

MCNAIR

ATTORNEYS

James K. Gilliam

jgilliam@mcnair.net
T (843) 444-1107
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March 28, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

MAR 29 2013

SC Court of Appeals

RE: *Williams Carpet Contractors, Inc. v. Ruonala and Company, LLC, et al.*
Case Track #: 2012-213575
Civil Action No. 2007-CP-26-0265
Our Client Matter No. 048962.00001

Dear Ms. Kitchings:

With regard to the above matter, enclosed for filing with the Court, please find the following:

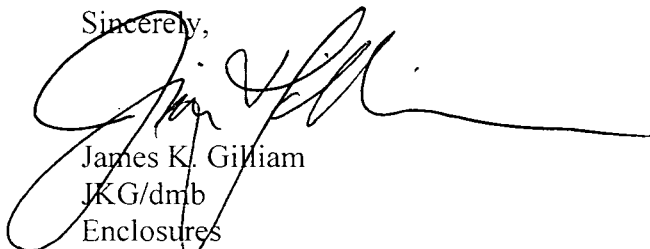
- Original and seven copies of Respondent's Return to Petition for Rehearing, Exhibits 1-9; and
- Proof of Service.

By copy of this letter to parties of record, and as shown on the Proof of Service, I hereby serve a copy of the Return to Petition for Rehearing, Exhibits 1-9, and Proof of Service.

Please return to me a clocked copy of the enclosed documents in the enclosed self-addressed envelope.

With kindest regards, I am

Sincerely,



James K. Gilliam
JKG/dmb
Enclosures

cc: G. Michael Smith, Esquire
Rick Ruonala
Clients

McNair Law Firm, P. A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John
Circuit Court Judge

Case No.: 2007-CP-26-0265
Appellate No.: 2012-213575

RECEIVED

MAR 29 2013

SC Court of Appeals

Williams Carpet Contractors, Inc.,Respondent,

v.

Ruonala and Company, LLC, Mark Skelly and
M.S. Industries, Inc., Defendants,

Of Whom Mark Skelly is, Appellant.

RETURN TO PETITION FOR REHEARING

This Court should deny Mark Skelly’s (hereafter “Skelly”) Petition for Rehearing because the Court of Appeals did not err in submitting the remittitur to the lower court and because Skelly raises no issues the Court of Appeals either overlooked or misapprehended.

PROCEDUREAL HISTORY

This case was tried before a jury in Horry County on April 21 and 22, 2010 before the Honorable Steven H. John. (**Exhibit #1: Trial Court Order Granting JNOV**). The jury returned a verdict in favor of Williams Carpet on April 22, 2010. (**Exhibit #2: Verdict Form**). Skelly then moved for a Judgment Notwithstanding the Verdict (“JNOV”). (**Exhibit #1: Trial Court Order Granting JNOV p. 4-10**). On May 19, 2010, the trial court granted Skelly’s JNOV motion. (**Exhibit #1: Trial Court Order Granting JNOV**). Williams Carpet filed a

Motion for Reconsideration with the trial court on June 3, 2010, which the trial court denied on October 4, 2010. (**Exhibit #3: Order Denying Motion for Reconsideration**). Thereafter, Williams Carpet timely filed a Notice of Appeal to the South Carolina Court of Appeals. (**Exhibit 4: Original Notice of Appeal**).

On October 24, 2012, the South Carolina Court of Appeals reversed the trial court's grant of JNOV to Skelly. (**Exhibit 5: Opinion No. 5040**). Skelly did not file a Petition for Rehearing to the Court of Appeals and did not file a Petition for Writ of Certiorari to the Supreme Court. Counsel for Skelly filed a Motion to be Relieved as Counsel on November 6, 2012. (**Exhibit 6: Motion and Petition to be Relieved as Counsel**). The Court of Appeals sent the remittitur to the lower court on November 9, 2012. (**Exhibit 7: Remittitur**). On December 10, 2012, Skelly filed a Notice of Appeal to the Court of Appeals. (**Exhibit 8: Skelly's Notice of Appeal**). In this Notice of Appeal, Skelly sought to "appeal[] the jury verdict dated April 22, 2010 and entered as a matter of law as a result of the Remittitur dated November 9, 2012" (**Exhibit 8: Skelly's Notice of Appeal**).

On January 3, 2013, Williams Carpet moved to dismiss this appeal as untimely and for lack of subject matter jurisdiction. On March 11, 2013, the Court of Appeals dismissed Skelly's appeal. (**Exhibit 9: Order Dismissing Skelly Appeal**). On March 21, 2013, Skelly filed this Petition for Rehearing, arguing the Court of Appeals erred in submitting the remittitur to the circuit court in this case.

STANDARD OF REVIEW

"In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument." Kennedy v. South Carolina Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (citing Rule 221(a), SCACR). The petition for

rehearing must “state with particularity the points supposed to have been overlooked or misapprehended by the court.” *Id.* “The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.” *Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322 (citing Jean H. Toal, *Appellate Practice in South Carolina*, 293 (2002)).

DISCUSSION

I. REMITTITUR WAS PROPERLY SENT

In his Petition for Rehearing, Skelly contends the Court of Appeals erred in sending the remittitur to the circuit court because counsel for Skelly’s Motion to be Relieved as Counsel automatically stayed the case pursuant to Rule 240(b), SCACR, and with this automatic stay in place, the Court of Appeals should not have submitted the remittitur to the lower court.

Aside from the procedural defects of Skelly’s arguments, which are addressed below, Skelly’s understanding of the automatic stay provision in Rule 240(b), SCACR is incorrect. Rule 240(b) provides for an automatic stay for the time period to **perfect an appeal** when a motion to be relieved as counsel is filed. (emphasis added). Rule 240 states, “A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for **perfecting the appeal** until the motion is decided. Rule 240(b), SCACR (emphasis added).

The term “perfect” is defined by Black’s Law Dictionary as, “To take all legal steps needed to complete” Black’s Law Dictionary 1173 (8th ed. 2004). In *In re: Anonymous Member of the Bar*, the Supreme Court considered “the duty of an attorney, retained for purposes of trial only, to assist his client in **perfecting an appeal**.” 303 S.C. 306, 307, 400 S.E.2d 483,

483 (1991) (emphasis added). With the issue so framed, the Court held, “If the client wishes to appeal and is indigent or claims at the end of trial to be indigent, trial counsel (whether appointed or retained) must serve and file a Notice of Appeal as required by Rule 203, SCACR, and request a determination of indigency by the Office of Appellate Defense.” Id. The Supreme Court’s decision in In re: Anonymous Member of the Bar, makes clear that the phrase “perfect an appeal” entails serving and filing the Notice of Appeal. Id.

Here, the appeal had already been perfected and actually decided when counsel for Skelly filed a Motion to be Relieved as Counsel. The undisputed procedural facts show that the Court of Appeals issued an opinion reversing the trial court’s grant of JNOV to Skelly on October 24, 2012. (**Exhibit 5: Opinion No. 5040**). Thereafter, on November 6, 2012, counsel for Skelly filed a Motion to be Relieved as Counsel. (**Exhibit 6: Motion and Petition to be Relieved as Counsel**). Counsel for Skelly’s Motion to be Relieved as Counsel did not stay the appellate proceedings, and when Skelly failed to either file a timely Petition for Rehearing to the Court of Appeals, or to file a Petition for Writ of Certiorari to the Supreme Court, the Court of Appeals properly submitted the remittitur to the circuit court on November 9, 2012. See Rule 221(b). Accordingly, this Court should deny Skelly’s Petition for Rehearing.

II. PETITION FOR REHEARING FAILS TO POINT OUT ISSUES OVERLOOKED OR MISAPPREHENDED

In Skelly’s Notice of Appeal, he appealed “the jury verdict dated April 22, 2010 and entered as a matter of law as a result of the Remittitur dated November 9, 2012” (**Exhibit 8: Skelly’s Notice of Appeal**). In the Notice of Appeal, Skelly did not argue that the Court of Appeals erred in sending the remittitur to the lower court. Likewise, in the Notice of Appeal, Skelly did not argue that the filing of his counsel’s Motion to be Relieved as Counsel automatically stayed the appeal. These are arguments that Skelly raises for the first time in this

Petition for Rehearing. A Petition for Rehearing is not the appropriate vehicle to raise issues for the first time. See Kennedy, 349 S.C. at 532, 564 S.E.2d at 322 (citing Rule 221(a), SCACR) (“In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument.”). Instead, the sole reason to file a Petition for Rehearing is to bring issues to the attention of the Court that were either overlooked or misapprehended. Because Skelly does not raise any issues in his Petition for Rehearing that he contends the Court of Appeals overlooked or misapprehended, this Court should deny Skelly’s Petition for Rehearing.

III. SKELLY FAILED TO CARRY BURDEN TO JUSTIFY RECALLING OF REMITTITUR

The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. Christy v. Christy, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994). The appellate court cannot recall a remittitur after it is sent down so as to correct errors. Carpenter v. Lewis, 65 S.C. 400, 43 S.E. 881 (1903). The remittitur will not be recalled due to excusable neglect by a party, since the proper time for such a showing is before the remittitur is sent. State v. Keels, 39 S.C. 553, 17 S.E. 802 (1893); Jean H. Toal, *Appellate Practice in South Carolina*, 295 (2002)). In order to justify the unusual power of recalling the remittitur, a very strong showing is required that the remittitur was sent down through some mistake or inadvertence on the part of the appellate court. Id.

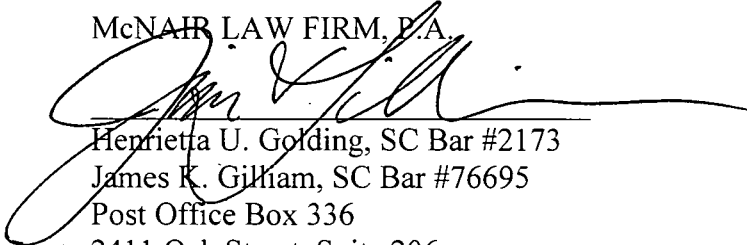
Here, the Court of Appeals properly submitted the remittitur to the circuit court more than fifteen (15) days after the Court of Appeals issued an opinion reversing the trial court’s

grant of JNOV to Skelly. Rule 221(b).¹ The Court of Appeals committed no mistake of any kind in issuing the remittitur to the lower court. Therefore, this Court should deny Skelly's Petition for Rehearing.

CONCLUSION

For the foregoing reasons, this Court should deny Skelly's Petition for Rehearing.

McNAIR LAW FIRM, P.A.



Henrietta U. Golding, SC Bar #2173

James K. Gilham, SC Bar #76695

Post Office Box 336

2411 Oak Street, Suite 206

Myrtle Beach, SC 29578

(843) 444-1107

Attorneys for Williams Carpet

Williams Carpet Contractors, Inc.

Myrtle Beach, South Carolina

March 28, 2013

¹ Additionally, the remittitur is not an appealable order. The remittitur is a document prepared by the clerk of court to which the judgment of the appellate court is attached and sent to the lower court. See Rule 221(b); Ackerman v. McMillan, 324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Judicial Circuit

Case No.: 2007-CP-26-0265
Appellate No.: 2012-213575

Williams Carpet Contractors, Inc.,Respondent,

v.

Ruonala and Company, LLC, Mark Skelly and
M.S. Industries, Inc., Defendants.

Of Whom Mark Skelly is,Appellant.

PROOF OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., attorneys for Respondent Williams Carpet Contractors, Inc. in the above-entitled action, certify that I have served the Respondent's Return to Petition for Rehearing, Exhibits and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 28th day of March, 2013.

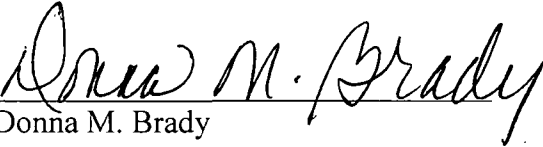
Other Counsel of Record:

G. Michael Smith, Esq.
Thompson & Henry, P.A.
1300 Second Avenue
P.O. Box 1740
Conway, SC 29528

Email: msmith@thompsonlaw.com

(Attorney Appellant/Defendants for Mark Skelly and M.S. Industries, Inc.)

Rick Ruonala
Ruonala and Company, LLC
423 Maison Dr
Myrtle Beach, SC 29577
(*Pro Se* Respondent/Defendant)


Donna M. Brady

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE No: 2007-CP-26-0265

WILLIAMS CARPET)
CONTRACTORS, INC.,)
)
Plaintiff,)

vs.)

RUONALA AND COMPANY, LLC,)
MARK SKELLY AND M.S.)
INDUSTRIES, INC.,)
)
Defendants.)

**ORDER GRANTING JUDGMENT
NOTWITHSTANDING THE VERDICT**

COPY

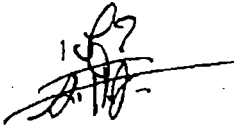
FILED
10 MAY 19 PM 3:20
CLERK OF COURT

TRIAL JUDGE: Honorable Steven H. John
DATE OF TRIAL: April 21 and 22, 2010
PLAINTIFF'S ATTORNEY: Henrietta U. Golding, Esquire
DEFENDANTS' ATTORNEY: G. Michael Smith, Esquire
COURT REPORTER: Dixie Eubanks

On Thursday, April 22, 2010, the jury in the above captioned matter returned a verdict in favor of the Plaintiff on the quantum meruit cause of action in the amount of \$168,000.00.

PROCEDURAL HISTORY

This case was commenced by the Plaintiff, an experienced carpet and tile sub-contractor, against the general contractor, Ruonala and Company, LLC, the developer, M.S. Industries, Inc., and Mark Skelly, individually and as agent for M.S. Industries, Inc. The Complaint pled four causes of action: breach of contract, quantum meruit, negligent misrepresentation and unfair



trade practices. The Plaintiff abandoned the contract action and this Court dismissed the Unfair Trade Practices Act cause of action at the directed verdict stage. In addition, the Plaintiff dismissed its claims against Ruonala and Company, LLC and M.S. Industries, Inc. Thus, the case went to the jury against Defendant Mark Skelly on the quantum meruit cause of action and the negligent misrepresentation cause of action.

The jury returned a verdict in favor of Mr. Skelly on the negligent entrustment cause of action and against Mr. Skelly on the quantum meruit cause of action. After the verdict, Mark Skelly moved for a judgment notwithstanding the verdict (JNOV). Multiple arguments were made by defense counsel in favor of the motion and by Plaintiff's counsel opposing the motion.

After reviewing the applicable law and evidence, this Court makes the following findings of fact and conclusions of law.

STANDARD OF REVIEW

When a Court is asked to rule on a motion for judgment notwithstanding the verdict (JNOV), the court must consider the evidence in a light most favorable to the party opposing the motion. Stanley Smith & Sons vs. Limestone College, 283 S.C. 430, 322 S.E. 2d 474 (Ct. App. 1984). If more than one reasonable inference can be drawn from the evidence, the motion

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will not be granted. However, if there is no evidence to support an essential element of the Plaintiff's cause of action, a verdict in the Plaintiff's favor cannot be permitted to stand. *Id.*

DISCUSSION

Quantum meruit has been recognized in South Carolina as an equitable doctrine to allow recovery for unjust enrichment. The South Carolina Supreme Court established that in order to prevail under a quantum meruit cause of action, the Plaintiff must prove: (1) a benefit conferred by the Plaintiff upon the Defendant; (2) realization of that benefit by the Defendant; and (3) retention of the benefit by the Defendant under circumstances that make it inequitable for him to retain it without paying its value. Myrtle Beach Hospital, Inc. vs. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000); Columbia Wholesale Co. v. Scudder May, N.V., 312 S.C. 259, 440 S.E.2d 129 (1994).

An analysis of the exhibits and testimony reveals that the Plaintiff did not prove the third element necessary to prevail on their quantum meruit claim, that is: retention of the benefit by the Defendant under circumstances that make it inequitable for him to retain it without paying its value.


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Here, the evidence proved that the Defendant's corporation, M.S. Industries, Inc., paid for the value of the materials provided by the Plaintiff for the project when it paid in excess of the full construction contract price to Ruonala and Company, LLC.

Mark Skelly is a shareholder of M.S. Industries, Inc., the developer of the project. The testimony established that the money he personally received from the project was reimbursement for monies spent on developing the project or dividends owed to him as a shareholder. Payments by M.S. Industries, Inc. to the general contractor ipso facto reduced the money paid to the shareholders. Equity does not require Mr. Skelly to pay twice for the materials and services provided by the Plaintiff.

Mark Skelly presented a copy of all six contracts between M.S. Industries, Inc. and Ruonala and Company, LLC for the construction of condominiums known as Greenhaven. The contract price for each of the six buildings was \$650,000.00. The total sums due to Ruonala and Company, LLC for all six contracts was \$3,900,000.00.

Both the Plaintiff and Defendant presented evidence that the principal/corporation of Mr. Skelly paid in excess of the contract amounts. Exhibits produced by the parties reflect the

A handwritten signature or set of initials, possibly "MS", written in dark ink. The signature is somewhat stylized and appears to be written over a horizontal line.

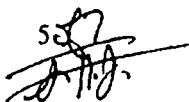
following payments:

Building 8	\$ 659,541.80
Building 9	\$ 632,982.05
Building 10	\$ 655,124.00
Building 11	\$ 589,893.91
Building 12	\$ 698,878.12
Building 13	\$ 677,048.53
Total	\$3,913,468.30

Thus, the evidence presented by both the Plaintiff and Defendant is uncontroverted that the general contractor was paid in full. It is also undisputed that the contract price included the materials and labor supplied by the Plaintiff for the project.

The Court of Appeals recently analyzed the quantum meruit theory in the case of Shirley's Iron Works, Inc. v. City of Union, ___ S.C. ___, ___ S.E.2d ___ (2010 WL 530195). In that case, sub-contractors filed an action against the owner and the general contractor alleging quantum meruit. The sub-contractor stated that its claims arose from the general contractor's failure to pay all monies owed to them. The Court did not feel that the owner had been unjustly enriched because it paid the full price of the construction contract.

In Scudder May, supra, the Court held that a quantum meruit/unjust enrichment claim by a sub-contractor against a property owner is typically denied where the owner paid its

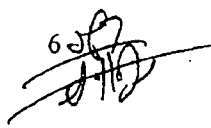
537


contract with the general contractor. The Court cited cases from Delaware, Iowa, Texas and Arizona supporting that view.

The Plaintiff presented the Massachusetts case of Mike Glynn & Company v. Hy-Brasil Restaurants, Inc. et al., 75 Mass. App. Ct. 322, 914 N.E.2d 103 (2009) in support of its position. That case is easily distinguished by one very important fact: the evidence confirmed the general contractor had not been paid in full. 914 N.E.2d at 105 ff (At the time of trial, the owners were disputing a \$69,164.00 balance on their contract in an independent action). The Defendant submitted for consideration those cases cited in 62 ALR 3d 288 (citing Scudder May) regarding the denial of recovery under quantum meruit when the evidence reflects the general contractor was paid in full. 62 ALR 3d 288 §4. Based upon South Carolina case law and that annotation, it appears the more solid reasoning is to deny recovery when the contractor has been paid in full. In the cases granting recovery, full payment to the contractor was generally not made.

CONCLUSION

Since the evidence is clear and uncontroverted that M.S. Industries, Inc. paid in excess of the total contract price, there is no unjust enrichment and, therefore, the third element

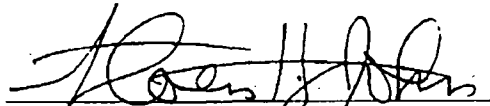
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of quantum meruit has not been proven by the Plaintiff.

Accordingly, it is

ORDERED that the Defendant's motion for-judgment not withstanding the verdict is granted. It is further

ORDERED that the jury verdict against Mark Skelly on the quantum meruit cause of action is vacated and judgment shall be entered in favor of the Defendant.



Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

May 19, 2010

Conway, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
2007-CP-26-00265

WILLIAM CARPET
CONTRACTORS INC.,
Plaintiff,

v.

MARK SKELLY,
Defendant.

VERDICT FORM

I. ON THE CLAIM OF NEGLIGENT MISREPRESENTATION, WE, THE JURY, BY UNANIMOUS CONSENT,

FIND FOR THE PLAINTIFF

OR

FIND FOR THE DEFENDANT

FILED
HORRY COUNTY
2010 MAY 19 PM 4:56
MELANIE HUGGINS-WARD
CLERK OF COURT

II. ON THE CLAIM OF QUANTUM MERUIT, WE, THE JURY, BY UNANIMOUS CONSENT,

FIND FOR THE PLAINTIFF

OR

FIND FOR THE DEFENDANT

IF YOU HAVE FOUND FOR THE PLAINTIFF ON EITHER I. OR II, GO TO THE NEXT QUESTION,

III. WE, THE JURY, BY UNANIMOUS CONSENT, FIND FOR THE PLAINTIFF ACTUAL DAMAGES IN THE AMOUNT

OF One Hundred and sixty-eight Thousand Dollars ^{00/100}
(Write out amount in words)
(\$ 168,000)


FOREPERSON'S SIGNATURE

April 22, 2010
Conway, South Carolina.

RECEIVED

MAY 24 2010

McNAIR LAW FIRM, P.A.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 WILLIAMS CARPET)
 CONTRACTORS, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 RUONALA AND COMPANY, LLC,)
 MARK SKELLY AND M.S.)
 INDUSTRIES, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE No: 2007-CP-26-0265

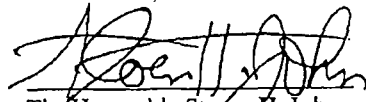
**ORDER DENYING MOTION
 FOR RECONSIDERATION**

HORRY COUNTY
 10 OCT 11 PM 3:18
 CLERK OF COURT

HEARING JUDGE: Honorable Steven H. John
DATE OF HEARING: July 27, 2010
PLAINTIFF'S ATTORNEY: Henrietta U. Golding, Esquire
DEFENDANTS' ATTORNEY: G. Michael Smith, Esquire
COURT REPORTER: Dixie Eubanks

This matter came before me pursuant to a Motion for Reconsideration filed by the Plaintiff's attorneys on June 3, 2010. The motion raised multiple grounds in their request to have this Court reconsider the findings, conclusions and holding in the Order Granting Judgment Notwithstanding the Verdict dated and filed May 19, 2010. After reviewing the transcript of record of the complete testimony of Mark Skelly, considering the arguments of counsel and reviewing and analyzing all the case law submitting by the parties, I find and conclude that the Plaintiff's Motion for Reconsideration should be denied. Therefore, it is

ORDERED that the Plaintiff's Motion for Reconsideration is denied.


 The Honorable Steven H. John
 Resident Judge
 Fifteenth Judicial Circuit

Conway, South Carolina
 October 4, 2010

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OCT 27 2010

McNAIR LAW FIRM, P.A.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Judicial Circuit

Case No.: 2007-CP-26-0265

RECEIVED
NOV 02 2010
SC Court of Appeals

Williams Carpet Contractors, Inc. Plaintiff,
vs.

Ruonala and Company, LLC, Mark Skelly and M.S.
Industries, Inc., Defendants,

OF WHOM Williams Carpet Contractors, Inc. is Appellant,

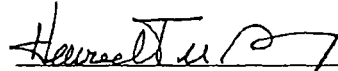
AND

Ruonala and Company, LLC, Mark Skelly and M.S.
Industries, Inc., are Respondents.

NOTICE OF APPEAL

Williams Carpet Contractors, Inc. appeal from the Order of the Honorable Steven H. John, dated October 4, 2010 denying Plaintiff's Motion for Reconsideration. Written notice of the Order was received on October 27, 2010. A copy of the Order is attached hereto.

November 1, 2010


Henrietta U. Golding, SC Bar #2173
James K. Gilliam, SC Bar #76695
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, South Carolina 29578
(843) 444-1107
Attorneys for Appellant

Other Counsel of Record:

G. Michael Smith, Esq.
Thompson & Henry, P.A.
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P.O. Box 1740
Conway, SC 29528
Email: m.smith@thompsonlaw.com

(Attorney Respondent/Defendants for Mark Skelly and M.S. Industries, Inc.)

Rick Ruonala
Ruonala and Company, LLC
423 Maison Dr
Myrtle Beach, SC 29577
(*Pro Se* Respondent/Defendant)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

WILLIAMS CARPET)
CONTRACTORS, INC.,)
)
Plaintiff,)
)
vs.)
)
RUONALA AND COMPANY, LLC,)
MARK SKELLY AND M.S.)
INDUSTRIES, INC.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE No: 2007-CP-26-0265

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NOV 02 2010

SC Court of Appeals

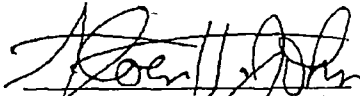
**ORDER DENYING MOTION
FOR RECONSIDERATION**

HORRY COUNTY
10 OCT 11 PM 3:18
CLERK OF COURT

HEARING JUDGE: Honorable Steven H. John
DATE OF HEARING: July 27, 2010
PLAINTIFF'S ATTORNEY: Henrietta U. Golding, Esquire
DEFENDANTS' ATTORNEY: G. Michael Smith, Esquire
COURT REPORTER: Dixie Eubanks

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ORDERED that the Plaintiff's Motion for Reconsideration is denied.



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

Conway, South Carolina
October 4, 2010

RECEIVED

OCT 27 2010

McNAIR LAW FIRM, P.A.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Judicial Circuit

Case No.: 2007-CP-26-0265

Williams Carpet Contractors, Inc. Plaintiff,
vs.

Ruonala and Company, LLC, Mark Skelly and M.S.
Industries, Inc., Defendants,

OF WHOM Williams Carpet Contractors, Inc. is Appellant,

AND

Ruonala and Company, LLC, Mark Skelly and M.S.
Industries, Inc., are Respondents.

PROOF OF SERVICE

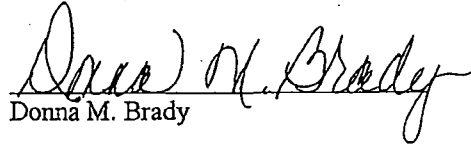
I, Donna M. Brady, an employee of McNair Law Firm, P.A., attorneys for Williams Carpet Contractors, Inc. in the above-entitled action, certify that I have served the Appellant's Notice of Appeal and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 1st day of November, 2010.

Other Counsel of Record:

G. Michael Smith, Esq.
Thompson & Henry, P.A.
1300 Second Avenue
P.O. Box 1740
Conway, SC 29528
Email: msmith@thompsonlaw.com

(Attorney Respondent/Defendants for Mark Skelly and M.S. Industries, Inc.)

Rick Ruonala
Ruonala and Company, LLC
423 Maison Dr
Myrtle Beach, SC 29577
(*Pro Se* Respondent/Defendant)


Donna M. Brady

Myrtle Beach, South Carolina

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Williams Carpet Contractors,
Inc., Appellant,

v.

Mark Skelly, Respondent.

Appeal From Horry County
Steven H. John, Circuit Court Judge

Opinion No. 5040
Heard June 7, 2012 - Filed October 24, 2012

REVERSED

Henrietta U. Golding and James K. Gilliam, of
Myrtle Beach, for Appellant.

G. Michael Smith, of Conway, for Respondent.

KONDUROS, J.: Williams Carpet Contractors, Inc. appeals the circuit court's granting of Mark Skelly's motion for judgment notwithstanding the verdict (JNOV). Williams Carpet argues the court improperly weighed the evidence in making its determination. We reverse.

EXHIBIT 5

FACTS/PROCEDURAL HISTORY

Williams Carpet provides and installs floor coverings, including carpet, tile, and hardwood floors, in the Myrtle Beach area. Skelly is a builder and developer in Horry County. Around 1982, Williams Carpet and Skelly began doing business together. Over the years, Williams Carpet provided materials to projects Skelly developed and built through various corporations. Williams Carpet dealt directly with Skelly for those projects, and Skelly paid each time. The parties never entered into a written contract but had oral agreements sealed with a handshake.

In 2003, M.S. Industries acquired a parcel of property known as Green Haven on which to develop and build condominiums. Skelly was the president of M.S. Industries, and he and John L. Martini, Jr. were shareholders. Skelly selected carpet and tile from Williams Carpet by himself on his initial visit, and he and his wife made the final selections. Skelly negotiated the price and verbally agreed to pay with a handshake for the items. Skelly did not inform Williams Carpet that anyone was involved in building or developing the project other than himself.

Before construction of Green Haven began in 2005, M.S. Industries hired Baldwin Construction Company as the general contractor for the project; it built the first three buildings. M.S. Industries then replaced Baldwin with Rick Ruonola, a former employee of Baldwin, and his new LLC, Ruonola and Company, for the remaining six buildings, all without Williams Carpet's knowledge. On April 18, 2005, Skelly, through M.S. Industries, and Ruonola and Company entered into a contract to construct six buildings at Green Haven for \$650,000 per building. Williams Carpet began installing carpet and tile at Green Haven in 2005, and Skelly requested it send all invoices to Ruonola and Company, which alarmed Williams Carpet. Skelly told Williams Carpet "don't worry about it, you bill it and I will pay for it" and "I'll make sure you get paid for it," and Williams Carpet agreed to send all invoices to Ruonola and Company.

Because Williams Carpet had not been paid after it installed carpet and tile in five of the six buildings, it informed Skelly it would not do any of the

remaining work until it was paid and threatened to file a mechanic's lien if it did not receive payment. Skelly asked it to refrain from filing a mechanic's lien and promised it would receive full payment once it completed the job. Skelly requested Williams Carpet send all invoices directly to him, and it completed the final building. Skelly, through M.S. Industries, paid Williams Carpet \$45,272.33 and Williams Carpet received a total of \$78,781.52 with a balance of \$188,851.40 remaining. Skelly and Martini each received one million three thousand dollars for the project.

Williams Carpet brought suit against Ruonala and Company, Skelly, and M.S. Industries for breach of contract, quantum meruit, negligent misrepresentation, and violations of the Unfair Trade Practices Act. At trial, just after the selection of the jury, Williams Carpet dismissed its breach of contract claim, without objection. The owners of Williams Carpet testified that it would have never agreed to do business with Ruonala and Company because the owner had no money and had previously worked at Baldwin Construction, which failed to pay Williams Carpet for prior jobs. Beverly Causey, one of the owners of Williams Carpet, testified Skelly asked it not to file a mechanic's lien, requesting "please get this last building done and I will pay you all your money."

Prior to the case being submitted to the jury, Williams Carpet dismissed M.S. Industries and Ruonala and Company from the suit. At the conclusion of Williams Carpet's case, Skelly moved for a directed verdict on all of the causes of action. The trial court denied the motion as to the quantum meruit and negligent misrepresentation actions and granted the motion as to the Unfair Trade Practices action. The jury found in favor of Skelly on the negligent misrepresentation action and Williams Carpet for the quantum meruit cause of action and awarded it \$168,000 in damages. Skelly moved for a JNOV, arguing awarding quantum meruit to Williams Carpet would result in Skelly paying for its products and services twice because M.S. Industries had paid Ruonala and Company the full contract price of \$650,000 per building. Williams Carpet argued it had presented evidence M.S. Industries did not pay Ruonala and Company in full.

The trial court gave the parties seven days to submit further research on the matter. The trial court ultimately granted Skelly's JNOV motion, finding,

"the evidence proved that [Skelly's] corporation, M.S. Industries, Inc., paid for the value of the materials provided by [Williams Carpet] for the project when it paid in excess of the full construction contract price to Ruonala and Company, LLC." Williams Carpet filed a motion for reconsideration pursuant to Rules 59 and 60, SCRPC, which the trial court denied. This appeal followed.

STANDARD OF REVIEW

A motion for JNOV, under Rule 50(b), SCRPC, is a renewal of the directed verdict motion. Glover v. N.C. Mut. Life Ins. Co., 295 S.C. 251, 256, 368 S.E.2d 68, 72 (Ct. App. 1988). When ruling on a JNOV motion, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). This court must follow the same standard. Welch v. Epstein, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). "If more than one reasonable inference can be drawn or if the inferences to be drawn from the evidence are in doubt, the case should be submitted to the jury." Chaney v. Burgess, 246 S.C. 261, 266, 143 S.E.2d 521, 523 (1965).

LAW/ANALYSIS

I. Quantum Meruit

Williams Carpet argues the trial court erred in granting Skelly's JNOV motion because it presented evidence demonstrating M.S. Industries paid less than the full contract price to Ruonala and Company. We agree.

"[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy." OHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004) (citations and internal quotation marks omitted) (alteration by court). "The terms 'restitution' and 'unjust enrichment' are modern designations for the older doctrine of quasi-contracts." Ellis v. Smith Grading & Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988). To prevail on a quantum meruit claim, a plaintiff must establish (1) he conferred a benefit

upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value. Swanson v. Stratos, 350 S.C. 116, 121, 564 S.E.2d 117, 119 (Ct. App. 2002); see also Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010) (providing the same requirements).

"Courts addressing a claim of unjust enrichment by a subcontractor against a property owner have typically denied recovery where the owner in fact paid on its contract with the general contractor." Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 262-63, 440 S.E.2d 129, 131 (1994) (citing Cohen v. Delmar Drive-in Theatre, Inc., 84 A.2d 597 (Del. Super. Ct. 1951); Guldberg v. Greenfield, 146 N.W.2d 298 (Iowa 1966); Crockett v. Brady, 455 S.W.2d 807 (Tex. Civ. App. 1970)) (comparing Costanzo v. Stewart, 453 P.2d 526 (Ariz. Ct. App. 1969) (allowing recovery for unjust enrichment when owner assured subcontractor money was escrowed to pay for job and owner did not pay general contractor)).

The trial court erred in granting Skelly's JNOV motion because Williams Carpet presented evidence Ruonala and Company was not paid in full for the project. That evidence included a spreadsheet showing M.S. Industries paid less than full contract price for four of the buildings constructed and the exact contract price for the other two buildings. Additionally, Skelly testified M.S. Industries paid less than the full contract price per building. Williams Carpet also submitted evidence that M.S. Industries included money paid for services like landscaping as part of the contract price even though those services were not part of the agreement. The trial court stated that Ruonala and Company came in under contract for two buildings.

Skelly testified that he believed Ruonala and Company was paid less than the contract price because he "imagine[d] that went to subcontractors directly, or jointly." Skelly argues that M.S. Industries paid over the contract price to Ruonala and Company and the subcontractors. The evidence conflicts as to whether Ruonala and Company was fully paid under the contract. Therefore, because some evidence supports that Ruonala and

Company was not fully paid, the trial court erred in granting Skelly's motion for JNOV.

II. Additional Sustaining Grounds

Skelly argues as additional sustaining grounds that Williams Carpet should be barred from recovering under the theory of quantum meruit because it did not pursue a mechanic's lien and because it had a contract with Skelly. We disagree.

[A] respondent . . . may raise . . . any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review. It also could violate the principle that a court usually should refrain from deciding unnecessary questions.

l'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). However, "an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court." Id. at 421, 526 S.E.2d at 724.

A. Mechanic's Lien

"Some courts addressing quasi-contractual claims have held a subcontractor's failure to pursue the statutory remedy of a mechanic's lien precludes a finding the enrichment is unjust." Columbia Wholesale Co., 312 S.C. at 263, 440 S.E.2d at 131 (citing Lynn v. Miller Lumber Co., 246 S.E.2d 137 (Ga. Ct. App. 1978); Pay-N-Taket, Inc. v. Crooks, 145 N.W.2d 621 (Iowa 1966); Crockett, 455 S.W.2d at 810). "Other courts have allowed recovery in quantum meruit even where a mechanic's lien was not pursued." Id. (citing United States v. Ins. Co. of N. Am., 695 F.2d 455 (10th Cir. 1982) (applying New Mexico law); G & G Langenbrunner, Inc. v. Davis Constr. Co., 488

N.E.2d 506 (Ohio Munic. Ct. 1984)). The South Carolina Supreme Court has determined, "Failure to pursue a mechanic's lien, however, will not bar an action for quantum meruit recovery as a matter of law if a plaintiff can otherwise prove circumstances establishing unjust enrichment." *Id.* at 263, 440 S.E.2d at 131-32 (citing Gee v. Eberle, 420 A.2d 1050 (Pa. Super. Ct. 1980); Costanzo, 453 P.2d at 529 (finding the failure to file mechanic's lien did not bar recovery for unjust enrichment when owner paid no one)).

The South Carolina Supreme Court has found failure to pursue a mechanic's lien will not bar an action for quantum meruit recovery as a matter of law if a plaintiff can otherwise prove circumstances establishing unjust enrichment. Here, when Williams Carpet was threatening to obtain a mechanic's lien, Skelly convinced it not to do so. Accordingly, its failure to obtain a mechanic's lien in this situation does not bar it from recovering under the quantum meruit action.

B. Express Contract v. Quantum Meruit

"A breach of contract claim and quantum meruit claim can be alternative rather than inconsistent remedies." JASDIP Props. SC, LLC v. Estate of Richardson, 395 S.C. 633, 639, 720 S.E.2d 485, 488 (Ct. App. 2011) (citing Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988)). In Earthscapes Unlimited, Inc., 390 S.C. at 617, 703 S.E.2d at 225, the supreme court affirmed the circuit court's decision to award damages under the theory of quantum meruit even though the circuit court had found a contract between the parties. The supreme court found, "While the circuit court did find there was a contract between the two parties in this action, it never awarded damages because of a breach of that contract. Rather, the circuit court chose the theory of quantum meruit as an alternate remedy." *Id.* at 617 n.4, 703 S.E.2d at 225 n.4.

However, "[i]f the tasks the plaintiff is seeking compensation for under a quantum meruit theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under quantum meruit." Swanson, 350 S.C. at 122, 564 S.E.2d at 120 (citing 66 Am. Jur. 2d Restitution and Implied Contracts § 81 (2001) ("[I]t is a defense to an action in quantum meruit that there is an express

contract covering the issue of compensation for services or materials furnished.")) (comparing Strickland v. Coastal Design Assocs., 294 S.C. 421, 424, 365 S.E.2d 226, 228 (Ct. App. 1987) ("The law is well settled in this nation that where an express contract has been rescinded or abandoned, one furnishing labor or materials in part performance may recover in quantum meruit unless the original contract remains in force."); Johnston v. Brown, 290 S.C. 141, 148, 348 S.E.2d 391, 395 (Ct. App. 1986), rev'd on other grounds, 292 S.C. 478, 357 S.E.2d 450 (1987) ("While a recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid for the services." (footnote omitted))).

Case law bars recovering under both theories. Here, Williams Carpet abandoned its breach of contract claim without any objection from Skelly and instead proceeded only under the quantum meruit theory. The jury never considered whether Skelly and Williams Carpet formed a contract. Because a finding was never made on whether there was an express contract, Williams Carpet could pursue recovery under quantum meruit. Further, Skelly never raised this issue at trial. Although an additional sustaining ground does not have to be raised at trial, it does make it less likely that this court would rely on it. Accordingly, the alleged contract does not bar Williams Carpet's recovery under the theory of quantum meruit.

CONCLUSION

As some evidence supports that Ruonala and Company was not fully paid, the trial court erred in granting Skelly's motion for JNOV. Further, we do not find Skelly's arguments as to his additional sustaining grounds merit affirming. Therefore, the trial court's order granting Skelly's JNOV motion is

REVERSED.

WILLIAMS and PIEPER, JJ., concur.

THOMPSON & HENRY, P.A.

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740

CONWAY, SOUTH CAROLINA 29528

G. MICHAEL SMITH
MSMITH@THOMPSONLAW.COM

TELEPHONE
(843) 248-5741

FACSIMILE
(843) 248-5112

November 6, 2012

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, SC 29211

RE: Williams Carpet Contractors, Inc. v. Ruonala and Company,
LLC, Mark Skelly and M.S. Industries, Inc.
Case Track No.: 2010176606
Civil Action No.: 2007-CP-26-0265
Our File No.: 15156

Dear Ms. Kitchings:

I am enclosing for filing with the court in connection with the above captioned matter the following:

- Original and eight copies of Motion and Petition to be Relieved as Counsel for Respondent Mark Skelly;
- Filing Fee of \$25.00,
- Proof of Service.

By copy of this letter, I am serving a copy of the aforementioned documents on other counsel of record.

Please return to me a clocked copy of the filed documents in the enclosed self-addressed envelope.

Very truly yours,


G. Michael Smith

GMS/gtw
Enclosures

cc: Henrietta U. Golding, Esquire
James K. Gilliam, Esquire
Mr. Mark Skelly

EXHIBIT 6

THOMPSON & HENRY, P.A.

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
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G. MICHAEL SMITH
MSMITH@THOMPSONLAW.COM

March 22, 2012

John L. Martini, Jr., Esquire
and Mr. Mark Skelley
1021 Sea Mountain Hwy, Ste B-2
North Myrtle Beach, SC 29582

RE: Williams Carpet Contractors, Inc. v. Ruonala and
Company, LLC, Mark Skelley and M.S. Industries, Inc.
Case No.: 2007-CP-26-0265
Our File No.: 15156

Gentlemen:

I am in receipt of correspondence from the Court of Appeals that our case will likely be considered now during the June 2012 term of court. In the event the case is placed on the oral argument roster, we will be heard on June 4, 7, 19 or 21, 2012. Please hold these dates open on your calendars until we hear something definitive from the Court.

Per my previous correspondence dated December 13, 2011 and again on February 14, 2012, your account is still \$6,914.16 in arrears. I am enclosing copies of delinquent invoices which have been sent to you. Please bring your account current before the Court of Appeals argument. I would appreciate payment of the past due account before May 1, 2012.

Thank you for your anticipated cooperation.

Very truly yours,

G. Michael Smith

GMS/lwj
Enclosures

THOMPSON & HENRY, P.A.

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
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G. MICHAEL SMITH
MSMITH@THOMPSONLAW.COM

March 22, 2012

John L. Martini, Jr., Esquire
and Mr. Mark Skelley
1021 Sea Mountain Hwy, Ste B-2
North Myrtle Beach, SC 29582

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G. Michael Smith

GMS/lwj
Enclosures

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JOHN P. HENRY
LINDA WEEKS GANGI
J. JACKSON THOMAS
EMMA RUTH BRITTAIN*
CLAY D. BRITTAIN, III
G. MICHAEL SMITH
PHILIP C. THOMPSON
CATHERINE H. DINGLE
MATTHEW R. MAGEE
CHARLES B. JORDAN, JR.
E. B. DAVIS INABNIT, JR.**

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MYRTLE BEACH OFFICE
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TELEPHONE
(843) 692-2628
TELECOPIER
(843) 692-0918
(843) 692-0928

RETIRED

JOHN C. THOMPSON

*CERTIFIED EMPLOYMENT &
LABOR LAW SPECIALIST

**ALSO ADMITTED IN N.C.

September 18, 2009

John L. Martini, Jr., Esquire
1021 Sea Mountain Hwy, Ste B-2
North Myrtle Beach, SC 29582

RE: Williams Carpet Contractors, Inc. v. Ruonala and Company, LLC,
Mark Skelly and M.S. Industries, Inc.
Case No: 2007-CP-26-0265
Our File No: 15156

Dear John:

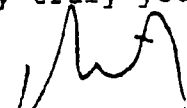
As you and I have discussed, our firm will agree to represent you in connection with the above-referenced matter. We will bill at an hourly rate of Two Hundred and No/100 (\$200.00) Dollars per partner and One Hundred Fifty and No/100 (\$150.00) Dollars an hour per associate. We will also bill for costs advanced (deposition costs, large coping costs, etc). The billing will be done on a monthly basis. Unpaid bills will result in grounds for withdrawing as counsel.

Each month, we will send you a bill and draw from the retainer. If you have any questions regarding the billing please do not hesitate to call. As I explained to you, I am used to justifying my bills with multiple insurance carriers and I have no problem in making sure that you are satisfied with the billing procedure.

John L. Martini, Jr., Esquire
September 18, 2009
Page 2

I look forward to working with you in this matter.

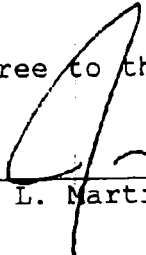
Very truly yours,



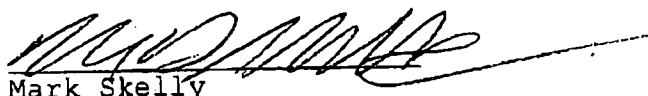
G. Michael Smith

GMS/dke

I agree to these terms.



John L. Martini, Jr.



Mark Skelly

RETAINER AGREEMENT

John L. Martini, Jr. and Mark Skelly (Clients) hereby retain and employ THOMPSON & HENRY, P.A. to represent them and M.S. Industries, Inc. in the defense of the following action captioned as: Williams Carpet Contractors, Inc. v. Ruonala and Company, LLC, Mark Skelly and M.S. Industries, Inc.; Case No: 2009-CP-26-0265.

In consideration for the legal services to be rendered by said firm, clients agree to pay THOMPSON & HENRY, P.A., pursuant to this Retainer in employment the sum of Two Hundred Dollars (\$200.00) per hour for partner's time and One Hundred Fifty Dollars (\$150.00) per hour for Associate's time. The time will be billed monthly. Included in the bill will be any costs incurred as set forth below. The bills will be paid from funds held in retainer. Should the escrow retainer be exhausted, THOMPSON & HENRY, P.A. will request additional retainer as may be appropriate. Failure to fund a requested retainer will be grounds for THOMPSON & HENRY, P.A. to withdraw as counsel.

Clients hereby authorize THOMPSON & HENRY, P.A. to pay all costs that in their judgment are necessary for the successful pursuit of the claim including but not limited to expert witness fees and investigation. Clients understand that they are responsible for any and all costs paid by THOMPSON & HENRY, P.A.

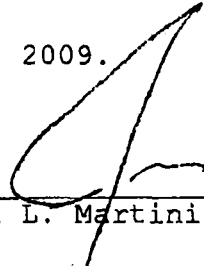
If said fees and costs are not timely paid by clients in accordance with this Agreement, clients understand that THOMPSON &

HENRY, P.A. has the option to withdraw from the representation of clients in this suit and that this withdrawal will not prejudice clients' rights in any way.


Clients understand that if an appeal is taken, a new and separate agreement for fees and services shall be entered into by the parties.

Dated this _____ day of September, 2009.

By:



John L. Martini, Jr.



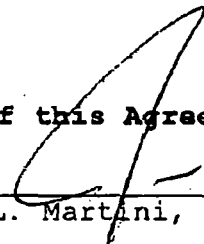
Mark Skelly

THOMPSON & HENRY, P.A.

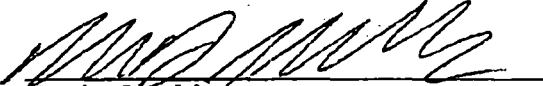
G. Michael Smith

I acknowledge receipt of a copy of this Agreement.

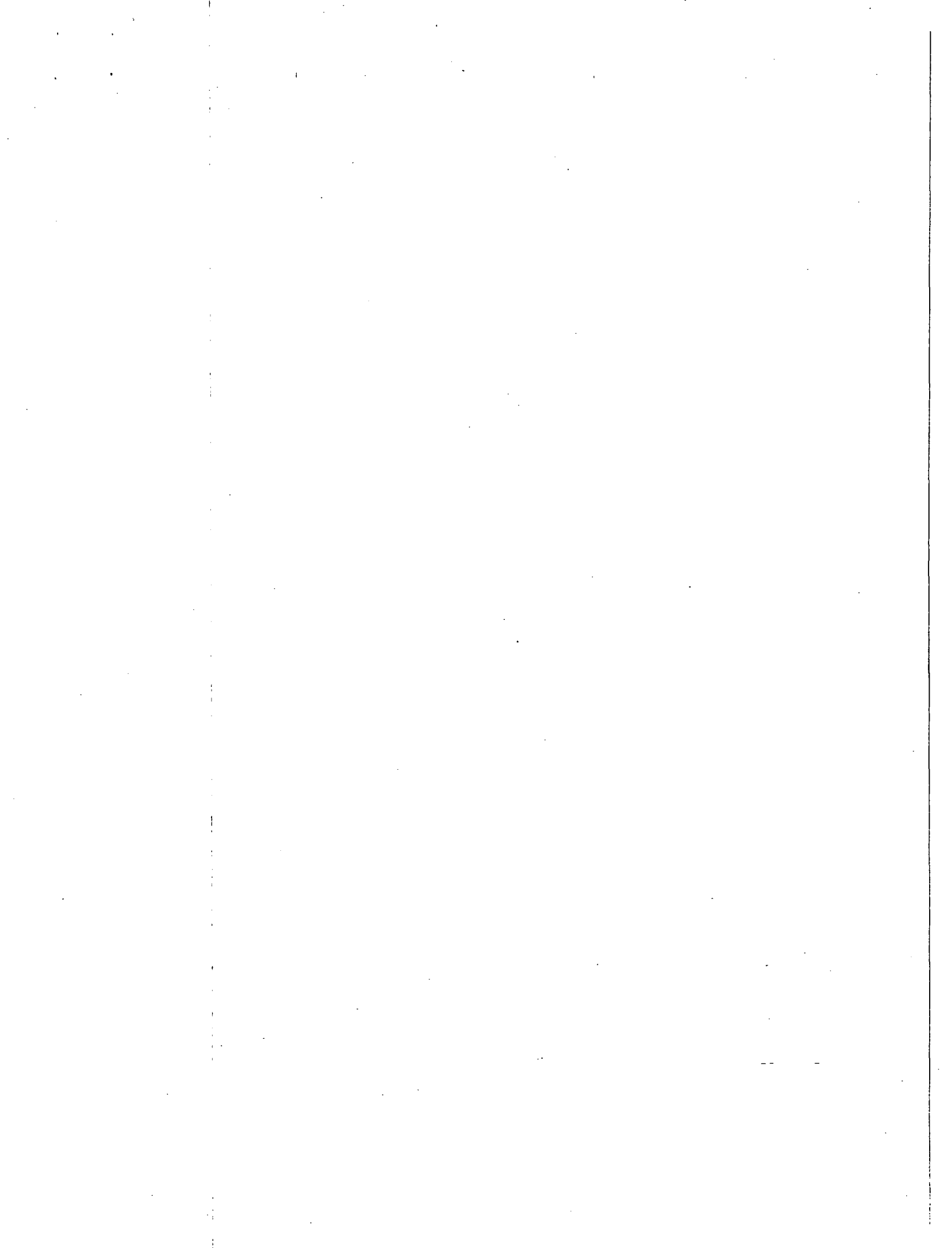
By:



John L. Martini, Jr.



Mark Skelly



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Circuit Court Judge

Case No.: 2007-CP-26-00265

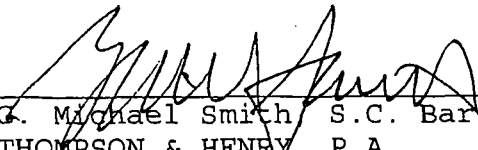
Williams Carpet Contractors, Inc.,Appellant,

v.

Ruonala and Company, LLC, Mark Skelly and
M.S. Industries, Inc.,Defendants,

Of Whom Mark Skelly isRespondent.

Motion and Petition to be Relieved as Counsel



G. Michael Smith, S.C. Bar No. 5255
THOMPSON & HENRY, P.A.
1300 Second Avenue, 3rd Floor
Post Office Box 1740
Conway, SC 29528
(843) 248-5741
Attorneys for Respondent
Mark Skelly

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for Mark Skelly hereby moves before this Honorable Court for an Order Relieving the undersigned as attorney for the Respondent. The grounds for the motion are as follows:

1. The undersigned and Mark Skelly entered into a Retainer Agreement for the payment of attorneys fees by agreement dated September 2009. The Retainer Agreement provides that if fees and costs are not timely paid, the undersigned may move before the court for an order relieving the undersigned as attorney of record. A copy of the Retainer Agreement is attached hereto and made a part hereof as Exhibit 1.

2. The Undersigned has regularly billed Mark Skelly for attorneys fees and costs, and after application of all payments received by Mr. Skelly, there remains due and owing the sum of \$8,654.02. Copies of the unpaid invoices are attached hereto and made a part hereof as Exhibit 2.

3. Efforts to collect payment from Mr. Skelly have been unsuccessful, and the undersigned believes he is entitled to be relieved as counsel based on the outstanding payments owed to the undersigned. A copy of the request for payments letter is attached hereto as Exhibit 3.

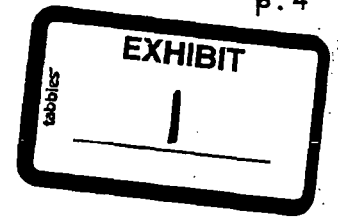
The Undersigned has communicated his intent to be relieved as counsel to Mr. Skelly's representative, Mr. John Martini. Therefore, based upon the foregoing, the undersigned is informed and believes that he is entitled to be relieved as counsel for the

Respondent Mark Skelly.



G. Michael Smith, S.C. Bar No. 5255
THOMPSON & HENRY, P.A.
1300 Second Avenue, 3rd Floor
Post Office Box 1740
Conway, SC 29528
(843) 248-5741
Attorneys for Respondent
Mark Skelly

November 6, 2012



RETAINER AGREEMENT

John L. Martini, Jr. and Mark Skelly (Clients) hereby retain and employ THOMPSON & HENRY, P.A. to represent them and M.S. Industries, Inc. in the defense of the following action captioned as: Williams Carpet Contractors, Inc. v. Ruonala and Company, LLC, Mark Skelly and M.S. Industries, Inc.; Case No: 2009-CP-26-0265.

In consideration for the legal services to be rendered by said firm, clients agree to pay THOMPSON & HENRY, P.A., pursuant to this Retainer in employment the sum of Two Hundred Dollars (\$200.00) per hour for partner's time and One Hundred Fifty Dollars (\$150.00) per hour for Associate's time. The time will be billed monthly. Included in the bill will be any costs incurred as set forth below. The bills will be paid from funds held in retainer. Should the escrow retainer be exhausted, THOMPSON & HENRY, P.A. will request additional retainer as may be appropriate. Failure to fund a requested retainer will be grounds for THOMPSON & HENRY, P.A. to withdraw as counsel.

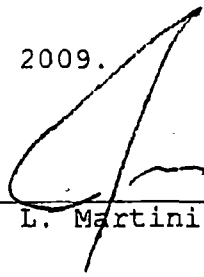
Clients hereby authorize THOMPSON & HENRY, P.A. to pay all costs that in their judgment are necessary for the successful pursuit of the claim including but not limited to expert witness fees and investigation. Clients understand that they are responsible for any and all costs paid by THOMPSON & HENRY, P.A.


If said fees and costs are not timely paid by clients in accordance with this Agreement, clients understand that THOMPSON &

HENRY, P.A. has the option to withdraw from the representation of clients in this suit and that this withdrawal will not prejudice clients' rights in any way.

Clients understand that if an appeal is taken, a new and separate agreement for fees and services shall be entered into by the parties.

Dated this _____ day of September, 2009.

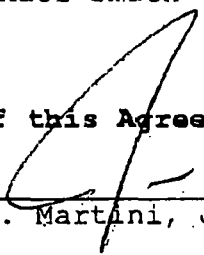
By: 
John L. Martini, Jr.

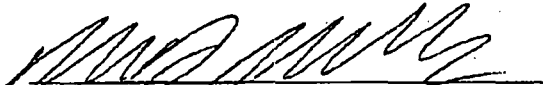

Mark Skelly

THOMPSON & HENRY, P.A.

G. Michael Smith

I acknowledge receipt of a copy of this Agreement.

By: 
John L. Martini, Jr.


Mark Skelly

THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

JOHN P. HENRY
LINDA WEEKS GANGI
J. JACKSON THOMAS
EMMA RUTH BRITTAIN
CLAY D. BRITTAIN, III
G. MICHAEL SMITH
PHILIP C. THOMPSON
CATHERINE H. DINGLE
MATTHEW R. MAGEE
CHARLES B. JORDAN, JR.
E. B. DAVIS INABNIT, JR.**

TELEPHONE
(843) 248-6741

TELECOPIER
(843) 248-5112
(843) 248-6396

MYRTLE BEACH OFFICE
1314 PROFESSIONAL DRIVE
POST OFFICE BOX 1290
MYRTLE BEACH, S.C. 29578
TELEPHONE
(843) 692-2628
TELECOPIER
(843) 692-0918
(843) 692-0928

RETIRED
JOHN C. THOMPSON

*CERTIFIED EMPLOYMENT &
LABOR LAW SPECIALIST

**ALSO ADMITTED IN N.C.

September 18, 2009

John L. Martini, Jr., Esquire
1021 Sea Mountain Hwy, Ste B-2
North Myrtle Beach, SC 29582

RE: Williams Carpet Contractors, Inc. v. Ruonala and Company, LLC,
Mark Skelly and M.S. Industries, Inc.
Case No: 2007-CP-26-0265
Our File No: 15156

Dear John:

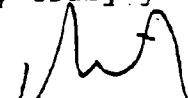
As you and I have discussed, our firm will agree to represent you in connection with the above-referenced matter. We will bill at an hourly rate of Two Hundred and No/100 (\$200.00) Dollars per partner and One Hundred Fifty and No/100 (\$150.00) Dollars an hour per associate. We will also bill for costs advanced (deposition costs, large coping costs, etc). The billing will be done on a monthly basis. Unpaid bills will result in grounds for withdrawing as counsel.

Each month, we will send you a bill and draw from the retainer. If you have any questions regarding the billing please do not hesitate to call. As I explained to you, I am used to justifying my bills with multiple insurance carriers and I have no problem in making sure that you are satisfied with the billing procedure.

John L. Martini, Jr., Esquire
September 18, 2009
Page 2

I look forward to working with you in this matter.

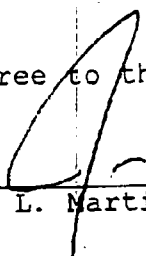
Very truly yours,



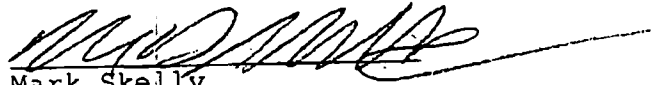
G. Michael Smith

GMS/dke

I agree to these terms.

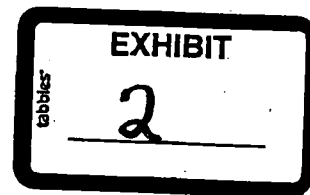


John L. Martini, Jr.



Mark Skelly

THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
 POST OFFICE BOX 1740
 CONWAY, SOUTH CAROLINA 29528
 FED ID NO.57-0686011



Page: 1
 08/16/2012

CLIENT NO: 15156-00M

Mark Skelly
 John Martini, Esquire
 1021 Sea Mountain Highway, Suite B2
 North Myrtle Beach SC 29582

Williams Carpet Contractors, Inc. vs. Ruonala and
 Company, LLC, Mark Skelly and M.S. Industries, Inc

	HOURS	
06/06/2012 GMS	2.00	Preparing for Oral Argument
06/07/2012 GMS	6.00	Attending Oral Argument in Columbia, South Carolina (includes trip to/from Columbia)
	8.00	FOR CURRENT SERVICES RENDERED
		<u>1,600.00</u>
06/15/2012		Costs Advanced paid to G. Michael Smith for reimbursement for roundtrip mileage to Columbia, SC for appeal on 06/07/12 - 252 miles @ .555 per mile
		<u>139.86</u>
		TOTAL ADVANCES
		139.86
		TOTAL CURRENT WORK
		1,739.86
		PREVIOUS BALANCE
		\$6,914.16
		BALANCE DUE
		<u>\$8,654.02</u>

THANK YOU VERY MUCH! PLEASE RETURN COPY WITH PAYMENT

OFFICE COPY

THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528
FED ID NO.57-0686011

Mark Skelly
John Martini, Esquire
1021 Sea Mountain Highway, Suite B2
North Myrtle Beach SC 29582

Page: 1
03/22/2012
CLIENT NO: 15156-00M

Williams Carpet Contractors, Inc. vs. Ruonala and
Company, LLC, Mark Skelly and M.S. Industries, Inc

PREVIOUS BALANCE	\$6,914.16
BALANCE DUE	<u>\$6,914.16</u>

THANK YOU VERY MUCH! PLEASE RETURN COPY WITH PAYMENT

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FED ID NO.57-0686011

Mark Skelly

Page: 2
11/21/2011
CLIENT NO: 15156-00M

Williams Carpet Contractors, Inc. vs. Ruonala and
Company, LLC, Mark Skelly and M.S. Industries, Inc

10/13/2011	04/21-22/10	180.00
	Costs Advanced paid to Sara Ashley Gwin for reimbursement for mileage Columbia, SC on 10/07/11 to correct caption on final brief at SC Court of Appeals	<u>139.86</u>
	TOTAL ADVANCES	319.86
	TOTAL CURRENT WORK	4,583.86
	PREVIOUS BALANCE	\$2,330.30
	BALANCE DUE	<u>\$6,914.16</u>

THANK YOU VERY MUCH! PLEASE RETURN COPY WITH PAYMENT

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THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
 POST OFFICE BOX 1740
 CONWAY, SOUTH CAROLINA 29528
 FED ID NO.57-0686011

Mark Skelly
 John Martini, Esquire
 1021 Sea Mountain Highway, Suite B2
 North Myrtle Beach SC 29582

Page: 1
 11/21/2011
 CLIENT NO: 15156-00M

Williams Carpet Contractors, Inc. vs. Ruonala and
 Company, LLC, Mark Skelly and M.S. Industries, Inc

		HOURS	
02/01/2011	GMS	Receipt & Review of extension of time to file brief	0.10
02/10/2011	GMS	Receipt & Review of amended notice of appeal	0.10
03/15/2011	GMS	Conference with Judge re: scheduling order for appeal brief	0.25
07/09/2011	GMS	Preparing for Appeal	5.00
07/10/2011	GMS	Preparing for Appeal	6.00
07/11/2011	GMS	Preparing for initial respondent's brief and designation of matter	5.00
08/04/2011	GMS	Receipt & Review of reply brief of the Appellant	0.25
09/06/2011	GMS	Receipt & Review of Record on Appeal	0.50
09/21/2011	GMS	Draft final brief on appeal	2.50
10/07/2011	AG	Trip to Court of Appeals to correct case caption on final brief	5.40
		FOR CURRENT SERVICES RENDERED	<u>25.10</u>
			<u>4,264.00</u>
02/15/2011		Costs Advanced paid to Dixie Cox Eubank for transcript of record -	

THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528
FED ID NO.57-0686011

Mark Skelly

Page: 2
02/21/2011
CLIENT NO: 15156-00M

Williams Carpet Contractors, Inc. vs. Ruonala and
Company, LLC, Mark Skelly and M.S. Industries, Inc

TOTAL CURRENT WORK	321.65
PREVIOUS BALANCE	\$2,008.65
BALANCE DUE	<u>\$2,330.30</u>

THANK YOU VERY MUCH! PLEASE RETURN COPY WITH PAYMENT

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THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
 POST OFFICE BOX 1740
 CONWAY, SOUTH CAROLINA 29528
 FED ID NO.57-0686011

Mark Skelly
 John Martini, Esquire
 1021 Sea Mountain Highway, Suite B2
 North Myrtle Beach SC 29582

Page: 1
 02/21/2011
 CLIENT NO: 15156-00M

Williams Carpet Contractors, Inc. vs. Ruonala and
 Company, LLC, Mark Skelly and M.S. Industries, Inc

		HOURS	
08/25/2010	GMS	Review correspondence from opposing party re: transcript	0.10
09/21/2010	GMS	Correspondence to court reporter re: transcript	0.20
10/01/2010	GMS	Draft order denying motion for reconsideration	0.40
10/12/2010	GMS	Correspondence to opposing party serving order denying motion for reconsideration	0.10
11/05/2010	GMS	Receipt & Review of notice from Court of Appeals	0.10
11/11/2010	GMS	Correspondence to Martini re: Notice of Appeal	0.10
01/06/2011	GMS	Receipt & Review of notice from court re: trial transcript	0.10
01/28/2011	GMS	Review correspondence from opposing party re: notification of transcript	0.10
		FOR CURRENT SERVICES RENDERED	1.20
			240.00
10/07/2010		Costs Advanced paid to Clerk of Court for filing fee for Order Denying Motion for Reconsideration	25.00
11/23/2010		Costs Advanced paid to Dixie Cox Eubank for transcript of record from 04/21-22/10	56.65
		TOTAL ADVANCES	81.65

THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528
FED ID NO.57-0686011

Mark Skelly

Page: 2

08/25/2010

CLIENT NO: 15156-00M

Williams Carpet Contractors, Inc. vs. Ruonala and
Company, LLC, Mark Skelly and M.S. Industries, Inc

	PREVIOUS BALANCE	\$4,749.70
08/23/2010	Payment - Thank You for fees and costs recovered from trust	-3,750.00
	BALANCE DUE	<u>\$2,008.65</u>

THANK YOU VERY MUCH! PLEASE RETURN COPY WITH PAYMENT

OFFICE COPY

THOMPSON & HENRY, P.A.
 ATTORNEYS AT LAW
 POST OFFICE BOX 1740
 CONWAY, SOUTH CAROLINA 29528
 FED ID NO.57-0686011

Mark Skelly
 John Martini, Esquire
 1021 Sea Mountain Highway, Suite B2
 North Myrtle Beach SC 29582

Page: 1
 08/25/2010
 CLIENT NO: 15156-00M

Williams Carpet Contractors, Inc. vs. Ruonala and
 Company, LLC, Mark Skelly and M.S. Industries, Inc

		HOURS	
05/12/2010			
	GMS Conference with client re: status of Judge John's ruling	0.20	
05/14/2010			
	GMS Draft order granting JNOV	1.00	
05/20/2010			
	GMS Correspondence to opposing party serving order	0.10	
07/15/2010			
	JWF Research and drafting memorandum in opp to plaintiff's motion for reconsideration	5.20	
07/26/2010			
	JWF Draft documents: finalize memo in opp to motion to reconsideration; Research; Meeting with Mike re: hearing; Edit brief; Send to Judge and opc	2.90	
07/27/2010			
	GMS Preparing for and attending motion for reconsideration	3.50	
	FOR CURRENT SERVICES RENDERED	<u>12.90</u>	<u>960.00</u>
05/28/2010			
	Costs Advanced paid to Business Card - Bank of America for meal expense during trial on 04/22/10		48.95
	TOTAL ADVANCES		<u>48.95</u>
	TOTAL CURRENT WORK		1,008.95

THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528
FED ID NO.57-0686011

Mark Skelly

Page: 2
05/24/2010
CLIENT NO: 15156-00M

Williams Carpet Contractors, Inc. vs. Ruonala and
Company, LLC, Mark Skelly and M.S. Industries, Inc

03/22/2010	Costs Advanced paid to Clerk of Court for filing fee for Consent Order to Amend Answer	25.00
	TOTAL ADVANCES	<u>25.00</u>
	TOTAL CURRENT WORK	6,355.00
05/24/2010	Payment - Thank You for fees and costs recovered from trust	-1,605.30
	BALANCE DUE	<u>\$4,749.70</u>

THANK YOU VERY MUCH! PLEASE RETURN COPY WITH PAYMENT

OFFICE COPY

THOMPSON & HENRY, P.A.
 ATTORNEYS AT LAW
 POST OFFICE BOX 1740
 CONWAY, SOUTH CAROLINA 29528
 FED ID NO.57-0686011

Mark Skelly
 John Martini, Esquire
 1021 Sea Mountain Highway, Suite B2
 North Myrtle Beach SC 29582

Page: 1
 05/24/2010
 CLIENT NO: 15156-00M

Williams Carpet Contractors, Inc. vs. Ruonala and
 Company, LLC, Mark Skelly and M.S. Industries, Inc

		HOURS	
02/25/2010	GMS	Draft proposed consent order to amend; Letter to opposing party	0.20
03/08/2010	GMS	Correspondence to Judge Culbertson re: consent order	0.10
03/29/2010	GMS	Receipt & Review of demand for jury trial	0.10
04/21/2010	GMS	Preparing for and attending trial	9.00
04/22/2010	GMS	Attending trial and post trial motions; Conference with client	11.00
04/23/2010	EDI	Legal Research - Westlaw - Quantum Merit.	1.50
	EDI	Legal Research - Westlaw - statutory parental liability.	0.40
	EDI	Legal Research - Westlaw.	2.80
04/27/2010	GMS	Legal Research on Quantum Merit Theory	2.00
04/28/2010	GMS	Draft memo in support of motion for JNOV	1.50
	GMS	Telephone Conference with Mark Skelly re: status	0.20
	EDI	Legal Research - Westlaw - Quantum Merit.	1.50
04/29/2010	GMS	Finalize Documents of memorandum after completion of research	4.00
	EDI	Legal Research - Westlaw - Quantum Merit.	0.90
		FOR CURRENT SERVICES RENDERED	35.20
			6,330.00

THOMPSON
& HENRY, P.A.

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740

CONWAY, SOUTH CAROLINA 29528

G. MICHAEL SMITH
MSMITH@THOMPSONLAW.COM



TELEPHONE
(843) 248-5741

FACSIMILE
(843) 248-5112

March 22, 2012

John L. Martini, Jr., Esquire
and Mr. Mark Skelley
1021 Sea Mountain Hwy, Ste B-2
North Myrtle Beach, SC 29582

RE: Williams Carpet Contractors, Inc. v. Ruonala and
Company, LLC, Mark Skelley and M.S. Industries, Inc.
Case No.: 2007-CP-26-0265
Our File No.: 15156

Gentlemen:

I am in receipt of correspondence from the Court of Appeals that our case will likely be considered now during the June 2012 term of court. In the event the case is placed on the oral argument roster, we will be heard on June 4, 7, 19 or 21, 2012. Please hold these dates open on your calendars until we hear something definitive from the Court.

Per my previous correspondence dated December 13, 2011 and again on February 14, 2012, your account is still \$6,914.16 in arrears. I am enclosing copies of delinquent invoices which have been sent to you. Please bring your account current before the Court of Appeals argument. I would appreciate payment of the past due account before May 1, 2012.

Thank you for your anticipated cooperation.

Very truly yours,

G. Michael Smith

GMS/lwj
Enclosures

THOMPSON
& HENRY, P.A.

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740

CONWAY, SOUTH CAROLINA 29528

G. MICHAEL SMITH
MSMITH@THOMPSONLAW.COM



TELEPHONE
(843) 248-5741

FACSIMILE
(843) 248-5112

March 22, 2012

John L. Martini, Jr., Esquire
and Mr. Mark Skelley
1021 Sea Mountain Hwy, Ste B-2
North Myrtle Beach, SC 29582

RE: Williams Carpet Contractors, Inc. v. Ruonala and
Company, LLC, Mark Skelly and M.S. Industries, Inc.
Case No.: 2007-CP-26-0265
Our File No.: 15156

Gentlemen:

I am in receipt of correspondence from the Court of Appeals that our case will likely be considered now during the June 2012 term of court. In the event the case is placed on the oral argument roster, we will be heard on June 4, 7, 19 or 21, 2012. Please hold these dates open on your calendars until we hear something definitive from the Court.

Per my previous correspondence dated December 13, 2011 and again on February 14, 2012, your account is still \$6,914.16 in arrears. I am enclosing copies of delinquent invoices which have been sent to you. Please bring your account current before the Court of Appeals argument. I would appreciate payment of the past due account before May 1, 2012.

Thank you for your anticipated cooperation.

Very truly yours,

G. Michael Smith

GMS/lwj
Enclosures



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1880
FAX: (803) 734-1839
www.sccourts.org

November 09, 2012

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: Williams Carpet v. Skelly, Mark
Lower Court Case No. 2007CP2600265
Appellate Case No. 2010-176606

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: G. Michael Smith, Sr.
Henrietta U. Golding
James Keith Gilliam
Steven H. John

EXHIBIT 7

THOMPSON & HENRY, P.A.

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740

CONWAY, SOUTH CAROLINA 29528

TELEPHONE
(843) 248-5741

FACSIMILE
(843) 248-5112

G. MICHAEL SMITH
MSMITH@THOMPSONLAW.COM

December 10, 2012

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, SC 29211

RE: Williams Carpet Contractors, Inc. v. Ruonala and Company,
LLC, Mark Skelly and M.S. Industries, Inc.
Civil Action No.: 2007-CP-26-0265
Our File No.: 15156

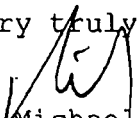
Dear Ms. Kitchings:

I am enclosing for filing with the court in connection with the above captioned matter the following:

- Original and 3 copies of Notice of Appeal of Appellant Mark Skelly;
- Filing Fee of \$100.00,
- Proof of Service.

By copy of this letter, I am serving a copy of the aforementioned documents on other counsel of record and the Honorable Melanie Huggins-Ward, the Clerk of Court for Horry County. Please return to me a clocked copy of the filed documents in the enclosed self-addressed envelope.

Very truly yours,


G. Michael Smith

GMS/gtw
Enclosures

cc: Henrietta U. Golding, Esquire
James K. Gilliam, Esquire
Mr. Mark Skelly
Honorable Melanie Huggins-Ward

RECEIVED

DEC 11 2012

McNAIR LAW FIRM, P.A.

EXHIBIT 8

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Circuit Court Judge

Case No.: 2007-CP-26-00265

Williams Carpet Contractors, Inc.,.....Respondent,

v.

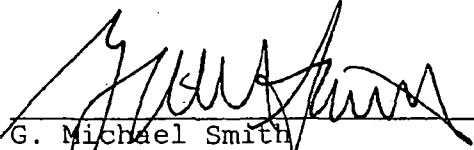
Ruonala and Company, LLC, Mark Skelly and
M.S. Industries, Inc.,.....Defendants,

Of Whom Mark Skelly is.....Appellant.

NOTICE OF APPEAL

Mark Skelly appeals the jury verdict dated April 22, 2010 and entered as a matter of law as a result of the Remittitur dated November 9, 2012, received by the Appellant and filed with the Horry County Clerk of Court on November 13, 2012.

December 10, 2012


G. Michael Smith
Thompson & Henry, PA
Post Office Box 1740
Conway, SC 29528
(843)248-5741
Attorneys for the Appellant

Other Counsel of Record

Henrietta U. Golding
James K. Gilliam
McNair Law Firm, PA
P. O. Box 336
Myrtle Beach, SC 29577
(843)444-1107
Attorneys for the Respondent



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 09, 2012

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: Williams Carpet v. Skelly, Mark
Lower Court Case No. 2007CP2600265
Appellate Case No. 2010-176606

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: G. Michael Smith, Sr.
Henrietta U. Golding
James Keith Gilliam
Steven H. John

HARRIS COUNTY
12 NOV 13 PM 3:53
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
2007-CP-26-00265

WILLIAM CARPET
CONTRACTORS INC.,
Plaintiff,

v.

MARK SKELLY,
Defendant.

VERDICT FORM

I. ON THE CLAIM OF NEGLIGENT MISREPRESENTATION, WE, THE
JURY, BY UNANIMOUS CONSENT,

FIND FOR THE PLAINTIFF

OR

FIND FOR THE DEFENDANT

FILED
HORRY COUNTY
2010 MAY 19 PM 4:56
MELANIE HUGGINS-WARD
CLERK OF COURT

II. ON THE CLAIM OF QUANTUM MERUIT, WE, THE JURY, BY
UNANIMOUS CONSENT,

FIND FOR THE PLAINTIFF

OR

FIND FOR THE DEFENDANT

IF YOU HAVE FOUND FOR THE PLAINTIFF ON EITHER I. OR II, GO TO THE NEXT QUESTION.

III. WE, THE JURY, BY UNANIMOUS CONSENT, FIND FOR THE PLAINTIFF ACTUAL DAMAGES IN THE AMOUNT

OF One Hundred and Sixty-eight Thousand Dollars ^{168,000}
(Write out amount in words)
(\$ 168,000)

[Signature]
FOREPERSON'S SIGNATURE

April 22, 2010
Conway, South Carolina.

RECEIVED

MAY 24 2010

McNAIR LAW FIRM, P.A.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Circuit Court Judge

Case No.: 2007-CP-26-00265

Williams Carpet Contractors, Inc.,.....Respondent,

v.

Ruonala and Company, LLC, Mark Skelly and
M.S. Industries, Inc.,.....Defendants,

Of Whom Mark Skelly is.....Appellant.

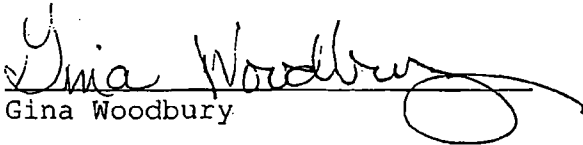
PROOF OF SERVICE

I, Gina Woodbury, an employee for Thompson & Henry, P.A., attorneys for the Appellant Mark Skelly, in the above-captioned action and/or actions, certify that I have this 10 day of December, 2012 mailed a copy and/or copies of the following:

1. Notice of Intent to Appeal,
2. Proof of Service, and
3. Filing Fee

to the undersigned at his/her/their address(es) of record, with sufficient postage attached thereto, as follows:

Henrietta U. Golding, Esquire
James K. Gilliam, Esquire
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Gina Woodbury

Conway, South Carolina

The South Carolina Court of Appeals

Williams Carpet Contractors Inc., Respondent,

v.

Mark Skelly, Appellant.

Appellate Case No. 2012-213575

ORDER

On December 12, 2012, Mark Skelly filed a notice of appeal, appealing "the jury verdict dated April 22, 2010 and entered as a matter of law as a result of the [r]emittitur dated November 9, 2012." The remittitur was sent down by this court after Skelly failed to serve and file a petition for rehearing from this court's October 24, 2012 opinion, which reversed the circuit court's grant of Skelly's motion for judgment notwithstanding the verdict. Any challenge to this court's October 24, 2012 opinion should have been raised in a timely petition for rehearing. Because no timely petition for rehearing was filed, this court correctly sent the remittitur. Accordingly, the appeal challenging the November 9, 2012 remittitur is not proper and this appeal is dismissed.



FOR THE COURT

Columbia, South Carolina

cc:

G. Michael Smith, Sr.
Henrietta U. Golding
James Keith Gilliam

FILED

3/11/13 AS

RECEIVED

MAR 1 2013

McNAIR LAW FIRM, P.A.

EXHIBIT 9