed because it was not the general contractor on these jobs. The proposal of Marsh does not contain any general conditions, or permitting, or sequencing, or scheduling or provision for the supervision of other work, all of which would be required of a general contractor. No repairs or changes were made by Marsh to any of the existing structural elements of the building. Marsh believed it was only a

trade contractor on the project because Defendants represented to Marsh they had a contractor working one step ahead of Marsh to do the preparatory work.

Defendants also claim that Marsh was supposed to pull a building permit but the proposal of Marsh does not contain any such requirement. Additionally, the work of Marsh came very last in the order of the work, so it stands to reason that the contractor doing the preparatory work would need to pull permits at the beginning of the job.

PROCEEDINGS BELOW

Before Defendants answered the Complaint they filed a Motion to Dismiss the case on the grounds that Marsh did not possess a general contractors license. Plaintiff's Return to Motion raised issues of fact as to whether Marsh was the general contractor or not. The motion was scheduled to be heard in this case on February 7, 2019 and Defendants appeared at the hearing and withdrew it. The parties proceeded to take the depositions of the primary witnesses of both sides. Following the depositions Defendants filed a second motion to dismiss the case for lack of a license and that motion was denied by Judge McCoy on January 15, 2020 on the basis that there were genuine issues of material fact to be determined.

Defendants counterclaim for intentional interference with contractual relations was dismissed in five of the six cases on motion by Plaintiff for summary judgment. Defendants perfected appeals in three of the five cases. The consolidated appeals have now been dismissed. The only county where the counterclaim survived the

Plaintiff's motion for summary judgment was this case in Charleston County. When this case reached trial, the Defendants withdrew the counterclaim.

This case came up for trial on the jury roster and was called February 5, 2020. The Defendants conceded they did not intend to dispute the amount of the debt, only the entitlement of Marsh to recover. The jury venire was excused and the trial proceeded with the Defendants presenting the issues of the lack of licensing and the role of Marsh in the projects to the court sitting without a jury. The Final Order, filed March 11, 2020, contained detailed findings of fact and conclusions of law on the issue, and held that Marsh was not acting as the general contractor for the projects and need not be licensed as a general contractor. The Order granted judgment to Marsh for $36,800, the value of the work in the proposal. A timely Motion to Alter or Amend and Plaintiff's Motion for the award of fees and costs were heard April 28, 2020. A Supplemental Order denying the Motion for Reconsideration and awarding attorney's fees and costs to Marsh in the amount of $29,894 was filed May 11, 2020. This appeal followed.

STANDARD OF REVIEW

A proceeding for the enforcement of a statutory lien, such as a mechanic's lien, is legal in nature. Willard v. Finch, 123 S.C. 56, 116 S.E. 96 (1923); Stoudenmire Heating & Air Conditioning Co. v. Craig Bldg. Partnership, 308 S.C. 298, 301, 417 S.E.2d 634, 636 (Ct. App. 1992); Butler Contr., Inc. v. Court St., LLC, 369 S.C. 121, 631 S.E.2d 252 (2006).

In an action at law, when a case is tried without a jury, the trial court's findings of fact will be upheld on appeal when they are reasonably supported by the evidence. Stated another way, the trial court's findings of fact will not be disturbed on appeal unless wholly unsupported by the evidence or unless it clearly appears the findings were influenced or controlled by an error of law. The trial court's findings in such a case are equivalent to a jury's findings in a law action. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976); Willard, 123 S.C. at 58, 116 S.E. at 96. Review in the appellate court is limited to determining if there is any evidence to support the ruling of the trial court. Stoudenmire, 308 S.C. at 301, 417 S.E.2d at 636 (*citing*: Southern Pole Buildings, Inc. v. Williams 289 S.C. 521, 523, 347 SE2d 121, 122 (Ct. App. 1986)).

I.

Marsh was not the general contractor.

Title 40, Chapter 11 of the South Carolina Code is the statutory regulatory scheme for general and mechanical contractors. A "general contractor" is one who performs or supervises or offers to perform or supervise "general construction". S.C. Code §40-11-20(9). "General construction" is installation, replacement or repair of a building or structure. S.C. Code §40-11-20(8). The facts in the record establish that Marsh Waterproofing, Inc. does not fall within that definition. These definitions reflect the reality that general contractors are defined essentially by either the nature of the work performed or the scope of the work performed.

A. The nature of the work was not general contracting.

Analyzing this case by the nature of the work, S.C. Code §40-11-20, subparagraph (8) would require us to build a building or structure, or replace a building or structure, or repair a building or structure. The record reflects Marsh made absolutely no repairs or modifications to the existing structural elements of the building. (R. p. 444, line 23 – p. 447, line 2). Marsh did mix up a couple of bags of concrete to close up the opening in the slab, but made no repair or modification to the existing slab. That work does not even remotely approach the minimum $5,000 value of work necessary to trigger the licensing requirement. The foam was installed in the open air space between the ground and the bottom of the steel deck. (R. p. 358, line 9 - line 18). It does not attach to any of the structural elements and does not modify or change any of the

structural elements. The foam simply occupies the air space to prevent the slab from moving downward if the slab fails in the future. It is not supporting the existing slab as initially installed. The scope of work outlined by the engineering report does not specify any repairs to any existing structural elements. Marsh made no repairs to any supporting soils, footings, cmu walls, brick masonry walls, steel girders, steel joists, steel decking or the existing slab. (R. p. 446, line 6 – p. 447, line 2). None were called for by the engineering report. (R. p. 527 – p. 541). The installation of foam for supplemental support is not a classification of work identified as being the work of a general contractor in the statutory scheme in code section S.C. Code §40-11-410. (R. p. 575 – p. 579), (R. p. 395, line 22 – p. 397, line 8).

The argument advanced by the appellant that the work is "structural in nature" is based on the misconception that the foam is actually bearing any load when it is installed. The testimony of Avant Armentrout (R. p. 434, line 3 – p. 445, line 1) clearly reflects that he crawled into the crawlspace under the slab to install the foam. At that time the slab was being fully supported and held off the ground by the other structural elements of the building. The soil, footings, cmu or brick walls, girders or trusses, and the corrugated steel decking were all supporting the floor slab. Installation of the foam did not change this fact. The foam will not bear any load or support any weight of the slab when installed, and will never do so unless, and until, one of the other structural members fails, at some unknown point in the future, or perhaps never. If the slab itself, or one of the supporting members, does fail at some future time, the weight of the slab

will be borne at that time by the foam. Until then, the foam does nothing to support the structural loads.

B. The LLR email and Order reached the same result as the court.

The administrative proceeding started when Mr. Burns, on behalf of Hamilton, wrote to the LLR after the work was complete and told them that Marsh was acting as general contractor on the projects. He apparently believed that an adverse ruling by the LLR would prevent Marsh from bringing an action to collect the debt Hamilton owed for the work, so set about to manufacture a defense. The trial judge ruled that the LLR Order would not be dispositive of any factual issues in the trial and that the court was free to find the facts in accordance with the evidence presented. (R. p. 422, line 2 – line 13). Even so, the Appellant relies heavily on the LLR proceedings in its brief, so it is important to note that LLR reached the same result as the court, but by a different route.

LLR has twice told Marsh that no contracting license is required for the six projects, of which this is one. The first time is the email exchange between personal counsel for Marsh and the administrator of the LLR which is trial Exhibit 13. (R. p. 572 – p. 573). This exchange was made immediately prior to the filing of the mechanic's liens.

The second time is the Final Order of the LLR. The LLR issued a citation and a Cease and Desist Order in April 2018. Both were appealed by Marsh and in its Final Order entered July 23, 2019, (R. p. 157 – p. 162), the LLR Hearing Officer held that Marsh had a reasonable basis to believe that either Hamilton was the general contractor or that Hamilton had hired a general contractor so that, in either event, Marsh needed

no license for these six projects. The exception in S.C. Code §40-11-270(E) and the considerations illustrated in Teseniar v. Professional Plastering & Stucco, Inc. 407 S.C. 83, 754 SE2d 267, (Ct. App. 2014) applied to excuse Marsh from needing any license for the work performed.

The Hearing Officer found Marsh to have a reasonable basis for believing that Defendants had engaged a general contractor on the project. The specific factual findings of the Hearing Officer which support the finding of a reasonable belief by Marsh can be found within the Final Order of the LLR at paragraphs 5, 6, 7, 8, and 9 on page 2; paragraphs 13, 16, and 17 on page 3; and paragraphs 18, 19, 20, 21 on page 4. These factual findings are contrary to the position taken by Defendants. The Hearing Officer found that Marsh had a reasonable belief that someone else was acting as general contractor and therefore Marsh fit within the exception in S.C. Code §40–11–270 (E) and the Teseniar case in paragraph 4 of the conclusions on page 5. The Hearing Officer found mitigating circumstances and withdrew the Cease and Desist Order and dismissed the Citation issued in connection with these cases leaving Marsh free to proceed in these cases.

The Hearing Officer found mitigating circumstances and excused compliance with the statute, so he never addressed the absence of any classification for the work within the licensing statute defining the classifications of work of a general contractor. Trial Exhibit 14. (R. p. 575 –p. 579).

Contrary to the argument made in Appellants Brief at page 3 and again at page 10, the Hearing Officer specifically found that the email sent by counsel was not

misleading and clearly explained the nature of the material to be installed and its purpose. (R. p. 161, note 1).

The cases cited by Appellant for the proposition that the courts must give great deference to agency rulings and interpretations are the rule on direct appeal from the agency action. The rule is not absolute, and where the agency ruling is contrary to the plain language of the statute, the courts may disregard the agency ruling even on direct appeal. Sierra Club v. S.C. Dept. of Health and Environmental Control 426 S.C. 236, 826 SE 2d 595 (2019). In this case the agency never addressed the absence of a classification for the work of installing foam for purposes other than insulation.

C. The scope of the work was not general contracting.

Analyzing this case by the scope of the work, general contractors are sometimes identified by the fact that they contract to perform all of the work required to complete the project. The complete scope of work was designed by the engineering firm hired by Hamilton. Trial Exhibit 4 (R. p. 527 – p. 541); (R. p. 371, line 16 – p. 375, line 1). Marsh clearly did not do all of the work. The proposal of Marsh lists multiple exclusions for all of the preparation work. (R. p. 545 - 546), (R. p. 377, line 13 – p. 383, line 8). Marsh was not the only contractor on the project. Others performed the preparatory work and others provided the typical general contractor responsibilities set forth below. Marsh only arrived last, in the order of the work, to install the foam in the airspace above grade and below the slab. (R. p. 374, line 14 – p. 375, line 1).

The scope of the general contractor's work generally includes providing permitting, temporary utilities, temporary facilities, scheduling of the trades, sequencing of the trades, supervision of the trades, and general overall responsibility to see all of the work gets fully and properly executed. None of the foregoing are within the scope of work defined by the proposal of Marsh. (R. p. 545 – p. 546).

The representations of the Defendants to Marsh that they had a "contractor" working "one step ahead" of Marsh to do the preparatory work outlined in the engineer's report reasonably led Marsh to believe a general contractor was working ahead of Marsh on the project. (R. p. 551 – p. 553), (R. p. 383, line 25 – p. 386, line 10). The prep work involved multiple trades, all of which required separate trade licenses, and would have required someone to pull a building permit before Marsh ever set foot on the project. To the extent that Marsh could observe whether these "general contractor" obligations were being met by others, they appeared to be furnished by someone, and it was not Marsh. Marsh was not present at the time the preparation work was performed, so Marsh was not in a position to supervise the other trades or be responsible for general conditions, sequencing, scheduling, permitting or facilities. (R. p. 372, line 12 – p. 375, line 1).

D. The Defendants did not rely on the existence of a license.

Marsh made no representation to Defendants that it was licensed in the correspondence or the proposal or the discussions of the parties. The Teseniar case stands for the proposition that "where the reason for the rule ends, so ends the rule". On

the facts in the record the parties discussed licensing before the work started and Tim Marsh told Mr. Burns that he was not licensed in South Carolina and asked if Mr. Burns thought he needed to be. (R. p. 402, line 3 - 16). Mr. Burns promised to check on it. We don't know with whom he checked or whether he checked, but the parties proceeded with the work. Mr. Burns could not have relied upon the existence of a license for the qualifications of the contractor if he knew no license existed. Being aware Marsh was not licensed in South Carolina, common sense dictates that Mr. Burns and Hamilton would be obligated to raise the issue with Marsh before proceeding with the work

In addition, Mr. Burns was referred to Marsh by Church's, and aware of the past record of Marsh for making repairs for the Church's franchise in multiple states at numerous stores, and so was fully aware of the extensive experience and the ability of Marsh to install the foam. (R. p. 375, line 2 – p. 376, line13). He was not relying upon the existence of a license to know the contractor's qualifications to do the work. He was fully aware of the experience and the qualifications and the track record of the contractor and was relying upon that knowledge, rather than the existence of a license in deciding whether to engage the contractor. "The statute involved, and similar ones, are designed to protect the public from being imposed upon by persons not qualified to render a professional service. ... In the case before us, [Defendant] was in a position to know, and did know, the qualifications of [Marsh]. No reliance was placed upon the existence of a license, as presumptively would be the case if [Marsh] was dealing with the general public." Teseniar v. Professional Plastering & Stucco, Inc. 407 S.C. 83, 97, 754 SE2d 267, 274 (Ct. App. 2014). In the present case, the testimony reflects that

there was never any complaint made about the quality of the work or the quantity of the work of Marsh. (R. p. 388, line 12 – p. 389, line 6), and (R. p. 443, line 7 – p. 444, line 2).

E. On motion under SCRCP Rule 59 (e) testimony available at the time of trial may not be submitted by affidavit after the end of the trial.

One "cannot use a Rule 59(e) motion to raise matters that could have been raised before judgment, but were not." Gartside v. Gartside 383 S.C. 35, 43, 677 SE2d 621, 625 (Ct. App. 2009).

The purpose for the rule is to allow the court a "do over". The motion is to allow the court to correct anything that the court missed or overlooked or misapprehended. The rule is not to be used for counsel to get a "do over" or to add matters not raised which could have been raised. The three attachments to the motion in this case were: two affidavits of Burns, one made in November 2019, (R. p. 148 – p. 155) and one made on February 24, 2020 (R. p. 168 – p. 172), almost three weeks after the trial ended, and the deposition of Burns. The older affidavit and the deposition were both available at the time of the trial, but were not offered in evidence at trial. The newer affidavit was made after the trial by the same person who had decided not to appear and testify. His affidavit should not be allowed to be substituted for his appearance after the trial has ended. Allowing it to be considered would run contrary to our procedural and evidentiary processes. It is simply not proper to present factual testimony to the court for the first time on a rule 59 (e) motion after judgment has already been entered.

F. The evidence supports the court's findings and conclusions that Marsh was not the general contractor.

The court concluded Marsh was not the general contractor on the job. (R. p. 20, para. 25). That conclusion is supported by findings of fact which are all amply supported by the testimony and exhibits in the trial record. (R. p. 15 – p. 18, para. 11 - 17). The court's findings of fact should not be disturbed unless wholly unsupported by the evidence or clearly controlled by an error of law. The court found Marsh was not the general contractor on the project, based on factual findings that Marsh did not conduct any of the activities commonly handled by a general contractor. The court also made detailed findings that Marsh did not make any repairs to the existing structural elements of the building. The court found that Marsh only appeared at the very end of the job to perform a discreet portion of the entire work and was not present for, or involved in, the extensive work done prior to arrival of the Marsh employees.

G. The cases relied upon by Appellants are distinguishable.

All of the cases relied upon by Defendants involved individuals or companies admittedly and clearly acting as the general contractor or residential homebuilder. The cases relied upon by Defendants all involve projects where only one contractor existed, or where the contractor was admittedly the general contractor for the job, or were adjudged to be the general contractor based upon either the nature of the work or the scope of the work. No cases are cited by Defendants where there was a contested issue as to whether the contractor was acting as the general contractor or not. The cases cited simply do not address the issue raised here where Marsh is not the only

contractor on the job.

Columbia Pools, Inc. v. Moon 284 S.C. 145, 325 SE2d 540 (1985) involved a pool and pool house addition to a residence and, from the opinion, the builder appears to have been the sole contractor on the project and therefore required to be licensed as a residential homebuilder. They admittedly had no license until after the contract was signed. Columbia Pools is further distinguishable because it was decided under the residential home builders licensing statute, S.C. Code §40-59-10, et. seq., which is separate from the commercial general contractors licensing statute, S.C. Code §40-11-10, et. seq., and is not applicable to the work on the restaurants in this case.

W & N Construction Co., v. Williams 322 S.C. 448, 472 SE2d 622 (1996) involved a commercial renovation of about $60,000 value where admittedly the claimant was the sole general contractor on the project and was acting as general contractor without any license at all. After first noting that nothing in the licensing statute prohibits the contractor from bringing an action to recover payment for services rendered; the court nevertheless held the contract illegal and not enforceable in the state courts on public policy grounds. This case would support the Defendant's position if Marsh was the general contractor on the job, but as discussed previously, Marsh clearly was not.

C–Sculptures involved a licensed general contractor with a $100,000 limit on his license classification who took on a project in excess of that amount and was the sole contractor on the job and admittedly the general contractor. The very first paragraph of the syllabus states that it arises from a construction contract by which "a general contractor agreed to build a home...". C-Sculptures, LLC v. Brown 403 S.C. 53, 55, 742

SE2d 359, 360, (2013). The case involved the commercial licensing act and the court relied upon S.C. Code §40-11-370(C), which had by then been enacted, providing that no action could be brought to enforce any contract unless the contractor held a valid license.

Marsh maintains that it was not the general contractor whether its activities are evaluated by the scope of its work or by the nature of the work. In the case before the court, Marsh was not the sole contractor on the job but was scheduled to appear to work at the very end of the list of all trade contractors coming to do their work. No cases are cited by the appellant where there is any factual dispute about who was the general contractor on the project. If Marsh was not acting as the general contractor on the job, then he was not subject to the prohibition on enforcement of the agreement in S.C. Code §40-11-370(C) and was in fact excused from any licensing requirement pursuant to S.C. Code §40-11-270(E) and the decision in Teseniar v. Professional Plastering & Stucco, Inc. 407 S.C. 83, 754 SE2d 267 (Ct. App. 2914).

II.

The evidence supports the entry of judgment against Hamilton on the contract.

The court found that the exhibits reflected correspondence between Alexander Burns, acting on behalf of Hamilton Management, and Marsh resulted in the formation of a contract. (R. p. 14, para. 7). Hamilton Management authorized the improvements to the property upon which the lease was held by Steeple Dorchester, Ltd. Exhibit 4 (R. p. 527 – p. 541) is the engineer's report that is addressed to Mr. Burns at Hamilton

Management. Exhibit 5 (R. p. 543) is the email follow up to the initial conversation between Mr. Burns and Mr. Marsh where Burns, acting for Hamilton Management, directs Marsh to address the quotation to him at State Acquisitions, a company that is neither organized in, nor qualified to do business in, South Carolina. Exhibit 6 (R. p. 545 – p. 546) is the proposal sent to Hamilton, but addressed as requested to State Acquisitions. It was signed by Mr. Burns without him making any indication of what capacity, or for which company Mr. Burns was signing. Exhibit 7 (R. p. 548 – p. 549) is the email of July 19, 2017 in which Mr. Burns, over the Hamilton company name, indicates a schedule will soon be forthcoming and clarifies terms of payment. Exhibit 8 (R. p. 551 – p. 553) is the email of July 21, 2017 in which Mr. Burns, on behalf of Hamilton, provides a schedule for the work and represents that he has a contractor to do the water removal, plumbing and electrical, who will be "working one step ahead of you on each site." That email also discusses the possible removal of one of the eight stores from the list of work to be done that is attached. Exhibit 10, (R. p. 562) is the invoice sent after the work was completed which references the store location, and is addressed to the non-existent company as requested by Hamilton. The offer, acceptance and valid consideration are all reflected in the record. The formation of a contract for the work and the role of Hamilton as a party to the agreement is supported by the record. The court entered judgment against Hamilton Management on the contract. (R. p. 22, first para.).

III.

The evidence supports the entry of judgment against Steeple Dorchester, Ltd., on the mechanics lien.

The Final Order at paragraph 5, page 2 (R. p. 14) shows that the record owner and record tenant were initially named in the suit and that they were removed by amendment after the true identity of the tenant, Steeple Dorchester, Ltd. was discovered. That information was made available soon after the suit was served. The mechanics lien statute allows for enforcement of the lien against an estate less than a fee simple interest, such as a leasehold interest. The statue provides that the lien attaches to the interest "in like manner as a mortgage would have done and the creditor may cause the right of redemption or whatever other right or estate the owner had in the property to be sold...". S.C. Code §29-5-30; Adams v. B & D, Inc. 297 S.C. 416, 377 SE 2d 315 (1989). The court entered judgment for foreclosure of the mechanic's lien against Steeple Dorchester, Ltd. (R. p. 22, second para.).

The mechanics lien statute, in S.C. Code §29-5-20 provides for liens to be filed by those having an agreement with someone other than the owner who is acting for the owner as Hamilton did here.

The last day of work on the Charleston location at issue here was August 18, 2017. (R. p. 442, line 1 - p. 443, line 6). S.C. Code §29-5-90 provides that the lien is dissolved unless it is filed in the records office of the county where the property is located and served on the owner, or in the event the owner cannot be found, upon the person in possession within 90 days of the last furnishing of labor or material. The trial

record reflects that the 90 day limitation was satisfied by the date of service of the lien on the owner. (R. p. 449, line12 – line 18).

S.C. Code §29-5-120 provides that suit for enforcing the lien must be commenced and notice of pendency of the action filed within six months after the last furnishing of labor or material. The trial transcript indicates this deadline was met by the date of service of the suit on the owner. (R. p. 449, line 19 – line 25).

On the record, Marsh has complied with all of the statutory requirements and is entitled to foreclose against the interest of the leasee, Steeple Dorchester, Ltd.

CONCLUSION

The findings of the trial judge should not be disturbed unless wholly unsupported by the evidence, or unless it clearly appears the findings were influenced by an error of law. If there is any evidence to support the rulings of the trial judge, the decision should be affirmed. In this case there is ample evidence in the exhibits and testimony to support the rulings of the trial judge and the judgment of the Circuit Court should therefore be AFFIRMED.

CLAWSON and STAUBES, LLC

Albert A. Lacour, III
Bar No.: 3099
126 Seven Farms Drive, Suite 200
Charleston, 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: alacour@clawsonandstaubes.com
Attorney for Marsh Waterproofing, Inc.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief complies with S.C.A.C.R. 211(b).

CLAWSON and STAUBES, LLC

Albert A. Lacour, III
Bar No.: 3099
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: alacour@clawsonandstaubes.com
Attorney for Marsh Waterproofing, Inc.

Charleston, South Carolina

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