

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

Crenshaw's TV and Radio Service, Inc., d/b/a Crenshaw's
TV & Appliance, Respondent,

v.

Jocassee Partners Holdings, LLC Individually and d/b/a
The Jocassee Club and Bank of Travelers Rest,
Defendants,

Of whom Jocassee Partners Holdings, LLC Individually
and d/b/a The Jocassee Club is Appellant.

Appellate Case No. 2010-175307

Appeal From Oconee County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2012-UP-610
Heard October 3, 2012 – Filed November 14, 2012

REVERSED AND REMANDED

Violet Elizabeth Wright and T.S. Stern, Jr. of Covington
Patrick Hagins Stern & Lewis, P.A. of Greenville, for
Appellant.

James W. Logan of Logan Jolly & Smith, LLP of
Anderson, for Respondent.

PER CURIAM: Jocassee Partners Holdings, LLC (Jocassee) appeals the trial court's grant of summary judgment to Crenshaw's TV and Radio (Crenshaw) on its mechanic's lien foreclosure action and the award of costs and attorney's fees to Crenshaw. We reverse and remand to the trial court for an award of reasonable attorney's fees to Jocassee as the prevailing party.

Jocassee argued that the trial court erred in finding Crenshaw was the prevailing party and in awarding Crenshaw attorney's fees under section 29-5-20 of the South Carolina Code (2007) when Jocassee had previously tendered the full amount of the mechanic's lien, the final half of which Crenshaw had refused before it commenced foreclosure proceedings.

As a general rule, attorney's fees are not recoverable unless authorized by contract or statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). Under the mechanic's lien statute, attorney's fees are awarded by the court only if there is an action filed with the court. S.C. Code Ann. § 29-5-20 (A) (2007). The court may award to the prevailing party

the costs of the action and a reasonable attorney's fee which must be *determined by the court in which the action is brought* but only if the party seeking to enforce the lien prevails. If the *party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court.*

Id. (emphasis added).

Our supreme court has defined a "prevailing party" as "one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered."

EFCO Corp. v. Renaissance on Charleston Harbor, LLC, 370 S.C. 612, 618, 635 S.E.2d 922, 925 (Ct. App. 2006) (quoting *Heath v. County of Aiken*, 302 S.C. 178, 182-83, 394 S.E.2d 709, 711 (1990)).

"Clearly, the intent of the legislature in allowing the prevailing party in an action brought under the mechanic's lien statute to recover attorney fees and costs stems from a desire to deter both wrongful filing of liens and unjustified refusal to pay debts subject to mechanic's liens." *Cedar Creek Properties v. Cantelou Associates, Inc.*, 320 S.C. 483, 486, 465 S.E.2d 774, 775 (Ct. App. 1995).

In this case the lien was properly filed, but Crenshaw did not accept payment of the debt and refused to accept the second half of the payment for the mechanic's lien after previously accepting the first half. At that point in time, Crenshaw was not entitled to costs and fees. In defending the foreclosure action against the improper addition of costs and fees, Jocassee should have been the prevailing party and awarded attorney's fees. *See* § 29-5-20 (A) (stating the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court).

REVERSED AND REMANDED.

HUFF, THOMAS, and GEATHERS, JJ., concur.